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Traffic Offences

- Usually considered strict/absolute liability offences, as the person's intention/purpose in doing something fundamentally does not matter
- However, there are defences of reasonable excuse/reasonable grounds
 - e.g. someone's life depends on being taken to a hospital so you speed

Dangerous Driving

- Two offences created under s 52A of the *Crimes Act 1900* (NSW):
 - s 52A(1): dangerous driving occasioning death
 - s 52A(3): dangerous driving occasioning grievous bodily harm
- Both offences of strict liability: *Giorgianni* (1985) 156 CLR 473/*Jiminez* (1992) 173 CLR 572

52A Dangerous driving: substantive matters

(1) A person is guilty of the offence of dangerous driving occasioning death if the vehicle driven by the person is involved in an impact occasioning the death of another person and the driver was, at the time of the impact, driving the vehicle:

- (a) under the influence of intoxicating liquor or of a drug, or
- (b) at a speed dangerous to another person or persons, or
- (c) in a manner dangerous to another person or persons.

A person convicted of an offence under this subsection is liable to imprisonment for 10 years.

- Accused must be driving
 - There is no definition of 'driving' in the *Crimes Act*, however common law has stated that it is controlling the propulsion of the vehicle
 - Having control of the brakes and accelerator is sufficient, even if someone else took the wheel: *Williams v R* [2012] NSWCCA 286
 - Driving must be voluntary: *Jiminez* (1992) 173 CLR 572
- 'In a manner dangerous':
 - General principle is that driving is dangerous where it represents a serious breach of the proper conduct of a motor vehicle: *King* (2012) 288 ALR 565 affirming *McBride*
 - "whether the manner of driving, the condition of the vehicle, or the condition of the driver as a matter of objective fact made the driving a danger to the public": *King* (2012) 288 ALR 565 quoting *Gillett v The Queen* (2006) 46 MVR 429, [27]
 - 'Danger' doesn't depend upon resultant damage, but potential of danger to the public, whether realised by the accused or not: *McBride* (1966) 115 CLR 44
 - Split in *King* on whether 'negligence' should come into discussions and applications of dangerous driving – joint judgement says no, Bell J says yes
 - Examples:
 - Inattention, even momentary: *R v Hain* (1966) 2 NSW 142
 - Overtaking, which may be safe when you start, but to continue to overtake is dangerous: *Goodman* (unreported, NSWCCA, 1991)
 - Epilepsy, where the condition was already known: *Gillett* (2006) 166 A Crim R 419
 - Mechanical defects unknown to the driver: *Giorgianni* (1985) 156 CLR 473
 - Falling asleep at the wheel, if there is a preceding period of dangerous driving that may be regarded as contemporaneous with the impact, such as driving while tired or knowledge that there was a risk of falling asleep: *Jiminez v R* (1992) 173 CLR 572

- Or 'at a speed dangerous':
 - The test is objective: *McBride* (1966) 115 CLR 44
 - Not determined simply by reference to the speed limit, speeding on its own doesn't mean the speed was objectively dangerous (eg. 5km/h over): *Pike v Becker* [2012] WASC 397
 - But, speed alone can be sufficient (eg. 50km/h over): *Lehmann v Police* [2010] SASC 102
 - Conduct which would support a conviction of driving at a speed dangerous may also support a conviction of driving in a manner dangerous: *R v De Keyzer* (1987) 9 NSWLR 709
 - Remember speed is a potential circumstance of aggravation
- Or 'under the influence':
 - A person is 'under the influence' if they have consumed a quantity of intoxicating liquor which disturbs the balance of their mind for intelligent exercise of their faculties: *Mair v Railway Passengers Assurance Co Ltd* (1877) 37 LT 356
 - Deeming provision is s 52AA(1) – PCA of 0.15 or higher
 - Where this does not apply, "determination is one of fact and degree based on the evidence", including observations of witnesses: *Sagacious Legal Pty Ltd v Westfarmers General Insurance Ltd (No 4)* (2010) 268 ALR 108, 138 [119]
- Must be involved in an impact
 - 'Direct' impacts listed non-exhaustively in s 52A(5)
 - 'Indirect' impacts allowed under s 52A(6), where the vehicle driven by the accused causes another impact, such as between two other vehicles or another vehicle and an object
- Impact must occasion the death or GBH of another person
 - s 52A(8): defence that the death or injury was not attributable to the accused's actions
- The offence can be 'aggravated' under ss 52A(2) and (4) by a number of factors listed in s 52A(7):
 - A prescribed concentration of alcohol (0.05), particularly high range PCA (0.15 or higher)
 - Ability to drive 'very substantially impaired' by drugs and/or alcohol
 - No definitive standard, to be determined objectively case-by-case
 - Blood/urine sample must be taken 'within 2 hours after the impact' for alcohol under s 52AA(3)(a), and 'within 4 hours' for any other drug under s 52AA(3B)(a)
 - Exceeding the speed limit by more than 45km/h
 - Escaping pursuit by a police officer
- Guideline judgement available

