

MLL214 – CRIMINAL LAW NOTES



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Acronyms:

AR = Actus Reus	CL = Common Law
MR = Mens Rea	CA = Crimes ACT 1958 (Vic)
D = The Defendant, accused, doer	s. = Section
V = Victim	SD = Self-defence
GBH = Grievous Bodily Harm	RSI = Really Serious Injury
IM = Involuntary Manslaughter	BRD = Beyond a Reasonable Doubt
DOC = Duty of Care	

Exam

1 Fact pattern

4 questions which are all the same 'Discuss criminal liability'

- When asked to discuss criminal liability discuss all potential relevant offences
- Do so in a Step by step manner (incremental step)
- Most important charges first
- Spent more time on the higher mark questions
- Even if not all elements are met discuss it
- Discuss potential defences

When asked to discuss criminal liability:

1. Discuss **every** offence the person should be held liable for (WHAT THE FACTS ALLOW TO BE CHARGED(introduction))
2. Go **Crime by Crime** (introduction)
3. **First go the Source of Law (either statutory or common law) (1st para)**
4. **Define the offence as per the statute** (1st para)
5. Identify the elements (1st para)
6. Put the case name or statute number there is no need to use footnotes (1st para)
7. USE HEADINGS
8. 1ST HEADING (1ST ELEMENT)
9. Identify and describe the element 2nd Para
10. Source of law 2nd Para
11. Anything else that might be important to the element (the law presumes) 2nd Para
12. Apply the facts to the law 2nd Para (do not reference)
13. Conclude by saying elements substantiated)

DO THIS FOR EACH CRIME

Topic 1: Course Overview

40% Written Assignment – Due 10th August @ 11:59pm

60% Final Examination – 2 hours, open book, 4 questions from one fact pattern

Steps to Success in MLL214

1. Read the case law more than once
2. Write a case brief and then correct it after it is discussed in class/seminar
3. Take (complete) notes
4. Review, type and edit your notes within 48 hours of the last class
repeat for each and every lecture

Understanding the Relationship

- Punishment connects consequences to one's wrongdoing via state-imposed sanctions
- Why do we punish?
 - Deterrence
 - Incapacitation
 - Rehabilitation
 - Retribution

Crimes Covered in this Course

- Crimes causing the death of another
- Assault
- Sexual offences
- Property crimes
- Strict and absolute liability offences
- Inchoate offences
- Participatory liability offences

Understanding HOW to Read the Case Law

Issue: What facts and circumstances brought these parties to court?

Rule: What is the governing law for the issue?

Analysis: Does the rule apply to these unique facts?

Conclusion: How does the court's holding modify the rule of law?

Features of Legal Judgements

They are not always in the same order and do not always appear

1. **Facts** (Elements that need to be proven are dependent on facts)
2. **Procedural Posture** (at what point in the criminal prosecution are we looking at the case if judgement someone is convicted of a crime) (How many rulings have happened in the case)
3. **Framing the Issues** (Judge gave wrong instructions to the jury about the law) (Mostly appeal from the defence that judge gave wrong instructions to the jury) (**under what circumstances has the case come to court**)
4. **Arguments Advanced by the Parties**
5. **Analysis (often includes rationale/policy)**
6. **Holding**
7. **Disposition**

Section 5 Sentencing guidelines

- (1) The only purposes for which sentences may be imposed are:
 - (a) To punish the offender to an extent and in a manner which is just in all of the circumstances; or
 - (b) To deter the offender or other person from committing offences of the same or a similar character; or
 - (c) To establish conditions within which it is considered by the court that the rehabilitation of the offender may be facilitated; or

- (d) To manifest the denunciation by the court of the type of conduct in which the offender engaged; or
- (e) To protect the community from the offender; or
- (f) A combination of two or more of those purposes

