

CRIM EXAM NOTES

Weeks 1-4

Table of Contents

Setup (jurisdiction, BOP, onus)	2
Elements, AR, Voluntariness	3
Voluntariness, Automatism	4
MR (intention, reckless, knowledge, negligence)	5
Concurrence	6
Liability offences	7
liability, defense of honest and reasonable mistake	8
Intoxication	9
Homicide	
Murder , AR, Life begins, causation	10
Causation tests	11
Causation NAI	12
Causation, MR, reckless indifference	13
Constructive murder, intoxication	14
Manslaughter , AR, Voluntary/ involuntary, dangerous + unlawful, elements, test of dangerous	15
Dangerousness, unlawful	16
Criminal negligence, elements	17
Omissions	18
Omissions and duty	19
Process	20

Jurisdiction

Presumption of innocence

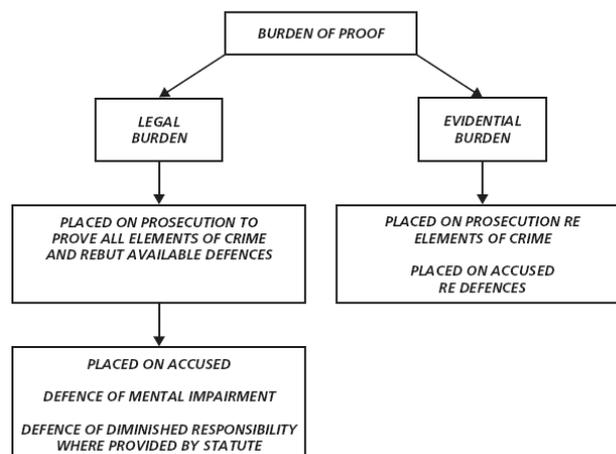
- **Woolmington v DPP [1935] AC 462** : The Trial Judge directed the jury that Woolmington was presumed in law to be guilty of the murder unless he could satisfy the jury that his wife's death was due to accident
- person is innocent until prosecution has proven all elements of the offence charged beyond reasonable doubt

Burden (onus) and standard of proof

- **Woolmington:**
 - "that it is the duty of the prosecution to prove the prisoner's guilt"
 - "If, at the end of the whole of the case, there is a reasonable doubt, created by the evidence ... the prosecution has not made out its case and the prisoner is entitled to an acquittal"
- Beyond reasonable doubt:
 - It is a doubt which the tribunal of fact entertains in the circumstances: Green v The Queen (1971) 126 CLR 28 at 32-33
 - "Attempts to substitute other expressions have never prospered." Ferguson v The Queen [1979] 1 WLR 94 at 99:

Defences

- Evidential burden
- "The accused bears an evidentiary onus to point to or to produce evidence ... from which it could be inferred that . . . there is at least a reasonably possibility that, for example, the act of the accused was accidental or that it was provoked or done in self-defence." Youssef (1990) 50 A Crim R 1, 3.
- 'once the evidence discloses the possibility that the fatal act was done in self-defence, **a burden falls upon the prosecution to disprove the fact**, that is to say, to prove beyond reasonable doubt that the fatal act was not done in self-defence.' Zecevic v DPP (Vic) (1987) 162 CLR 645, 657 (Wilson, Dawson & Toohey JJ)

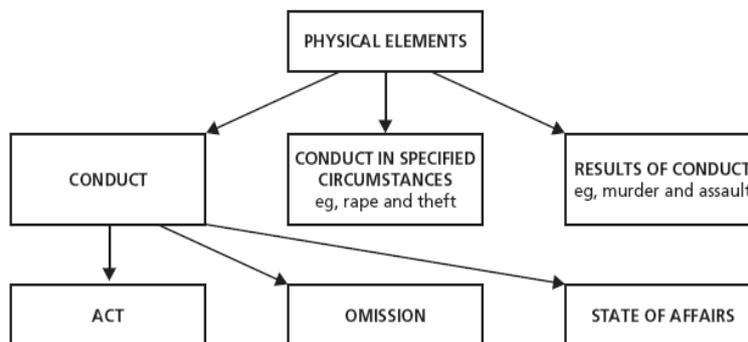


THE ELEMENTS

- Physical (*actus reus*) and fault (*mens rea*) elements
- “conduct of the accused and his state of mind at the time of the conduct” - R v Miller [1983] 2 AC 161, 174 (Lord Diplock)
- Actus reus = The external or physical element/s of an offence;
- Mens rea = The required mental state/s or the fault element/s of an offence

