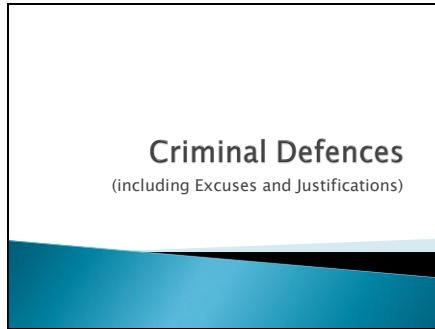



Slide 1



Slide 2

Alibi



ALFRED HITCHCOCK
BRINGS YOU 101 MINUTES OF MATCHLESS SUSPENSE

STRANGERS ON A TRAIN

FARLEY GRANGER RUTH ROMAN ROBERT WALKER

Basic denial defence which is used when the accused claims that he or she was **not present** at the time of the offence.

Independent evidence supporting this claim strengthens an alibi defence.

The slide contains a movie poster for 'Strangers on a Train' by Alfred Hitchcock. The poster shows a man in a suit (Farley Granger) and a woman (Ruth Roman) on a train. The text on the poster includes the director's name, a promotional tagline, the title, and the lead actors' names. To the right of the poster is a definition of an alibi as a basic denial defence. Below the poster, a sentence explains that independent evidence supporting the claim strengthens the defence.

Slide 3

No Criminal State of Mind

The *actus reus* of the offence may exist, but if the accused does not have a guilty mind – that is, the necessary *mens rea* or mental element – he or she may be found not guilty (or not charged at all)

<http://www.cbc.ca/canada/story/2009/04/04/aziga-verdict.html>

Case partially on point: *R. v. Clark*

The slide has a white background with a blue and black decorative wave at the bottom. The title 'No Criminal State of Mind' is centered at the top. Below it is a paragraph explaining that the *actus reus* of an offence can exist without a guilty mind (*mens rea*). A URL is provided below the paragraph, and the case *R. v. Clark* is mentioned as partially on point.

Slide 4

Behaviour not Voluntary

The accused person must have acted consciously. The criminal behaviour – what the person did – must be **voluntary**. A person who does something while sleepwalking, for example, may not be acting consciously.

Similarly, a person's actions brought on by an epileptic seizure or by a blow to the head, are not truly voluntary.



Slide 5

Behaviour not Voluntary

Crimes committed in an unconscious state are rare, but if the actions were not voluntary the accused person will be acquitted. This is called the defence of “automatism” because the accused person moves about automatically, without consciously controlling his or her actions.

MAJOR CASE:

R. v. PARKS, [1992] 2 S.C.R. 871

Slide 6

Ignorance

Mistake of Fact

- › Depends on the accused not having the *mens rea* or *guilty mind*
- › The accused must show that the mistake was an honest one and that no offence would have been committed had the accused known the true facts
- › Consent cannot be assumed by the absence of objections (e.g., date rape, intoxication, etc.)



Pappalardo v. The Queen, [1980] 2 S.C.R. 120

Slide 7

Ignorance

Mistake of Law

- ▶ According to the *Criminal Code*, ignorance of the law is not an excuse, but because of the enormity of the law, the defence of mistake of law is allowed in certain circumstances. For example, if the accused relied on incorrect legal advice from a government official.
- ▶ This defence is rarely successful, as allowing an accused to simply say that he did not know of the existence of a law would make ignorance a valuable commodity.

Slide 8

Ignorance (continued)

- ▶ Law was not publicized.
- ▶ Law was not accurately communicated.
- ▶ “Officially induced error”

MAJOR CASE:
R. v. Maclean
(1974), 17 C.C.C. (2d) 84 (N.S. Co. Ct.)

Slide 9

R. v. MacLean

The accused had lost his driver's licence. He worked at the Halifax International Airport and part of his duties required him to drive airport vehicles on property owned by the federal government. He sought the advice of the Nova Scotia Department of Transport as to whether he required a standard driver's licence in order to drive on airport property, and received the advice that he did not; but simply required the consent of his employers, which he had.

The court acquitted him on a charge of driving without a valid licence. The court held that the defence of **mistake of law** could apply since the accused made a *bona fide* effort to determine the true state of the law, using appropriate sources, and relied on the results of his efforts in good faith.

Slide 10

Insanity

“Not guilty by reason of insanity”

- Accused was unable to understand the quality of the act.
- Must be based on psychiatric expert testimony. (The **onus** is on the defendant to prove insanity – not the prosecution.)
- Can also be found “unfit to stand trial.” [Andrea Yates](#)

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Insanity (continued)

McNaughton Rule (1843)


To establish a defence on the ground of insanity, it must be proved that **at the time of the committing of the act** the party accused was labouring under such a defect of reason from disease of the mind, as **not to know the nature and quality of the act** he was doing; or, if he did know, that he **did not know that what he was doing was wrong.**

Slide 12

Intoxication

- ▶ **Involuntary Intoxication**
- ▶ **Voluntary intoxication** can only be used as a defence if **specific intent** is required and the accused was incapable of forming this intent
- ▶ Recent case [R. v. Evans](#)
- ▶ **Self-induced intoxication** is itself a criminal offence since 1995.

MAJOR CASE: [R. v. Daviault](#)



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R. v. Daviault, [1994] 3 S.C.R. 63

The accused was charged with sexual assault against a partially-paralyzed 65-year-old woman, after having consumed a bottle of brandy and several beers.

The court acquitted the accused because there was a reasonable doubt that he could form the required intent because of his extreme intoxication, even though sexual assault is an offence that requires only general intent.

