

1012CCJ Police Courts and Criminal Law

Weekly Topics

Week 1: Introducing Criminal Law

Week 2: Understanding Criminal Offences

Week 3: Legal Defences

Week 4: Police Powers 1

Week 5: Police Powers 2

Week 6: Police Powers and Accountability

Week 7: Pre-trial Processes

Week 8: The Criminal Trial

Week 9: Sentencing

Week 10: Appealing Court Decisions

Week 11: Justice and Injustice

Week 12: Justice and Injustice

WEEK 1: INTRODUCING CRIMINAL LAW

Why do we have criminal laws?

- Moral wrongness approach
- Individual autonomy approach
- Community welfare approach
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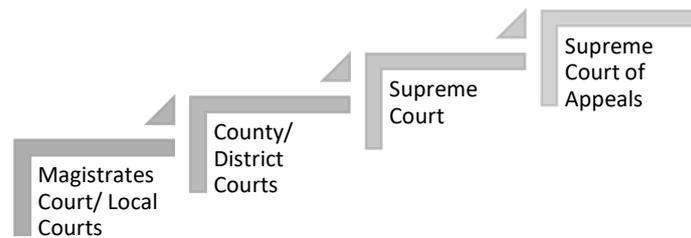
Functions of the criminal law:

- Distinguish civil wrongs from criminal wrongs
- Stipulate degree of seriousness of conduct
- 'regulatory' criminal law
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Sources of criminal law

- Legislation = statutes acts of parliament
 - Criminal code act 1995 (Cth)
 - Criminal Code 1899 (Qld)
 - Crimes Act 1900 (NSW)
- Case law (common law) = judge-made law
 - Thomas v Mowbray (2007) 233 CLR 307
 - R v Suleman (2015) QSC 5
- State vs federal law

Court Hierarchy



Burden of Proof

- Criminal Courts = BEYOND REASONABLE DOUBT
 - If guilty – incarcerated or fined
- Civil Courts = ON THE BALANCE OF PROBABILITIES
 - If liable – compensate to plaintiff

The Rule of Law

- AV Dicey
 - Society is ruled by law rather than arbitrary power
 - No person is above the law (i.e. criminal laws still apply to members of government)
- Contemporary legal theorists link the rule of law to notions of equality, liberty, justice and (in some accounts) human rights

Due Process

- Also, referred to as 'natural justice'
- Right to fair treatment in terms of the procedure by which you interact with the criminal justice system
- Chisholm: "There must be a hearing and the hearing must be fair"
- The right derives from common law (case law), and elements of due process can be found in states and regulations
- Not explicitly protected by the Australian Constitution - this contrasts with the US where the 5th amendment explicitly provide that 'no person shall be deprived of life, liberty or property without due process'

DUE PROCESS: KEY ELEMENTS

- Notice (included knowing the case against you)
- Publicity (open court)
- Standards of proof
- Evidence
- Impartiality
- Trial by jury
- Right to appeal (from decisions incorrectly made on law or fact)
- Legal representation
- Adversarial procedure

WEEK 2: UNDERSTANDING CRIMINAL OFFENCES

Types of offences

- Unlawful homicide

- Assault and sexual assault
- Public order offences
- Property offences
- Drug offences
- Offences against the state
- Road traffic offence
- OHS offences
- Environmental offences
- ‘Paternalistic’ offences

Circumstances of aggravation

Indictable Vs Summary offences

- Indictable = more serious, trials heard by judge and jury in District or Supreme Courts
- Summary = less serious, trials heard by magistrates in the local court
- Many indictable offences are now required to be tried summarily.

Criminal Responsibility

- Elements of criminal offences
- Physical vs. fault elements
 - Actus = Physical *act* element
 - Mens Rea= *Mental* element
- Extending criminal liability
 - Attempt, complicity, conspiracy
 - Conspiracy = agreeing to a crime
 - Complicity = letting the crime happen with prior knowledge

WEEK 3: LEGAL DEFENCES

- Accused can be found not guilty because of prosecution failing to prove elements of offence
- Special categories of defences can absolve/ reduce criminal responsibility
- Partial and full defences
- Examples of defences included
 - Self-defence
 - Where a person unlawfully assaulted, they may use reasonably necessary force to repel the assault. This may extend to causing GBH or death where (1) assault causes reasonable apprehension of death or GBH and (2) the person reasonably believes that they cannot defend against the attack except in that way
 - This is a **complete** defence – in cases of murder, successfully arguing self-defence means a full acquittal
 - ‘Reasonably necessary’ force is an objective standard but not strictly so – some leeway in circumstances (‘to the assailant’)
 - Insanity
 - To establish a defence on the ground of insanity, it must be clearly 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 (8 ER 722)

- Leads to ‘special verdict’ of not guilty and a custodial (forensic) order under the *Mental Health Act 2000* (Qld) – detention in forensic hospital (not something you would argue lightly)
- A related claim may be made that a person is not fit to stand trial – the accused must be minimally able to understand the charge and proceedings for fair trial to take place
- Intoxication
 - Not an defence to do something because you were drunk – and certainly not in cases of ‘Dutch courage’. But it can be a defence where the intoxication is involuntary (drink spiking, forcefully administering drugs) – in Qld, defence of insanity could be mounted under s 27
 - Where chronic consumption leads to brain damage, claim of insanity may also be made under s 27
 - Also, relevant where an offence has an element of specific intent (e.g. in a case of murder, could make it difficult to prove an intention to cause GBH or death)
 - Often referred to as a ‘defence’, but might be better to think of it in the terms that *evidence of intoxication can be relevant to criminal responsibility*
- Duress and necessity
- Provocation
 - Claim that a person assaulted or killed another person because they were ‘provoked’, and lost self-control
 - Is a partial defence to murder (reduces murder to manslaughter) or a full defence to assault
 - Has two elements:
 - (1) a **subjective** test that the person lost self-control
 - (2) an **objective** test that the provocation would be likely to cause an ordinary person to lose self-control
 - Accused must act suddenly, before there is time for ‘the passion to cool’
- Diminished responsibility
 - Reduces charge of murder to manslaughter where the accused acted under an abnormality of mind that substantially impaired their ability to understand what was happening, their ability to control their actions, or to understand that what they were doing was wrong (i.e. like a less serious claim of insanity)
 - Abnormality of mind can’t be merely transient – must be from an underlying condition (though need not be permanent)
 - Model Criminal Code Officers Committee: **“Public confidence in the defence, and more generally in the law, is damaged by the perception that it operates to excuse persons because of the often-deplorable way they kill”**
- In what circumstances will these defences apply?