

# MLM214 CRIMINAL LAW 2013

## CHAPTER 1: THE FUNDAMENTALS OF CRIMINAL LAW

### 1. Introduction

In this unit we are looking at the basic principles and underlying rationales of the substantive criminal law.

### Definition of a Crime

- A crime is generally defined as conduct that is forbidden by law and which can be followed by criminal prosecution.
- Criminal vs Civil Wrong

### 2. Purposes Of Criminal Laws: Connection Between Crime and Punishment

- Punishment looks at the connection between wrongdoing and state imposed sanctions.
- Sentencing is the system of law through which offenders are punished.

#### Goals sought to be achieved by Sentencing:

1. Deterrence
2. Incapacitation/Retribution
3. Rehabilitation

### 3. Sources of Criminal Law

- **Victoria –Common Law jurisdiction.**
- In Vic- main criminal law statutory provisions are contained in the Crimes Act 1958(Vic). These provisions are largely interpreted by referring to common law principles.
- **Constitutionally**, Criminal Law is a generally matter for the states but there is federal criminal jurisdiction created by the Commonwealth Parliament

### 4. Criminal Capacity

- Assumption is that everyone is capable of committing crimes and being held criminally responsible for those crimes with a number of exceptions.

#### 1. Children

- Under s.344 of Children Youth Families Act 2005 (Vic), the minimum age at which a person is deemed capable of committing a crime is now 10.
- There is a rebuttable presumption that children who are aged 10 but under the age of 14 are incapable of committing a crime

- s516 of the Children Youth and Families Act 2005, provides that the Children's Court has exclusive jurisdiction to deal with criminal offences committed by persons who are over the age of 10 but under the age of 18 at the time of the commission of the offence. Some exceptions apply.

## 2. Corporations

- Expansion of range of criminal offences that corporations may be liable for in last few years.

## 5. Classification of Crimes

### Summary Offences Or Indictable Offences.

- **Summary Offence**- Less serious than indictable offences.

Example- traffic infringements, offensive behaviour, property damage

- **Indictable Offence**- more serious offence. Example: Murder, Rape, Drug Trafficking Offences and Burglary
- Parliament decides on classification of offences as being summary, indictable or triable summarily.

### Offences Against The Person And Offences Against Property.

- **Offences Against the Person:** Eg: Unlawful homicide, CL and Statutory Assaults and Rape
- **Offences Against Property:** Theft, Obtaining Property or a Financial Advantage by deception, Burglary, Robbery,
- Overriding these offences will be the **inchoate (or incomplete) offence (eg attempts)** where an offence has not quite been completed but criminal liability will attach all the same.

## 6. General Principles of Criminal Responsibility

- Most important general principles studied of this course are contained here in Chapter 1.7 of the text.

### Criminal Responsibility

- **To attribute criminal responsibility and find a person guilty of any criminal or property offence , we need to establish:**

1. The **Actus Reus** of the offence- non mens rea element
2. The **Mens Rea** of the Offence- mental state of the Defendant
3. Establish there is **Temporal Coincidence** between the mens rea of the offence and the voluntary act or omission component of the AR.

## Elements of an Offence

- Each crime is composed of elements are called the **CORPUS DELECTI**.
- Each element comprising the corpus delecti of the offence will fall into the category of the Actus Reus or Mens Rea of the offence.

## Mens Rea

- Many crimes require that the defendant must have acted with a particular state of mind.
- **This mental element is referred to as the MENS REA of the crime.**
- In criminal law, mens rea consists of one or more of the following mental states, depending upon the statutory or common law definition of the crime:

### 1. INTENTION

### 2. KNOWLEDGE

### 3. BELIEF

### 4. RECKLESSNESS

### 5. NEGLIGENCE -Is Negligence a mens rea?

## Actus Reus of the Offence

- Although not all crimes require a mens rea component, they all have an Actus Reus component.
- **Actus Reus** (a latin term meaning bad act) consists of:

### 1. All of the non mens rea elements of a crime:

AND

### 2. The voluntary act or omission to act (where there is a duty to act) which brings about those non mens rea elements.

- Thus there must be a **causal connection** between the act or omission and the non mens rea (ie AR) elements of a crime. (ie non MR elements must be the result of the voluntary act or omission (where there is a duty to act))
- Act must be voluntary- ie conscious and willed.

## Doctrine of Temporal Coincidence

- Where an offence is one of mens rea, there can be no crime unless the mens rea and the voluntary act that brings about the non mens rea elements (ie AR elements ) concur in time.
- Referred to as MR and the AR elements to concur in time- but this is misstated- The courts have held that what must concur in time is the act causing/bringing about the AR elements of the crime and the necessary specific intent (MR)
- **Act and Intent must coincide: Baker v The Queen.**

- The courts have displayed a willingness to relax this temporal coincidence requirement in order to reach what they believe is an equitable result in some circumstances.

## Defences

- Two types:

**1. Primary or Denial Defence-** failure to establish and AR or MR element.

**2. Secondary or Affirmative Defence-** EG Duress, Necessity, Insanity, Self Defence.

## Strict Liability Offences

- Committed without a MR.
- Mainly exist in statutory form.
- **He Haw Teh v Queen:** statutory offences are presumed to be crimes of MR but this presumption is rebuttable. See Ch 11.
- Strict/ Absolute Liability Offences: See Ch 11

## Inchoate Crimes

- Crimes that are incomplete, unfinished or imperfectly expressed or realised.
- We will only look at Attempts in Chapter 12.

## Participatory Liability

We do not examine Participatory Liability in this course but consider:

- Principals of first degree
- Principal in the second degree
- Accessory before the fact.
- Accessory after the fact

## Transferred Malice

- Where D acts with a requisite MR to commit an offence against a particular person or property and succeeds in causing the same type of harm to another or other property, the law treats D in the same manner as if he or she carried out the crime as intended.