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R. v. Daviault, [1994] 3 S.C.R. 63

Following this decision the Criminal Code was amended to deny this defence for all offences involving assault or "interference with the bodily integrity of the victim".

Slide 15

Specific Intent

A specific intent crime not only requires that an accused act **knowingly**, but that the accused also acted with a **specific purpose** in mind.

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Specific Intent (continued)

Examples:

To be convicted of **theft**, most theft laws not only require that you take something from someone else, but that you have the **specific intent** to deprive that person of his property permanently. If you took your neighbour's Porsche, the Crown must prove that you intended to deprive the person of it permanently.

If you only intended to take it for a spin and return it to your neighbour's garage, then you didn't commit the crime of theft (though, you can still be convicted of other crimes, such as joyriding).

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Specific Intent (continued)

Examples:

To be convicted of **burglary**, the Crown has to prove that you broke into your neighbour's house with the intent to steal something. If you only intended to break in and watch your neighbour's big screen TV and take a nap, you'd be guilty of the crime of breaking and entering, and not burglary.

Slide 18

Duress or Compulsion

- ▶ This is available as a defence if you only committed the crime under the threat of bodily harm.
- ▶ The threat must be **immediate**.
- ▶ The defence does not apply to sexual assaults or murder.
- ▶ The accused cannot be part of the group committing the offence.

MAJOR CASE: R. v. Ruzic

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R. v. Ruzic, [2001] 1 S.C.R. 687

- ▶ The accused was tried before a judge and jury on charges of unlawfully importing two kilograms of heroin into Canada, contrary to s. 5(1) of the Narcotic Control Act, and of possession and use of a false passport contrary to s. 368 of the Criminal Code.
- ▶ The accused admitted having committed both offences but claimed that she was then acting under duress and should thus be relieved from any criminal liability.

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R. v. Ruzic (continued)

She testified that a man in Belgrade, where she lived in an apartment with her mother, had threatened to harm her mother unless she brought the heroin to Canada. She also said that she did not seek police protection because she believed the police in Belgrade were corrupt and would do nothing to assist her. The accused conceded that her claim of duress did not meet the immediacy and presence requirements of s. 17 of the Code, which provides a defence for a person "who commits an offence under compulsion by threats of immediate death or bodily harm from a person who is present when the offence is committed".

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R. v. Ruzic

- She successfully challenged the constitutionality of Criminal Code s.17 under s.7 of the *Canadian Charter of Rights and Freedoms*, raised the common law defence of duress and was acquitted.
- ▶ s.17 is the statutory form of the defence of duress
 - ▶ Ruzic won at trial; Crown appealed; Ruzic won at B.C.C.A.; Crown appealed to SCC; Ruzic won at SCC

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R. v. Ruzic

"It is a principle of fundamental justice that only voluntary conduct – behaviour that is the product of a free will and controlled body, unhindered by external constraints – should attract the penalty and stigma of criminal liability. Depriving a person of liberty and branding him or her with the stigma of criminal liability would infringe the principles of fundamental justice if the person did not have any realistic choice."

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Self-Defence

- ▶ Can be used to protect one's person or property from another's threat.
- ▶ Must have an honest belief in the likelihood of harm.
- ▶ Threat must be imminent.
- ▶ The amount of force used must be reasonable in the circumstances.
- ▶ "Battered Woman/Spouse Defence"



Slide 24

Necessity

- ▶ Where the crime was committed in order to avoid a greater evil.
- ▶ Does **not** cover **homicide**.
- ▶ For example, you may not be convicted of a charge of "indignity to a dead body" if you resort to cannibalism in a shipwreck **IF** the victim is already deceased.

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Necessity (continued)

Updated 6:33 p.m. ET, Tues., Nov. 10, 2009

WICHITA, Kan. - An anti-abortion opponent says he's the one who killed a Kansas abortion provider – and did it because it was necessary to save lives.


Scott Roeder told The Associated Press in a telephone call from jail on Monday that he plans to argue at his trial that he was justified in shooting Dr. George Tiller to protect unborn children.

Should this use of the defence of necessity succeed or fail?

Slide 26

Entrapment

- ▶ Can be used as a defence if the accused is induced to commit a crime by trickery, persuasion, or fraud by law enforcement officials.
- ▶ e.g., prostitution, drug offences, etc.
- ▶ It must be shown that the accused would not otherwise have committed the offence.



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Provocation

- ▶ Any act or insult that causes a reasonable person to lose self-control.
- ▶ Not a pure defence.
- ▶ The defence of provocation applies only to the crime of murder, so that once the court is convinced beyond a reasonable doubt that the accused has committed murder, provocation may be considered as a partial defence to reduce the conviction from murder to manslaughter.
- ▶ In any other criminal act, provocation may serve to reduce a sentence

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Provocation (continued)

- ▶ For the defence of provocation to succeed, defence counsel must prove all four elements listed below. If any of these elements cannot be proven, then provocation cannot be used as a defence.
 - A wrongful act or insult occurred
 - This act or insult was sufficient to deprive an ordinary person of the power of self-control
 - The person responded suddenly
 - The person responded before there was time for the passion to cool

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Canadian *Charter of Rights and Freedoms*

Look especially to sections 7 to 14 (Legal Rights sections) of the *Charter* to see if any of the accused's rights have been violated:

- ▶ Arrest
- ▶ Detention
- ▶ Right to Counsel
- ▶ Punishment

Supreme Court of Canada decisions will be used as precedents.

CANADIAN
CHARTER OF RIGHTS
AND FREEDOMS