

Criminal Law

MLL214

Summary

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Semester 2 2015

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TOPIC 1 – OVERVIEW

CRIMINAL CAPACITY

CHILDREN

- According to the Crimes Act 1914 (Cth), a ‘child’ is a person under the age of eighteen
- It is conclusively presumed that a child under the age of 10 years cannot commit an offence – Section 344 Children, Youth and Family Act 2005
- Common law principle – Doli Incapax Doctrine
 - In all Australian criminal jurisdictions children under the fourteen are presumed criminally incapable.
 - This presumption of criminal incapability has an irrebuttable and a rebuttable form depending on the age of the child
 - For children aged ten but not yet fourteen the presumption is condition and may be rebutted by proof that the child understood the wrongfulness of what they were doing
- The Children’s Court lacks jurisdiction to adjudicate all homicide offences as well as the offences of attempted murder – Crimes Act 1958 (Vic) S6
- In exceptional circumstances, the court may exercise discretion to decline jurisdiction and order that the matter be transferred to the Magistrates Court

- Exception circumstances outlined in the Children, Youth and Families Act 2005 (Vic) Subsections 516 (5) (a) – (h);
 - Instances in which the defendant was under the age of eighteen at the time the offence was allegedly commenced but has reached the age of nineteen or above by the time proceedings were actually commenced in the Children's Court
 - Situations where, due to the seriousness of the alleged crimes(s) and/or the advanced age of the accused, the court is of the view that it would be more appropriate to try the defendant as an adult in the Magistrates Court
- If the defendant is charged with one or more indictable offences, he/she (or his or her parent) may opt to have the charges adjudicated by a jury in the County or Supreme Court – Children, Youth and Families Act 2005 Section 3(1), S356 and S516
- Section 20C of the Crimes Act 1914 (Cth) states that Commonwealth offences committed by children are to be treated as though there were offences against the state or territory in question

CORPORATIONS

- Corporations hold the legal status of persons and can incur criminal liability under certain circumstances
- At common law, a corporation may only act through its officers or employees. The questions then becomes one of determining which act of a corporation's officers or employees may be attributed to the corporation
- Doctrine of vicarious liability - the acts of the employee in the course of his/her employment are attributed to the corporate employer
 - Case: Morgan v Babcock Ltd (1929) – according to this approach, the central legal issue is whether the employee was acting within the scope of his/her employment
- Doctrine of identification – the law treats the acts and mentality of the superior officers of the company as the act and mentality of the company itself
 - Case: Universal Telecasters (Qld) Ltd v Guthrie (1978)

DEFINITION OF A CRIME

- Professor Glanville Williams defines a crime as 'a legal wrong that can be followed by criminal proceedings and which may result in punishment'

CLASSIFICATIONS OF CRIMES

- A felony is taken to be a reference is a 'serious indictable offence'

- A misdemeanour is now termed a 'minor indictable offence'
- Summary offences, which are always in statutory form, are offences that are dealt with by a Magistrate sitting without a jury
- Indictable offences are those which are triable only before a judge and jury
- Indictable offences that are triable summarily are offences, that upon the consent of the parties designated by Parliament are triable summarily before a Magistrate without a jury
- Indictable offences are heard in the County or Supreme Court with a jury
- Parliament alone decides whether an offence is designated as summary, indictable or indictable triable summary

GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

- It is general practice of criminal law that criminal responsibility may not be attributed to a person unless s/he
 - Is engaged in conduct that is forbidden by the criminal law (referred to as the *actus reus* of the crime)
 - Possesses a mental state prohibited by the criminal law (referred to as the *mens rea* of the crime)
 - In addition, it is required that the prohibited mentality exists at the time of the volitional act(s) or omission(s) giving rise to the prohibited conduct (referred to as the requirement of temporal coincidence)
- These three principles are embodied in the common law maxim; *actus non facit reum nisi mens sit rea*. This has been judicially interpreted as a meaning that the act itself does not constitute a guilt unless done with a guilty mind
- The emphasis of the maxim is on the unity of the volitional act(s) or omission(s) component of the *actus reus* and the *mens rea*
- One does not incur criminal liability for one's volitional act(s) or omission(s) alone, nor for one's criminal mentality alone; rather it is only where there is a temporal coincidence between one's criminal act(s) or omission(s) and one's criminal mentality that liability attaches