Offences Involving Alcohol/Drugs

- ss 110 and 111 of *RTA 2013* cover the presence of alcohol and drugs in a person's system, while s 112 covers use or attempted use of a vehicle while under the influence:

111 Presence of certain drugs (other than alcohol) in oral fluid, blood or urine

(1) A person must not, while there is present in the person's oral fluid, blood or urine any prescribed illicit drug:

- (a) drive a motor vehicle, or
- (b) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or
- (c) if the person is the holder of an applicable driver licence (other than an applicable provisional licence or applicable learner licence) occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.

- ss 110-112 are silent as to whether location restricts its application so the offence can apply to driving on private land (*Carr v Walukicwick* [1969] VR 758), however there are restrictions on the location for a police officer to require someone to undertake a breath test (Schedule 3)
- Schedule 3 *RTA*: various powers relating to RBT's, blood/urine samples and failing to comply

- Various prescribed concentrations of alcohol:
 - 'Novice' range of 0.00-0.02
 - 'Special' range of 0.02-0.05
 - 'Low' range of 0.05-0.08
 - 'Middle' range of 0.08-0.15
 - 'High' range of greater than 0.15
 - Guideline judgement available
- Defence of honest and reasonable mistake of fact is available, on the balance of probabilities
 - Drink spiking: *Director of Public Prosecutions (NSW) v Bone* (2005) 64 NSWLR 735
 - Didn't know cough mixture contained alcohol: *Re Mendolicchiu* [2008] NSWDC 182

Negligent, Furious or Reckless Driving

- Lesser alternative offence to 'dangerous driving' under s 117 *Road Transport Act 2013* (NSW)
- Person must be driving, a motor vehicle, on a road
 - Defined in *RTA* ss 4 and 5
- They must be driving negligently
 - "departure from the standard of care for other users of the road to be expected of the ordinary prudent driver in the circumstances": *DPP v Yeo* (2008) 188 A Crim R 82, 90
 - "such a great falling short of the standard of care which a reasonable man would have exercised and which involved such a high risk that death or grievous bodily harm would follow that the doing of the act merited criminal punishment": *Nydam v The Queen* [1977] VR 430 referenced by *King v The Queen* (2012) 288 ALR 565
- Or recklessly
 - 'Recklessness' is not merely driving without care and attention, but driving in a manner that creates an obvious and serious risk of causing injury to another person or substantial damage to property. It is driving in a manner without giving any thought to the risk, or, having recognised the risk, nevertheless taking it: *R v Lawrence* [1981] 1 ALL ER 974, 975
- Doesn't require injury or damage: *Anderson v Sebris* (1959) 60 SR (NSW) 396
 - Driver turned into oncoming traffic: *Simpson v Peat* [1952] 2 QB 24
- Doesn't require other traffic to actually be on the road, if other traffic might reasonably be expected to be there: *R v Buttsworth* (1983) 1 NSWLR 658
- However, there are harsher penalties if death or GBH occurs as a direct result
 - See 'assault' for definitions of GBH

