

## Introduction Elements

Legislatures and courts are regularly confronted with the argument that a person who has engaged in prohibited conduct (**actus reus**) should not be convicted unless they were at fault in that they knew and realised what they were doing and anticipated the risk of any prohibited consequences (**mens rea**)

### **Euthanasia**

- General position is that assisting suicide means you are guilty of homicide
- The fact that they act out of compassionate motives is irrelevant
- Consent of the deceased is not a defence and neither is necessity (**R v A Primary Care Trust [2013]**)

**Mathers [2011] NSWSC** 78 year old was charged with the murder of his 64 year old partner who suffered severe pain from a spinal condition

- His partner expressed that she wanted to commit suicide so he caused her to overdose and then suffocated her
- He was given a suspended sentence of 2 years after pleading guilty to manslaughter with the partial defence of substantial impairment - he suffered from anxiety and depression with impaired his decision making capacity

**R (on the application of Purdy) v DPP [2009] UKHL** DPP was asked to clarify the position on prosecuting the offence of assisting/encouraging suicide

- 2010 DPP *Policy for Prosecution in Rest of Cases of Encouraging or Assisting Suicide* - the 18 factors listed in favour of prosecution included:
  - The suspect was a healthcare professional
  - The suspect was unknown to the victim and provided specific information through a website or publication
  - They provided a physical environment to commit suicide
- The factors against prosecution:
  - The victim reach a clear and settled decision to commit suicide
  - The suspect was wholly motivated through compassion
  - The actions of the suspect were only minor in terms of encouragement
  - The suspect sought to dissuade the victim
  - The actions of the suspect may be characterised as reluctant
  - The suspect report the suicide to the police and assisted them in their inquiries
- **R (on the application of Nicklinson) v Ministry of Justice [2014] UKSC** questioned when the suspect was a healthcare professional but did so purely out of compassion
- DPP's understanding is that this factor is not intended to lead to the prosecution of the healthcare professional
- **Justins [2008] NSWSC** Howie J sentences the accused to a non-parole period of 22 months after she had been charged with murder but convicted of manslaughter of her de facto partner who was suffering from Alzheimer's
- The victim already attempted to do so twice and applied to the Swiss organisation that legally assists in suicide but this application was rejected due to the mental capacity of the victim with Alzheimer
- Issue of causation here was whether or not the victim had the mental capacity to make a clear decision that they wanted to commit suicide

- The court heard that the victim did not have the mental capacity to decide

### **Voluntary Euthanasia, assisted suicide and the medical profession**

- **Airedale NHS Trust v Bland** passive euthanasia involves discontinuation of treatment such as removing a feeding or breathing tube etc v active euthanasia which is actively bringing a patient's life to an end
- **Rodriguez v British Columbia (Attorney General) 1993 (Canadian Case)** a case involving a woman who suffered from a degenerative disease which doesn't usually affect mental functions
- The victim sought a declaration that she was entitled to commit suicide in the event that she could not commit suicide unaided
- *Canadian Charter of Rights and Freedom* provides a right to life and not to be deprived thereof except in accordance with the principles of fundamental justice
- Under s 31C(2) of *the Crimes Act*, it is an offence, punishable up to five years of imprisonment to incite or counsel someone to commit suicide but only if that person attempts to or actually does commit suicide (**see Attorney-General v Able [1984]**)
- Under the *Criminal Code Amendment (Suicide Related Material Offences)*, it is an offence to use the internet to distribute materials that counsels or incites suicide (Criminal Code s 474.29A)

### **'Common Law' v 'Code' States**

- Legislation v judge made law
- NSW is a Common Law state although there is still legislation (*Crimes Act 1900*)
- QLD, ACT, NT, WA, TAS code states
- NSW, SA, VIC common law states
- There was an attempt to produce a model criminal code to enforce amongst all Australia/harmonisation of laws

### **Purpose of criminal law**

- (a) the individual autonomy (AR and MR) - if individuals are capable of making their own decisions, they should be liable
- (b) community welfare principle

### **Questions**

#### **Ashworth and Horder**

1. Ashworth and Horder note that the criminal law must be influenced by the 'principle of welfare.' Does this differ from the 'community welfare principle'? (see the Findlay, Odgers and Yeo chapter from the first class)
 

**Principle of Welfare - emphasises the State's obligation to create social conditions necessary for the full autonomy by individual citizens**

**The fulfilment of certain basic interests such as maintaining one's personal safety, health and capacity to pursue one's own life plan**

  - **This is almost a pre-condition of autonomy which focuses on the social context in which the law must operate and gives weight to collective goals**
2. Ashworth and Horder set out three conditions that they believe should be satisfied before conduct is held to be criminal. What are these conditions? What is the minimalist approach to criminalisation that they advocate?
  - **Harm, wrongful doing and the public element**

- Public wrongs considers the victims to be the community at a whole, not one that just injures the public but one that the public as a whole condemns