

Criminal Law and Procedure Exam Notes

Ordinary answer skeleton

To weave in authority (case and legislation):

- ___ is authority for the proposition that ___. In these circumstances therefore _____.
- _____ is authority that there is justification for a _____.
- - 'the application of s__ will result in _____'

When using case law, consider:

- Does the case apply? Are the facts sufficiently similar or can it be distinguished?
- What is the ratio of the case? Is it binding precedent or just persuasive?
- Why is the current scenario similar to justify applying the case?

If missing facts, ensure to state that! State what facts would be required for a more robust analysis.

1. **ISSUE SPOT:** Read the factual scenario carefully! Identify the potential offenders/accused that the Prosecution will bring an action against.
 - a. *CONSIDER *Duplicity* – defendant can't be charged twice for the same actions that led to the offence.
2. **ASK:** Can the accused actually be tried?
 - a. Not if under 10 years of age: s 5 *Young Offenders Act*
 - b. If between 10 and 14, presumed *doli incapax* – that the child is incapable of forming criminal intent (*but can be rebutted by the prosecution*).
3. **CHARGE SELECTION:** Identify the most appropriate charge (*or charges*) for each accused. If multiple offences, take the most relevant or appropriate first:
 - a. *Section 330 CLCA* is authority the prosecution can bring more than one charge.
 - b. IF RELEVANT: is the offence basic or aggravated?
 - i. See s 5AA - for dishonesty offences, non-fatal offences against the person and some sexual offences.
 - a. STATE: Prosecution Guideline No 1 is authority that: the prosecution will ordinarily pursue the most serious charge possible on the facts.
4. **ELEMENT ANALYSIS:** Define and Analyse ALL of the physical and mental elements of each offence! State them and apply them to the facts! For the prosecution to succeed, they must prove these beyond reasonable doubt!
 - a. VOLUNTARINESS - see defences below and notes but raise here. If successful, then complete defence. If unsuccessful, consider physical and fault elements of offence.
 - i. Per *Criminal Code (Cth)* s 4.2 and *Ryan v The Queen*, conduct can only be a physical element if it is voluntary, and a product of the will of the person. I.e. a willed muscular movement (*He Kaw Teh*). For example
 1. Spasms
 2. Result of a reflect action (*Ryan v The Queen*)
 3. Accidents
 4. Impaired consciousness

5. Impaired mental states
- b. Is there a dishonestly offence on the facts?
- i. THEFT? (section 134)
 1. Did the Defendant *deal* – *section 130 definition*
 2. With property – *look to section 130 definition*
 3. Belonging to another? – *section 130 definition*
 4. Dishonesty? – *section 131*
 5. Was there *consent* (was it gained by *deception*)? – *section 132 definition*
 6. Intending to either: – *section 134(2)*
 - a. Deprive the owner permanently OR
 - b. Seriously encroach on their rights?
 - ii. DECEPTION? (section 139)
 1. Did the defendant use deception (s 131) to:
 - a. Dishonestly (s 131) benefit to D or another; OR
 - b. Dishonestly (s 131) cause detriment to another person – *Section 130*
 - iii. SATELITES:
 1. Section 141 – Did the defendant: dishonestly manipulate or take advantage of a machine malfunction to obtain a benefit or cause detriment?
 2. Section 142 – Did the defendant dishonestly (s 130) exploit someone's mental or physical disability or ignorance as to local conditions to cause a benefit or detriment?
 3. Section 143 – Did the defendant dishonestly interfere with merchandise or a label to reduce a price?
 4. Section 144 – Did the defendant make off without payment of goods/services knowing that payment was due?
 5. Section 137 – Did the defendant commit a robbery? – *see below*
- c. Is there an unlawful killing on the facts?
- i. MURDER? (Section 11 and common law)
 1. Did the accused cause the death of the victim?
 - a. Were their actions consciously performed and so connected to the event that they had a *sufficiently substantial causal effect*, which remained until death?: *Hallett and Arulthilakan*
 - i. IF there is an omission: *Taber, Styman and Styman*
 - ii. IF the victim intervenes: *Royall*.
 - iii. IF the victim received bad medical treatment, or the treatment is never administered, see *Jordan and Smith*.
 2. Did the accused either: per *Moloney*
 - a. Intend to cause death/grievous bodily harm OR have knowledge that their actions would certainly cause death/grievous bodily harm.

