

LAW10015: Criminal Law and Procedure

Topic 1: Introduction to Criminal Law

Introduction

- ✦ **What is a crime?:** A crime (or offence) is a legal wrong that can be followed by criminal proceedings which may result in punishment'.
- ✦ **'The aims of the criminal law'**
 - The prevention of harm to others (balance between interests of State vs protecting freedom/autonomy of individual)
 - *Morality* - conduct that warrants classification as criminal, involves moral wrongdoing.

Sources of Criminal Law

- ✦ *Commonwealth Criminal Code Act 1995.*
- ✦ *Crimes Act 1914 (Cth).*
- ✦ *Crimes Act 1958 (Vic).*

Standard and legal burden of proof

- ✦ Requires *subjective blameworthiness*; that is, knowledge and/or intention of wrongfulness.
- ✦ The traditional assumption in criminal law is that a person shall not be held liable for an act unless the act was done with a guilty mind (*actus non facit reum nisi mens sit rea*).
- ✦ **Mens rea** (guilty mind) - specific 'state of mind' - can be subjective or objective
 - Denotes the 'mental' element
 - Presumption (in the common law) that all criminal offences require proof of mens rea.
 - It is a presumption that may be displaced where the offence is either one of strict or absolute liability and in such cases the prosecution does have to prove mens rea.

Standard and legal burden of proof - Subjective or Objective?

Evidence of the mental element

- ✦ '*Subjective*' standard - involves asking what the actual mental state of the accused person
- ✦ '*Objective*' standard - what would have been the supposed mental state of a hypothetical 'reasonable person' or ordinary person behaving in the way in which the accused behaved
- ✦ At common law, majority of offences have subjective mens rea requirements. (ie focus on what D actually intended/knew) and intention/recklessness are the major eggs of subjective mens rea requirements.
- ✦ **Actus reus** (*physical elements*): refers to the prohibited conduct of the offence - Eg in the case of murder, the relevant act/conduct is that causes death - consequence being death of the person

Who can commit crimes

- ✦ Only by those 'legal persons' who can perform mental and physical acts in the exercise of a choice to do or refrain from doing them.
- ✦ **Infants**

- Held by common law that a child under 7 yrs old was incapable of committing a crime
- *Youth and Families Act 2005* (Vic) **s 344**: the min age of criminal responsibility has been raised to 10 yrs.
- ✦ **Corporations...**
 - Is a legal person, may be convicted of crime and will be liable for the criminal acts of its officers/employees if can be shown that those acts were the acts of the corporation.
 - Whether this can be shown will depend on nature of charge, the position, powers and responsibilities of the officer/employee concerned etc.
 - *Criminal Code Act 1995* (Cth) Part 2.5 - introduces a statutory regime for the prosecution of corporations under federal law.
 - Cannot be imprisoned - If the offence is one for which a licence may be revoked or some other restriction imposed, then a corporation may be punished accordingly.
 - Can be fined - at levels beyond those set for individuals: e.g. *Crimes Act 1914* (Cth) s 4B(3)

Aims of Punishment

- ✦ Three competing aims of punishment...
 - **Retribution**: Punishment should reflect the level of seriousness of the harm. Max amount of punishment which may be inflicted is set out, and increases or decreases that max according to the degree of wrong involved in the particular crime.
 - **Deterrence**: Unlike retribution, deterrence is concerned with preventing crime
 - **Rehabilitation**: The punishment, according to this theory, is inflicted for the purpose of reforming the criminal and inducing him or her to lead a non-criminal life in the future.

The Jury

- ✦ Task of the jury: to act as fact-finding body and apply such facts to the principles of law explained to them by the judge.
- ✦ This analysis leads to the proposition that, if the facts appear clearly enough from the evidence, the judge can direct the jury as to the verdict which they ought to return.

Criminal Procedure - Preliminary

- ✦ Long-established rules and standards which apply only to criminal prosecutions. These are conveniently described as 'criminal procedure'.
- ✦ The elements of criminal procedure and evidence include:
 - Double jeopardy,
 - Burden and standard of proof in criminal prosecutions.
 - Appeals in criminal cases.

Double Jeopardy

- ✦ **Green v United States (1957) 355 US 184**, Black J (at 187–9) explained the rationale of the principle of double jeopardy: "The State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offence, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty".

- ✦ (At common law), principle of double jeopardy - expression in the special pleas of *autrefois convict* (**previously convicted**) and *autrefois acquit* (**previously acquitted**).
- ✦ Pleas operated as a bar to the further prosecution of an indictment for a criminal offence.
- ✦ The pleas differ from a plea to the general issue (guilty or not guilty) in that, by them, the accused is asserting that the court cannot proceed to try the charges laid in the indictment.
- ✦ **What constitutes jeopardy?**
 - ✦ A conviction quashed by an appellate tribunal, on such grounds as do not impugn the original trial as a nullity, is regarded as an acquittal, and the defendant may plead *autrefois acquit* should she or he be subsequently indicted for the same offence: *R v Barron* [1914]2 KB 570.
 - ✦ Original proceedings may terminate because the prosecution files a *nolle prosequi* (**a formal statement to the court that it does not wish to proceed further with the indictment**) or withdraws a charge by leave of the court, or because the presiding judge discharges the jury without receiving their verdict (as he or she may do for a variety of reasons, of which a common one is the inadvertent reception of inadmissible but highly prejudicial evidence).
 - ✦ In such an event, the defendant cannot plead this result as an acquittal should he or she be subsequently presented in respect of the same charge

