

**MLL214 - Criminal Law**  
**Unit Summary**

# Topic 1 – Overview

## Criminal Capacity

- 1) Children: doli incapax principle = children  $\leq 10$  y.o not capable of crime.
  - a) Rebuttable presumption that  $< 14$  years incapable, unless evidence shows they knew it was wrong (*R v ALH*)
- 2) Corporation: have legal status as persons and can be liable.
  - a) Vicarious liability – if the crime was committed within their scope as an employee
  - b) Liability by identification – if  $\Delta$  was in a significantly senior position so that their conduct reflects the company.

## Elements of an offence

- 1) All elements need to be present for a crime to have occurred
  - a) Mens rea (except strict liability)
    - i) Intention
    - ii) Knowledge
    - iii) Recklessness – aware of a risk of a certain consequence/circumstance
    - iv) Negligence – should have known the risk
  - b) Actus reus
    - i) A voluntary act or omission
    - ii) Omission arises where someone has a special duty to act
  - c) Temporal coincidence – AR and MR must occur at the same time, i.e. coincide with each other

## Defences

- 1) Primary/denial offence – not all elements proven  $\rightarrow$  acquittal
- 2) Secondary/affirmative offence – elements proven but there is an excuse  $\rightarrow$  lesser charge

## Transferred Malice

- 1) Where  $\Delta$  intends to commit a crime against X but it so happens that  $\Delta$  commits a crime against Y. The malice for the initial crime is transferred to the actual crime that occurred.
  - a) Only applies where the same outcome occurs on Y if  $\Delta$  committed the crime on X.

## Legal burden and standard of proof

- 1) Usu with the Crown and BRD

## Evidential burden

- 1) Who must persuade the court that ample evidence is presented to support claim BRD
  - a) Usually the Crown
    - i) Rests with the defence when they present a defence e.g. self-defence
      - (1) Proven on BRD to negate at least 1 element of Crown
      - (2) Mental incapacity on balance of probabilities

# Topic 2, 3 and 4 – Actus Reus of Homicide, Murder and Mens Rea and Manslaughter

## Categories

- 1) Murder
  - a) Intentional murder
  - b) Reckless murder
  - c) Statutory constructive murder
  - d) Common law constructive murder
- 2) Manslaughter
  - a) Voluntary manslaughter
  - b) Involuntary manslaughter
    - i) By unlawful and dangerous act
    - ii) By criminal negligence

## Elements of homicide

- 1) Death of a human being
  - a) Death determined by *Human Tissues Act 1982* (Vic) – irreversible cessation or brain or blood function.
  - b) Life = ‘in being’ → independent existence separate from mother - *Hutty*
- 2) Voluntary act or omission of  $\Delta$
- 3) Causal nexus btwn  $\Delta$ 's act and the non-mens rea elements i.e. causation
  - a) Factual causation – ‘but for’, ‘common sense test’
  - b) Legal causation
    - i) operating and substantial cause (*Evans and Gardiner*)
    - ii) intervening acts or events (*Hallett*) – medical treatment must be ‘palpably wrong’ (*R v Jordan*)
    - iii) fright or self-preservation (*Royall*) -  $\Delta$  induced V into well-founded fear, reasonable (objective) for V to want to escape, mode of escape = reasonable (objective i.e. reasonable person)

iv) egg-shell skull rule – pre-existing conditions ≠ break causation (*R v Blaue*)

## Elements of Murder

### 1) Intentional murder

#### a) AR

i) Voluntary act or omission

ii) Causation

iii) Death of a person

#### b) MR

i) A conscious purpose or desire to bring about death

ii) A knowledge that the result was substantially certain from the act

iii) See *Meyers v The Queen*

iv) Intent to cause DEATH or GBH is left to the fact finder (jury)

### 2) Reckless murder

#### a) AR

i) Death

ii) Causation – factual and legal

iii) Voluntary act or omission of Δ

#### b) MR

i) Δ acting with recklessness as to causing DEATH or GBH

ii) Recklessness is to a PROBABILITY standard and subjective test – *R v Crabbe*

iii) Δ foresee probability of DEATH or GBH and willingness to run risk of the consequences

### 3) Statutory constructive murder

a) S3A of *Crimes Act 1958* (Vic) – death resulting in furtherance of crime of violence

#### b) AR

i) Act of violence