

Alibi

Law

1. Alibi means that the accused was not at the locus delicti at the material time but that he was at another definite place, which must be specified (Macdonald, Criminal Law, 5th ed, 265).
2. Where an indictment is unspecific as to the date and is framed therefore with a latitude as to the time of commission of the alleged crime, and the accused lodges a defence of alibi specifying a time, or a time period, within the Crown latitude, then for the purpose of testing the alibi the time or period named by the accused will be taken as the correct one (Macdonald, 219).
3. There may be cases where, although the accused is admitting being near the place libelled in the charge, he offers an explanation for his being present at the locus. In these circumstances notice of a special defence of alibi does not require to be given ([Balsillie v HM Advocate 1993 JC 233](#), 237).
4. In charging the jury the trial judge is not bound to emphasise all the details of a special defence of alibi ([McGhee v HM Advocate 1991 JC 119](#), 516 (opinion of the court)).
5. It is for the Crown to meet the defence and satisfy you beyond reasonable doubt that it should be rejected ([Henvey v HM Advocate 2005 SLT 384](#), at paragraph [11]).
6. There are circumstances in which it is the duty of a trial judge to withdraw a special defence from the jury, but it is only appropriate to do so if there is no evidence from which it can possibly be inferred that the special defence might have application. So long as there is any possibility of the jury being satisfied that the special defence applies, or in the light of evidence given in support of it, entertaining a reasonable doubt as to the accused's guilt, the special defence must not be withdrawn from consideration by the jury ([Carr v HM Advocate \[2013\] HCJAC 87](#)). It is normal and accepted practice for the accused's representatives to intimate that a special defence is not being insisted upon before parties address the jury. Accordingly, if the trial judge entertains doubts as to whether there is any evidence before the jury which supports the special defence and no intimation is given of the withdrawal of a special defence, it is considered best for the trial judge to clarify the position outwith the

presence of the jury before parties address the jury ([Lucas v HM Advocate \[2009\] HCJAC 77, 2009 SCCR 892](#)).

7. Where an accused is charged with acting together with others and relies on a special defence of alibi, the alibi may not be a complete defence. It is possible for the accused to bear criminal responsibility art and part even if the accused was elsewhere at a particular time. In other cases, the alibi may exclude the accused's involvement entirely. It will depend on the facts and circumstances of the case. A suggested direction where the Crown rely on the accused acting together with others and the accused relies on alibi is provided below.

Possible form of direction on alibi

"In this case the accused has lodged a special defence of alibi. That was read out to you at the start of the trial, and you have a copy of it.

As is explained in the written directions, the only purpose of a special defence is to give notice to the Crown that a particular line of defence may be taken. A notice of special defence does not change the burden of proof. The defence do not need to lead evidence in support of it. It is not for the accused to prove it but for the Crown to disprove it.

(where accused acting alone)

The accused says that at the time the crime was committed the accused was not there, but at another place. It is for the Crown to satisfy you beyond reasonable doubt that defence should be rejected.

To support that the defence rely on: [summarise as appropriate]

If you believe that, or it leaves you with a reasonable doubt of the accused's guilt, you must acquit.

On the other hand, the Crown says: [summarise as appropriate]

They rely on:

You should look at all the evidence, consider the points made for and against alibi, and then decide if the Crown has proved guilt beyond reasonable doubt."

OR

(where Crown allege accused acting with others such that presence at the scene of the crime is not essential)

The accused says that he/she/they had no involvement in the commission of this crime.

The defence rely on [specify] that at the time the crime was committed the accused was not there, but at another place. If you believe that, or it leaves you in reasonable doubt of the accused's guilt, you must acquit.

It is for the Crown to satisfy you beyond reasonable doubt that the defence should be rejected or that it does not exculpate the accused.

Whilst in most cases an alibi, if believed, would result in acquittal, that does not always apply.

In this case, the Crown says that the circumstances of the commission of the crime show that the accused committed it by participating in a common plan to commit the crime with others.

It is possible in law for the accused to bear criminal responsibility in the carrying out of the common plan even if the accused can point to being elsewhere at a particular time.

The Crown rely on....

You should look at all the evidence, consider the points made for and against the alibi, and its effect in this case, and then decide if the Crown has proved guilt beyond reasonable doubt."

(NB: In some cases the Crown's primary position may be that the accused acted alone and, as a secondary position, that the accused acted with others. The above directions will require to be adapted accordingly).