ELEMENTS OF AN OFFENCE

- The elements which comprise any particular crime are sometimes referred to as the *corpus delicti*, meaning 'the body of the crime'
- In order to convict for the commission of a crime, the Crown must prove each and every element which comprises the offence and the defendant's complicity therein, beyond a reasonable doubt

MENS REA

- Many crimes require, as an essential element, that the defendant must have acted (or omitted to act where s/he was under a legal duty to act) with a particular state of mind, referred to as the mens rea component of the crime
- The mens rea component can consist of one or more of the following mental states, depending upon the statutory or common law definition of the crime
 - Intention – defendant acted (or omitted to act) with the actual subjective intention of bringing about one or more of the results forbidden by the definition of the crime; or, according to some authorities, that the defendant acted (or omitted to act) with the knowledge that one or more results forbidden by the definition of the crime were practically certain to result
 - Knowledge – the defendant acted (or omitted to act) while holding certain facts to be true. The term knowledge is often used interchangeably with the terms awareness and foresight in this context
 - Belief – the defendant acted (or omitted to act) with the belief that certain facts were true, albeit with some doubt and foresight in this context
 - Recklessness – the defendant acted (or omitted to act) with the knowledge (or an awareness or foresight) that there was a possibility, or depending on the type of crime, a probability, that some or all of the results forbidden by the definition of the crime would result from his or her conduct

ACTUS REUS

- The actus reus component of a crime requires that the non-mens rea elements must be the result of a voluntary act or omission to act where the law imposes a duty to act
- There must be a causal connection between the act or omission and the non-mens rea elements of the crime
- For an act to be regarded as voluntary, it must consist of some willed muscular movement. A muscular movement is deemed as willed if it results from a conscious decision to move a portion of one's body. Acts done whilst sleep walking, for instance, would not amount to voluntary acts in the relevant sense
- Involuntary movements such as reflex actions cannot constitute voluntary acts or omissions
- A duty to act will arise in the following circumstances
 - a) Where one is under a contractual duty to act eg. body guard
 - b) Where one is under statutory duty to act eg. police officer
 - c) Where one is deemed to have voluntarily assumed a duty to act by undertaking to rescue someone in peril
 - d) Where the defendant and victim have a special relationship

- It is sufficient to state that the actus reus of an offence consists of
 - a) The non-mens rea element of the offence as defined by its statutory or common law definition
 - b) The voluntary act or omission to act which brings about those non-mens rea elements
- Ryan v The Queen (1967) – Question to be determined by the trial judge is ‘whether upon the material a jury would be entitled to entertain a reasonable doubt as to voluntary quality of the act attributed to the accused’.

THE DOCTRINE OF TEMPORAL COINCIDENCE

- When an offence is one of mens rea, there can be no such crime unless the mens rea and the voluntary act or omission to act which brings about the non-mens rea elements (actus reus) to concur in time

DEFENCES

- There are two types of defences
 - 1) Primary or ‘denial’ defence – based on the evidence adduced, that the prosecution has failed to prove one or more of the constituent elements of an offence with which an accused is charged and/or that the accused is the person who committed the alleged crime
 - 2) Secondary or affirmative defence – when an accused is asserting that even if the prosecution has proven each of the constituent elements of the offence and the accused’s complicity therein, s/he is nonetheless entitled to an acquittal because of defence that is recognised in law and supported by evidence at trial eg. self defence

STRICT LIABILITY

- Strict liability crimes are those that, by way of express statutory statement of judicial interpretation, do not require proof of fault
- Fault in this context denotes, at a minimum, that the accused acted negligently in bringing about the consequences prescribed by the statutory or common law definition of the crime(s) alleged
- A crime of strict liability is one which, by definition does not require the prosecution to prove that the accused acted with ordinary negligence or any of the recognised mens rea
- There are two additional defences, however, which are of specific application to strict liability crimes;

- 1) Honest and reasonable belief in the existence of the facts that if true, would have made the accused's conduct perfectly lawful (known as the Proudman defence)
- 2) External intervention defence – requires the accused to show that
 - i. His or her conduct occurred as a result of a stranger or non-human act
 - ii. S/he had no control over that conduct
 - iii. S/he could not have been reasonably expected to guard against such external intervention