ACTUS REA

Diagram 1: Physical Elements



- Concurrence (of conduct and circumstances)
- Conduct in circumstance circumstances:
 - E.g. 51A Predatory driving only liable ‘while in pursuit of or travelling near another vehicle’ – aka only a crime in these specific circumstances

Voluntariness

- The relevant conduct must be ‘willed’
 - E.g. you cannot will anything while you are asleep or an epileptic fit
- Presumption of volition
 - Prosecution don’t have to prove unless there is evidence of no volition
 - Defence must raise evidence/ reasonable possibility

Ryan v R: Reflex

- shoots someone out of reflex during a robbery
- **held:** murder
 - even if the act of pulling the trigger was a reflex + non-voluntary, the act only occurred in the combination of earlier voluntary acts
 - Willed to load it, cock it, left his finger on the trigger etc.

Jimenez v the Queen (1992): unconsciousness

- Culpable driving causing death

Defence of insanity

- Burden of Proof:
 - ...it is necessary for the accused person to make out positively, upon a balance of probability, that he was not criminally responsible, and that he was not of such a mental condition at that time as to be criminally responsible. - *Porter* (1933)
- Common law defence of insanity – not statutory
 - “[T]o establish a defence on the ground of insanity, it must clearly be proved that, at the time of the committing of the act, the party accused was **labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.**”
 - Facts:
 - Killed the secretary of the PM
 - Under the delusion that the Tory party was out to get him
 - Thought he was killing the PM

1. the accused suffered from a “disease of the mind”



2. the disease of the mind deprived the accused of the capacity to:

- (i) understand the nature and quality of their conduct
- (ii) know whether their conduct was wrong

Disease of the mind

Porter (1933) 55 CLR 182 (Dixon J)

- “... a state of disease or disorder or mental disturbance arising from some infirmity, temporary or longstanding. If that existed it must then have been of such a character as to prevent him from knowing the physical nature of the act he was doing or of knowing that what he was doing was wrong.”

R v Falconer (1990)

- “**underlying pathological infirmity of the mind, be it of long or short duration and be it permanent or temporary, which can properly be termed a mental illness**”

Capacity to know the nature and quality of their conduct:

Porter (1933) 55 CLR 181, 188 (Dixon):

- “In a case where a man intentionally destroys life he may have so little capacity for understanding the nature of life and the destruction of life, that to him it is no more than breaking a twig or destroying an inanimate object. In such a case he would not know the physical nature of what he was doing.”

Capacity to know that the conduct was wrong

- *R v Porter* (1933) 55 CLR 182 at 190 per Dixon J
- Could he "...reason about the matter with a moderate degree of sense and composure.." about whether what he was doing was wrong . "...wrong having regard to the everyday standards of reasonable people."
 - Not wrong in law but morally wrong
 - Guided by voices – told something they have to do

No Defence for psychopaths

- 'Gross psychopath' – the question is whether the accused knew what they were doing was wrong, not whether the accused had significant feelings about the effect of his actions.
- *Wilgoss v The Queen* (1960) 105 CLR 295 at 300

MENTAL HEALTH (FORENSIC PROVISIONS) ACT 1990 - SECT 38

38 Special verdict

(1) If ... mentally ill at the time [of offence] the jury must return a special verdict that the accused person is not guilty by reason of mental illness.

39 Effect of finding and declaration of mental illness

(2) [Court not to order releases] unless it is satisfied, on the balance of probabilities, that the safety of the person