- b. Awareness that it was probable their actions could cause death or grievous bodily harm (*recklessness*)
 - ii. CONSTRUCTIVE MURDER? (Section 12A) – *See below*
 - 1. *Useful if intention cannot be proven.*
 - iii. MANSLAUGHTER? (Section 13 and common law)
 - 1. Physical element is same as for murder *above*. Will also arise if provocation defence is successful.
 - 2. Was the defendant:
 - a. Grossly negligent OR
 - b. Did they perform an unlawful and dangerous act?
 - iv. ATTEMPTED MANSLAUGHTER? (Section 270AB) – *See below*
 - v. CRIMINAL NEGLIGENCE? (Section 14) – *See below*
 - vi. *Note: if a doctor caused the death of a patient, see below!*
- d. Is there a non-fatal and non-sexual offence against the person on the facts? Will the offence be basic or aggravated? – *see above*
 - i. Under Division 7A?
 - 1. CAUSING SERIOUS HARM INTENDING TO CAUSE SERIOUS HARM? (Section 23(1))
 - a. Did the defendant intend to cause (section 21) serious harm (section 21) and cause serious harm?
 - 2. CAUSING SERIOUS HARM AND BEING RECKLESS AS TO CAUSING HARM? (Section 23(3))
 - a. Did the defendant cause (section 21) serious harm (section 21) whilst being reckless (section 21). to the possibility it may occur?
 - 3. CAUSING HARM INTENDING TO CAUSE HARM? (Section 24(1))
 - a. Did the defendant cause (s 21) harm (s 21) intending to cause harm?
 - 4. CAUSING HARM BEING RECKLESS AS TO CAUSING HARM? (Section 24(2))
 - a. Did the defendant cause (s 21) harm (s 21) whilst being reckless (s 21) as to the possibility it may occur?
 - 5. Specific DEFENCES:
 - a. Section 22(1) if the person consented.
 - b. Section 22(2) if the parent or guardian (*if applicable*) consented
 - c. Section 22(3) consent will be presumed if the nature of the harm falls within the limits that are generally accepted in the community. – *see below for more details.*
 - d. Section 22(4) consent will be presumed if the conduct lies within the limits that are generally accepted in the community. – *see below for more details.*
 - e. Section 22(5) this division will not apply if only mental harm was caused (defence except in some circumstances) – *see below for more details.*

- ii. Under Division 7?
 - 1. ASSAULT? (Section 20(1) and (3)) Did the defendant:
 - a. Intentionally apply direct/indirect force to the victim?
 - b. Intentionally make direct/indirect physical contact with the victim knowing they would reasonably object?
 - c. Threatened (by words or conduct) to apply direct/indirect force to the victim? – *see below for more details.*
 - d. Undertake an act for the intended purpose of applying direct/indirect force?
 - e. Accost or impede another in a threatening manner?
 - 2. ASSAULT CAUSING HARM? (Section 20(4))
 - a. Did the defendant assault another, causing harm?
 - 3. Specific DEFENCES:
 - a. Section 20(1) there will be no assault if the victim consented.
 - b. Section 20(2) there will be no assault if the conduct lies within the limits that are generally accepted in the community. – *see below for more details.*
 - 4. UNLAWFUL THREAT? (Section 19(1))
 - a. Did the defendant threaten to kill or cause harm to another?
 - b. Intending (or recklessly indifferent) to arouse a fear that the threat will be carried out?
- e. Is there a sexual offence against the person on the facts?
 - i. RAPE? (section 48 and definitions in sections 5, 46, 47 and 48)
 - 1. Did the defendant engage in, or continue to engage in, sexual intercourse with the victim without their consent?
 - a. Was the defendant aware of the lack of consent, or recklessly indifferent to it?
 - 2. Did the defendant compel the victim to engage in, or continue to engage in, sexual intercourse with another, OR an act of self-penetration, OR an act of bestiality?
 - a. Was the defendant aware of the lack of consent, or recklessly indifferent to it?
 - ii. ATTEMPTED RAPE? - *see below for more details.*
 - iii. INDECENT ASSAULT? (Section 56) - *see below for more details.*
 - iv. UNLAWFUL SEXUAL INTERCOURSE WITH A MINOR/DISABLED PERSON? (Section 49) - *see below for more details.*
- 5. IF RELEVANT: undertake *He Kaw Teh* analysis to determine the fault element of an offence. *See below.*
- 6. CONTEMPORANEITY
 - a. The Principle of Contemporaneity: (*Ryan v The Queen*)
 - i. The Defendant must possess fault element at the time of the offence (commission of the physical elements), or they will not be guilty!
- 7. ATTEMPTS: *as an alternative, the prosecution might charge the defendant with an attempted crime, if one of the physical elements are not met.*