INCHOATE CRIMES

- Inchoate crimes, which include attempt, incitement and conspiracy are those in which the mental element of the crime, although formed, is not fully expressed in the conduct of the accused
- With these types of crimes, the criminal law comes the closest to holding people criminally responsible for their thoughts alone
- Incitement consists of encouraging or attempting to induce or persuade (or other analogous terms) another person to commit a crime
- Conspiracy, consists of an agreement or amount two or more persons to commit an illegal act

PARTICIPATION

- At common law, the basic definition of participatory liability is between principal parties and accessories
- A principle in the first degree is a party who personally performs part or all of the actus reus of the crime
- If two or more parties each perform a portion of the actus reus, then each is considered to be a joint principle in the first degree
- The term principle in the first degree also encompasses those who are both present (meaning within eyesight and/or earshot or at least in close enough proximity to render assistance to the other joint principles) at the scene and 'acting in concert' as part of a pre-conceived agreement, express or implied, to commit a crime. In these instances, each of the parties 'acting in concert' is regarded as a joint principle in the first degree
- A principle in the second degree is one who is present at the scene of the crime, and though providing assistance and/or encouragement to the principle(s) in the first degree, does not significantly contribute to or actually perform any portion of the actus reus of the ulterior crime

- It is of no consequence that only one or some of the parties may have actually performed the actus reus of the crime; that is, each party to the joint criminal enterprise is personally liable for the crime to the same extent as a principle in the first degree
- At common law, under what is referred to as the common purpose doctrine, the secondary parties are not only liable to the same extent as the principle(s) in the first degree for the offence(s) that were actually contemplated by the secondary parties and committed by the principle(s) in the first degree, but also for any other crimes committed by them which the secondary parties contemplated might be committed as incidental to the offence(s) actually contemplated

TRANSFERRED MALICE

- The doctrine does not apply unless the accused ultimately achieves the same offence that s/he intended
- The doctrine is only applicable in instances where the actus reus of the intended offence is identical to that of the resulting offence

BURDENS OF PROOF

- In criminal prosecutions, it is the Crown that carries the 'legal' burden with respect to each and every element of the offence(s) charged and the identity of the accused as the perpetrator
- Standard of proof by which the Crown must satisfy the judge or jury is beyond a reasonable doubt
- The 'evidential' burden of proof denotes the burden persuading the court that there is ample evidence in support of a claim of defence to warrant a determination by the fact-finder as to whether the 'legal' burden has been discharged
- When an accused is asserting secondary defence (eg. self defence), it is s/he who bears the 'evidential' burden with respect to each of the constituent elements of the offence
- The test for determining whether the accused has satisfied the burden, the Crown has failed to negate one or more of the elements of the defence beyond a reasonable doubt which is looked upon in the light of the most favourable to the accused
- If the accused meets the 'evidential' burden, the Crown then assumed an additional 'legal' burden of negating the defence beyond a reasonable doubt
- Because self defence and the other secondary defences are comprised of more than one constituent element, the Crown can satisfy this burden by negating any one or more of the elements beyond a reasonable doubt

THEORIES OF PUNISHMENT

- The *lex talionis*, an eye for an eye theory of punishment, requires us to select a sanction that, as far as possible, equates with the nature of the crime
- This stands in contrast to the communicative theory of punishment, which favours sanctions that will best inform offenders of the wrongfulness of their crimes

GOALS OF SENTENCING

DETERRENCE

- There are two broad forms of deterrence
 1. Specific deterrence – aims to discourage crimes by punishing actual offenders for their transgressions, thereby convincing them that ‘crime does not pay’
 2. General deterrence – seeks to dissuade potential offenders from engaging in unlawful conduct by illustrating the unsavoury consequences of offending

INCAPACITATION

- Incapacitation involves rendering an offender incapable of committing further offences and is a means of protecting the community rather than an ends of punishment and sentencing
- All sanctions involve some degree of supervision or interference with freedom of the offender eg. probation license, community work orders which somewhat limit the hours left in the day for the opportunity of further offending
- Prison is the sentencing option that most effectively prevents re-offending

REHABILITATION

- Rehabilitation aims to discourage the commission of future offences by the offender
- Rehabilitation seeks to alter the values of the offender so that he/she no longer desires to commit criminal acts
- It involves the renunciation of wrongdoing by the offender and his/her re-establishment as an honourable law abiding citizen, and is achieved by reducing or eliminating the factors that contributed to the conduct for which the offender is sentenced