Other *Crimes Act 1900* (NSW) Offences

- Predatory driving under s 51A: pursuing a vehicle and conduct which causes or threatens an impact and intent to cause ABH – this offence is not one of strict liability
- Police pursuits under s 51B: knowledge of police pursuit, failure to stop and driving recklessly or at a speed/manner dangerous (doesn't require proof of harm)
- Failing to stop and assist after an impact under s 52AB
- Wanton, furious or reckless driving causing bodily harm under s 53: 'Wanton' is complete disregard for consequences: *R v Bolton* (1981, NSWDC)
- Throwing rocks or other objects at vehicles under s 49A

Other *Road Transport Act 2013* (NSW) Offences

- ss 53 and 54: driving unlicensed or while disqualified
- s 68: driving unregistered registrable vehicle
- s 115: racing
- s 188: menacing driving (eg. tailgating)

Drug Offences

- Key concepts:
 - Prohibited Drug: any substance, other than a prohibited plant, specified in Schedule 1
 - Prohibited Plant: s 3 *Drug Misuse and Trafficking Act 1985* (NSW)
 - Summary offences are provided under Part 1 Division 1
 - Indictable offences are given under Part 1 Division 2

Mens Rea of Drug Offences

- The prosecution must establish that the accused had the intention to possess, supply, cultivate, manufacture or import a prohibited substance: *He Kaw Teh* (1985) 157 CLR 523
- The intention of the accused can be established when:
 - The accused has actual knowledge that the substance in their possession or that they are importing, etc, is a prohibited drug: *Kural* (1987) 162 CLR 602; *Saad* (1987) 70 ALR 667
 - The accused believes there is a likelihood that the substance in their possession or that they are importing, etc, is a prohibited drug: *He Kaw Teh*; *Saad*
- It is sufficient if an accused knows of the existence of the drug and knew or believed it was an illegal drug: *R v Baird* (1985) 3 NSWLR 331
 - It does not have to be knowledge of, or belief as to, the existence of a specific prohibited drug: *Dunn v R* (1988) 32 A Crim R 203
- Regarding 'wilful blindness', although actual knowledge could be inferred from a combination of suspicious circumstances and a failure to make inquiries, it must be the only rational inference available and the tribunal of fact must still consider 'knowledge' as a matter to be proved beyond reasonable doubt: *Pereira v Direction of Public Prosecutions* (1988) 82 ALR 217
- Where the supply/cultivation/etc of a certain amount of a prohibited drug is charged, then a specific intent regarding that amount must be proven: *Lau* (1998) 105 A Crim R 167; *R v CWW* (1993) 32 NSWLR 348

Possession of Prohibited Drugs

- Provided under s 10 *Drug Misuse and Trafficking Act 1985* (NSW)
- Deeming provision under s 7 is not exhaustive and so common law must also be considered

7 Deemed possession of prohibited drug etc

For the purposes of this Act and the regulations, a prohibited drug, Schedule 9 substance (not being a prohibited drug) or prohibited plant in the order or disposition of a person, or that is in the order or disposition of the person jointly with another person by agreement between the persons, shall be deemed to be in the possession of the person.

- "In the ordinary use of the word 'possession', one has in one's possession whatever is, to one's knowledge, physically in one's custody or under one's physical control": *DPP v Brooks* [1974] 2 WLR 899 approved in *R v Hinton* (NSWCCA, 19 March 1976, unreported)
- An accused can be in possession of prohibited or controlled drugs by having either:
 - Physical custody of the drugs ('actual' or 'manual' custody)
 - In a position to exclude others from the drugs ('control' or 'de facto' custody)
 - De facto custody is "more extensive than physical custody... it is wide enough to include any case where the person has hidden the thing effectively so that he can take it into his physical custody when he wished and where others are unlikely to discover it except by accident": *Williams v Douglas* (1949) 78 CLR 526
 - Accused waiting and watching spot where he hid drugs was evidence of intention to retake physical control and to exclude others: *R v Delon* (1992) 29 NSWLR 29