Sources of Criminal Law

Common Law Offences

Statutory Offences

- Victoria crimes
 - Crimes Act 1958 (Vic)
- Commonwealth Crimes
 - Crimes Act 1914 (Cth)
 - Criminal Code Act 1995 (Cth)
 - Human Rights (Sexual Conduct) Act 1994 (Cth)

Jurisdiction of Criminal Law

Common Law States

- Referred to as “common law” states because:
 - Common law is source of some crim law
 - Many of the pieces of legislation emanate from common law
 - Many defences are established by the common law
 - Elements of criminal responsibility are drawn from the common law
- States include; New South Wales, South Australia, Victoria

Code States

- Have enacted criminal codes which have operated to replace the common law. Crime must be codified
- States include:
 - Australian Capital Territory
 - Northern Territory
 - Queensland
 - Tasmania
 - Western Australia

Establishing Jurisdiction is Important

- One cannot attribute criminal punishment until they establish guilt
- One cannot establish guilt until they have a criminal proceeding (trial, plea, etc.)
- Criminal proceedings require jurisdiction
- Under common law, jurisdiction has been established in many ways;
 - The “essential element” test (see, R v Ellis (1899) QB 230) (If the crime happened in the jurisdiction then the state has jurisdiction over it)
 - The “terminator” test (the cause of the crime emanated in the state that wants to prosecute it or the resulting effects)
 - The “initiator” test (looking at the creation of the offence whether with action or thoughts)
 - Constitutional principle of “peace welfare and good government”

Statute can also expand jurisdiction

In Vic for example, this has occurred with the offences of murder, manslaughter and some property offences

Requirements for Criminal Liability

1. A person must have legal capacity to commit a criminal offence
2. That person must have committed the conduct elements of the offence, that is the **actus reus** (the action)
3. The fault element, or the **mens rea**, which form part of the offence, must have been present at the time of the **actus reus**
4. The absence of any defences of excuse or justification which would negate liability

Capacity and Criminal Law (Children)

Children

Under 10 = incapable of committing a crime in Australia

- Children, Youth and Families Act 2005 (Vic) s 344

Ages 10- 13 = rebuttable presumption (intention or mens rea) of criminal capability

- Prosecution also has to prove that the person knew what was going on
- R v M (1977) 16 SASR 589
- R v Whitley (1993) 66 A Crim R 462
- C v DPP [1996] 1 AC 1

Age over 13 (can be prosecuted)

Compare with:

- R v ALH (2003) 6 VR 276; [2003] VSCA 129 (4 September 2003)

Capacity and Criminal Law (Corporations)

- Starting proposition: a corporation is a legal entity and might, theoretically, be liable to the same extent as a natural person.

Two Main Ways to Establish Corporate Criminal Responsibility

Vicarious Liability	Doctrine of Identification
<ul style="list-style-type: none"> • Was the individual who committed the act that constitute the crime an employee acting within the scope of their employment? • Then we can attribute their conduct to the corporation 	<p>Or, the 'directing mind and will' doctrine</p> <ul style="list-style-type: none"> • Was the individual who committed the acts that constitute the crime in a sufficiently senior and responsible position that those acts are in reality the acts of the corporation itself? • Associating conduct with corporation and then connecting individual to the corporation
<p>Case law: Morgan v Babcock Ltd (1929) 43 CLR 163</p>	<p>Case Law:</p> <ul style="list-style-type: none"> • HL Bolton (Engineering Co) Ltd vs TJ Graham & Sons Ltd (1957) 1 QB 159 • Universal Telecasters (Qld) Ltd vs Guthrie (1978) 18 ALR 531 • Tesco Supermarkets Ltd v Natrass (1972) 1 AC 153

Corporate and Criminal Responsibility (cont.)

