

JURD7121 CRIME AND THE CRIMINAL PROCESS

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RELEVANT LEGISLATIONS & SECTIONS FOR EXAM

Anti-Discrimination Act 1977	48
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Crimes (Criminal Organisations Control) Act 2012	54
Crimes Act 1900	59
Crimes (Appeal and Review) Act 2001	65
Criminal Code Act 1995	66
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Evidence Act 1995	95
Law Enforcement (Powers and Responsibilities) Regulation 2005	99
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Summary Offences Act 1988	109

QUICK REFERENCE CHART FOR LEGISLATION & SECTIONS

Cons

- the common law is supposed to punish moral blameworthiness, so punishing conduct alone will corrupt the moral authority of the law
- It is better to leave some evil unpunished than to punish people with no moral culpability

STRICT LIABILITY

Proudman v Dayum (HRMF)

- **Facts:** The defendant was charged with having an unlicensed driver drive their car.
- **Held:** The defendant is guilty, **unless at the time of the driving, he was under an honest and reasonable belief** that the driver was licensed.

Defence must comprise of an honest and reasonable belief in a state of facts, which if correct would have resulted in innocence. (**Honest and reasonable mistake of fact**).

- Honest and reasonable belief that the circumstances were X – mistake was genuine and reasonable
- **Defendant has the evidentiary burden** to raise HRMF, otherwise there is no mens rea.
- **Prosecution then has to negative this HRMF beyond reasonable doubt.** It is thus a persuasive/probative burden on the prosecution.

Mayer v Marchant (HRMF)

For the argument to succeed, the action had to have been innocent if the state of affairs were indeed as per the mistaken belief.

State Rail Authority v Hunter District Water Board (HRMF)

- A **positive belief that the act was permissible** will constitute a mistake.
- The **absence of a reason to believe** that the facts were otherwise will not constitute a mistake.
 - This is because the purpose of this law is to put more responsibility on people to be active and try doing the right thing, not hiding behind ignorance.
- The failure to consider whether the facts were otherwise will not constitute a mistake.

CTM v Regina [2008] HCA 25 / CTM v The Queen [2008] (If Absolute Liability, it must be stated in legislature)

- Defence of honest and reasonable mistake about the age of the complainant was still available as a defence.
- Gleeson CJ, Gummow, Crennan and Kiefel JJ said the presumption involved 'a basic legal principle of criminal responsibility which informs our understanding, and interpretation, of the criminal law'.

EVIDENCE ACT 1995

- **84** Exclusion of admissions influenced by violence and certain other conduct
- **85** Reliability of admissions by defendants
- **86** Exclusion of records of oral questioning (signing, adopting the record of interview)
- **89** Admissions by silence (See also S 89A)
- **89A** Evidence of silence in criminal proceedings for serious indictable offences
- **90** Discretion to exclude admissions
- **118** Legal advice
- **126** Loss of client legal privilege: related communications and documents
- **127** Religious confessions
- **138** **Exclusion of improperly or illegally obtained evidence**
- **139** Cautioning of person

BAIL ACT 2013

Division 1 Preliminary

- **15** Bail decision to be made in accordance with this Part
- **16** **Flow charts—key features of bail decisions**

Division 1A Show cause requirement

- **16A** **Accused person to show cause for certain serious offences**
- **16B** **Offences to which the show cause requirement applies**

Division 2 Unacceptable risk test—all offences

- **17** **Assessment of bail concerns**
- **18** **Matters to be considered as part of assessment**
- **19** **Refusal of bail—unacceptable risk**
- **20** **Accused person to be released if no unacceptable risks**
- **20A** **Imposition of bail conditions**