

33. Alternative Charges

33.1 Legislation

[Last reviewed: March 2025]

Criminal Code

[Section 568](#) – Cases in which several charges may be joined

[Section 575](#) – Offences involving circumstances of aggravation

[Section 575A](#) – Evidence at murder trial

[Section 576](#) – Indictment containing count of murder or manslaughter

[Section 577](#) – Charge of homicide of child

[Section 578](#) – Charge of offence of a sexual nature

[Section 579](#) – Charge of specific injury – charge of injury with specific intent

[Section 580](#) – Charge of injury to property

[Section 581](#) – Offences of dishonesty

[Section 582](#) – Charge of procuring commission of offence or wrongful act

[Section 583](#) – Conviction for attempt to commit offence

[Section 584](#) – When evidence shows offence of similar nature

[Section 588A](#) – Charges of stealing certain animals and of killing certain animals with intent to steal

[Section 589](#) – Indictment for joint receiving

[Section 589A](#) – Indictment for using or disclosing knowledge of match-fixing conduct or match-fixing arrangement for betting

[Chapter 61](#) – Effect of Indictment

33.2 Commentary

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As to the obligation to direct on lesser offences open on the evidence, see *R v MBX* [2014] 1 Qd R 438; *R v Chan* [2001] 2 Qd R 662; *Gilbert v The Queen* (2000) 201 CLR 414; [2000] HCA 15; *R v Willersdorf* [2001] QCA 183, [17]-[20]; *Harwood v The Queen* (2002) 188 ALR 296; [2002] HCA 20, [17]-[19]. However, see *R v Stevens* [2004] QCA

[99](#), [79], [99]; those paragraphs being a useful caution against complicating a summing-up unnecessarily by directing on alternatives that are not realistically indicated by the evidence (and see also *R v Perdikoyiannis* ([2003](#)) [86 SASR 262](#), 268).

In *R v Bickell* ([2020](#)) [QCA 37](#), Morrison JA (in dissent as to the outcome, but alone in considering this ground) summarised the principles relevant to leaving alternative charges to the jury as follows at [148] (footnotes omitted):

- a) the duty of a trial judge with respect to alternative verdicts does not require an alternative verdict to be left to a jury in every case; rather, the question is whether an instruction on an alternative verdict is necessary to secure the fair trial of the accused, according to the circumstances of the particular case;
- b) the rationale for directing a jury about alternative verdicts comes from a broader perspective than a consideration of the interests of the accused; public interest in the administration of justice is best served if a trial judge leaves to the jury, subject to any appropriate caution or warning, that irrespective of the wishes of trial Counsel, any obvious alternative offence which there is evidence to support;
- c) the conduct of a fair trial may require an alternative verdict to be left although it is not requested by Counsel for the accused;
- d) it would not be conducive to a fair trial to leave an alternative verdict where the defence case may have been differently conducted had the possibility of that verdict been one which was raised at the outset of the trial;
- e) the need to advise a jury about an alternative lesser offence comes from the risk, in the particular case, that a defendant who has committed only the lesser offence will either be wrongly convicted of the more serious offence or acquitted altogether; and
- f) the facts and circumstances of the particular case need to be considered and the essential inquiry is on the fairness of the trial.

Where there are alternative charges before the jury, a judge may make a suggestion as to what the jury might find a convenient approach to their deliberations, but must not mandate the order in which to deliberate on the charges (see *Stanton v R* ([2003](#)) [198 ALR 41](#), 38, 69; [\[2003\] HCA 29](#)).

A special direction is required where the alternative counts are stealing and receiving and the jury is entitled to deliver a verdict of guilty of either, though unable to say which: *Criminal Code*, s 568(9) (see also *R v Williams* [\[2001\] 2 Qd R 442](#); *Gilson v The Queen* ([1991](#)) [172 CLR 353](#); *R v Marijancevic* ([2001](#)) [3 VR 611](#)). When such a verdict is returned, the judge is required by s 568(10) to enter a conviction for the offence for which the least or lesser punishment is provided.

33.3 Suggested Direction

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Where alternative charges are before the jury

Charges 1 and 2 [shortly describing them] are alternatives. You may not therefore find the Defendant guilty of both.

You may consider the possible verdicts in whatever order you wish, but keep in mind that when you finish your deliberations you will be required to give your verdict first on the count of [describe more serious charge]. It will be only if you reach a verdict of not guilty of that count that you will be asked to return another verdict.

I suggest that you may first wish to consider [describe more serious charge], which is the more serious. If you find the Defendant guilty of that offence, you do not need to consider the other[s]. But, if you find the Defendant not guilty of [describe more serious offence], then consider the alternative charge of [describe it]. If your verdict is guilty of [describe more serious charge], you will not be asked to return a verdict in respect to the other charge. If, however, your verdict in respect of [the more serious event] is not guilty, then proceed to consider the other charge. Any verdict, whatever it is on any count, must be unanimous.

Special direction where the alternative counts are stealing and receiving

If you are not satisfied beyond reasonable doubt that the Defendant is guilty of stealing, and are not satisfied beyond reasonable doubt that the Defendant is guilty of receiving, but are satisfied beyond reasonable doubt that the Defendant either stole the property or received it knowing it to be stolen, you should return as your verdict: guilty of stealing or receiving the property [or part of it] but unable to say which.

(For an alternative formulation):

You are entitled to deliver any one of the following verdicts:

- 1. Not guilty; or**
- 2. Guilty of stealing; or**
- 3. Guilty of receiving; or**
- 4. Guilty of stealing or receiving but we are unable to say which.**