Standard of Proof

- ✦ **Woolmington v Director of Public Prosecutions [1935] AC 462.**
- ✦ W was charged with murdering his wife -W claimed the death occurred by accident
- ✦ Issues about evidence in the case and whether W was guilty of murder or manslaughter.
- ✦ Court reaffirmed the standard of proof in criminal law cases is 'beyond reasonable doubt'

Appeals

- ✦ Appeal lies from the trial court to the Court of Appeal (Supreme Court).
- ✦ Following that, an appeal may be taken to the High Court of Australia, but only if that court gives its 'special leave' .
- ✦ Appeals from the High Court to the Privy Council were abolished by the *Privy Council (Appeals from the High Court) Act 1975 (Cth)* and appeals from state Supreme Courts to the Privy Council were abolished by s 11 of the *Australia Act 1986 (Cth)*.
- ✦ The powers of the Supreme Court in relation to appeals are spelt out by statute: *Crimes Act 1958 (Vic)* ss 568–569;

Appeals against acquittal

- ✦ Crown has no general right of appeal against a jury's verdict of acquittal.
- ✦ If the accused is convicted by a jury and the conviction is reversed by an appellate court, then it is open to the Crown to seek an appeal against that decision to the High Court of Australia.

Appeals against sentence

- ✦ **s. 567** Crimes Act (Vic): enables a prisoner to appeal against the sentence passed on him or her, subject to obtaining leave from the appellate court

- ✦ **s. 567A** Crimes Act 1958 (Vic): Where a sentence is thought to have been too lenient, the Attorney-General has the right to appeal against sentence
- ✦ **ss. 567A(4) & 568(4)** Crimes Act 1958 (Vic): An appellate court has power to increase the sentence even in cases where the appeal has been brought by the prisoner:

Distinction between Indictable and Summary Offences

- ✦ The distinction between summary/indictable offences relates primarily to the mode of trial.

Indictable	Summary
<ul style="list-style-type: none"> ▶ generally has a preliminary hearing or committal proceedings 	<ul style="list-style-type: none"> ▶ less serious offences
<ul style="list-style-type: none"> ▶ is tried by a judge and jury. The judge rules on questions of law and 	<ul style="list-style-type: none"> ▶ determined finally before a lower court
<ul style="list-style-type: none"> ▶ the jury rules on questions of fact. 	<ul style="list-style-type: none"> ▶ tried before a judicial officer who is also a trier of fact

- ✦ **Presumption:** that an offence is an indictable offence, unless it is explicitly made a summary offence in the statute.
- ✦ The levels and maximum penalties correlating to the levels are set out in s 109 of the Sentencing Act 1991 (Vic):

Level Maximum Term of Imprisonment	Level Maximum Fine
<ul style="list-style-type: none"> ▶ Level 1 - Life ▶ Level 2 -25 years ▶ Level 3 -20 years ▶ Level 4 -15 years ▶ Level 5 -10 years ▶ Level 6 -5 years ▶ Level 7- 2 years ▶ Level 8- 1 year ▶ Level 9 -6 months 	<ul style="list-style-type: none"> ▶ Level 10- 10 penalty units [one penalty unit is a fine of \$110] ▶ Level 11- 5 penalty units ▶ Level 12- 1 penalty unit

- ✦ **Section 112** (Classification of offences as indictable or summary) of the Sentencing Act 1991 (Vic) which states as follows:
 - ▶ “Unless the contrary intention appears, offences which have a maximum penalty of between levels 7 to 12 are summary offences. Levels 1 to 6 are presumed to be indictable offences in the absence of a clear legislative intention to the contrary. Accordingly, unless a contrary legislative intention is clearly indicated, offences which are punishable by five or more years of imprisonment are presumed to be indictable offences.”

Indictable Offences Tried Summarily

- ♦ The indictable offences that may be determined summarily - **s 28** of the *Criminal Procedure Act 2009 (Vic)*, which provides:
 - **(1)** A charge for any of the following indictable offences may be heard and determined summarily by the Magistrates' Court, if section 29 is satisfied —
 - (a) an offence referred to in Schedule 2;
 - (b) an indictable offence under an Act or subordinate instrument or an offence at common law if the offence is described by an Act or subordinate instrument as being..
 - (i) A level 5 offence or level 6 offence; or
 - (ii) Punishable by level 5 or level 6 imprisonment or fine or both; or
 - (iii) Punishable by a term of imprisonment not exceeding 10 years or a fine not exceeding 1200 penalty units or both —

unless the contrary intention appears in this or any other Act or in any subordinate instrument.

- **(2)** If an indictable offence is described as being punishable in more than one way or in one of 2 or more ways, all of those ways must be referred to in subsection (1) for subsection (1) to apply.
- **(3)** If an indictable offence referred to in Schedule 2 is qualified by reference to a specified amount or value or a specified kind of property, that qualification is not affected by subsection (1)(b) or (2).

Note: A level 5 offence is punishable by 10 years imprisonment maximum and a level 6 offence is punishable by 5 years imprisonment maximum: section 109 of the Sentencing Act 1991