- Corporations liable to conviction for financial or property crimes, such as fraud or theft (highly likely)
- Not clear whether a corporation can be convicted of certain crimes that inherently require an act by a natural person (e.g., perjury or sexual assault)
- Law of corporate manslaughter still in development; rare protection in 1994 in Denbo (Denbo pleaded guilty)- essence of manslaughter usually regarded as one human being killing another human being
- Also, a corporation cannot be convicted at common law of a crime that is only punishable by imprisonment, such as murder

General Principles of Criminal Responsibility: Actus Reus

"Bad act" typically consisting of:

- **Voluntary action OR omission to act where the law imposes a duty to act**
- For some offences, the actus reus element is constituted by the act or omission (e.g., the application of force without the consent for common assault)
- For other offences, the actus reus element is only satisfied where the act or omission brings about certain results or consequences (e.g., the death of a person for murder)

Voluntary Act	Omission
<ul style="list-style-type: none"> • The act must be voluntary- a willed muscular 	<ul style="list-style-type: none"> • Generally an omission

<p>movement; a conscious decision to move part of the body (or in the case of an omission, a conscious decision to refrain from acting)</p> <p>No offence is committed where the act is involuntary, e.g.</p> <ul style="list-style-type: none"> • Accidental • Forced by someone else (duress) • A reflex • Done in a state of automatism (action without a conscious coalition; i.e. no knowledge of actions) e.g.; <ul style="list-style-type: none"> ○ Sleep disorders ○ Ingestion of drugs or alcohol ○ Epileptic fit ○ But see Jimenez v The Queen (1992) 173 CLR 572) 	<p>(nonfeasance) can not constitute the actus reus of a crime</p> <p>Must be a legal duty to act (R v Taktak (1988) 34A Crim R 334):</p> <ul style="list-style-type: none"> • A contractual duty to act • A statutory duty to act • An assumption of responsibility • A special relationship, e.g. parent-child, teacher-pupil, employer-employee, prison authority-prisoner
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General Principles of Criminal Responsibility: Mens Rea

- “Bad or guilty mind” which encompasses various mental states:
- Mindset of the people when they act

Intention (Highest Standard)

- (Actual subjective intention of bringing about the prohibited result
- Encompasses the situation where D knows the result is ‘practically certain to occur
- Encompasses transferred intent (malice)

Knowledge (also awareness or foresight)

- (Also awareness) that particular circumstances exist or that a particular consequences will come about
- **Belief** (Belief that certain facts are true)

Reckless

- (aware of the risk that result likely to occur and elects to proceed)
- Not aware of the consequence but aware of the risk

Ordinary negligence (will not suffice usually to gain criminal responsibility)

- (should have known of the risk) will not usually suffice
 - But see, involuntary manslaughter by criminal negligence- conduct falling greatly short of the standard of care expected of the reasonable person and carrying a high degree of risk and harm (gross negligence)-- Nydam v The Queen (1977) VR 430 AR 445
 - Note the proliferation in legislation of strict and absolute liability offences that do not require proof of mens rea or fault- see topic 8

The Doctrine of Temporal Coincidence

- The mens rea and voluntary act or omission that bring about the other (non-mens rea) elements of the offence must exist at the same point in time
 - **Note: it is the coincidence of timing between the criminal act or omission (not necessarily the actus reus) and the criminal mentality that must concur in time**
- Courts take a flexible approach; willing to construe a series of acts as one individual transaction or one continuing act
- Courts look at the act as a series of mini events
 - See Thabo Meli v The Queen (1954) 1 WLR 228 (Topic 3) (pg. 19)
 - See also Faqan v Metropolitan Commissioner of Police (1968) 3 ALL EW 442 (Topic 5)

Negation of Criminal Responsibility: Defences to Crime

Complete defences-when put forward cannot be disproved by the prosecution and in some cases can acquit the defendant

Partial defences-lessen the severity of the crime itself

Primary defence

- Prosecution did not meet their burden of proof

Affirmative defences:

- Self-defence
- Duress
- Necessity
- Battered Women's syndrome
- Intoxication
- Insanity
- Diminished responsibility