

Week 1: Overview

Common law = law made by Judges; precedent

Statute = law passed by parliament

Legislature = parliament

Judiciary = the court system

Government = the group of individuals and institutions charged with the constitutional authority to make, administer and interpret the law

Sovereign = supreme ruler of a state (king/queen, parliament)

Common law jurisdictions:

- VIC
- NSW
- SA
- Primary source of criminal law is the common law.
- In resolving any statutory ambiguities, courts are obliged to apply common law principles in absence of a clear legislative intention to do otherwise.
- *Crimes Act 1958*

Code jurisdictions:

- QLD
- WA
- TAS
- ACT
- NT
- In these jurisdictions all crimes now exist in statutory form as defined by the various Codes which have specifically supplanted the substantive common law crimes.
- Courts here not obliged to construe legislation in accordance with common law principles in absence of clear legislative intention to the contrary.

General exceptions to criminal capacity:

- Children – 10 is age at which a person is deemed capable of committing a crime.
- Corporations:
 - Do have the legal status of persons and can incur criminal liability under certain circumstances
 - Question becomes one of determining which acts of a corporation's employees may be attributed to the corporation.
 - At common law there are 2 approaches to this.
 - 1st = doctrine of vicarious liability, in which acts of employee in course of his/her employment are attribute to corporate employer.
 - 2nd = doctrine of identification, where law treats the acts and mentality of superior officers of company as the acts and mentality of company itself.
 - On either approach, criminal law has difficulty in attributing responsibility to corporations for certain offences.

Classification of crimes:

- Traditionally, felonies and misdemeanours.
- Now crimes are classified as either summary offences or indictable offences.
- Summary offences:
 - Always in statutory form.
 - Dealt with by a magistrate sitting without a jury.
 - Determination of summary offences called a hearing.
- Indictable offences:
 - Triable only before a judge and jury.
 - Determination of indictable offences called a trial.

- Indictable offences that are triable summarily are offences that, upon the consent of the parties designated by Parliament, are triable summarily before a magistrate sitting without a jury.
- Parliament decides whether an offence is designated as summary, indictable, or indictable triable summarily.
- Crimes can also be classified into 'offences against the person' and 'offences against the property'.

General principles of criminal responsibility:

- Criminal responsibility may not be attributed to a person unless s/he:
 - (i) Has engaged in conduct that is forbidden by the criminal law (*actus reus*); and
 - (ii) Possesses a mental state prohibited by the criminal law (*mens rea*).
- Prohibited mentality exists at the time of the volitional act(s) or omission(s) giving rise to the prohibited conduct (referred to as the requirement of 'temporal coincidence').
- Temporal coincidence between one's criminal act(s) or omission(s) and one's criminal mentality = liability.

Mens rea:

- Defendant must have acted with a particular state of mind = mental state.
- In Australia, the *mens rea* component can consist of one or more of the following mental states:
 - Intention – with actual subjective intention of bringing about 1 or more of the results forbidden.
 - Knowledge – holding certain facts to be true; this term is used interchangeably with awareness and foresight.
 - Belief – the belief that certain facts were true, albeit with some doubt or doubts as to their existence.
 - Recklessness – with knowledge that there was a possibility, or depending on the type of crime, a probability that some or all of the results forbidden by the definition of the crime would result from his/ her conduct.
- Recklessness can also be viewed as an aggravated form of negligence.
- Not all crimes require the presence of a *mens rea* (that a person act intentionally, knowingly, recklessly or with a certain belief in bringing about some or all of the proscribed consequences) – those without are termed non-*mens rea*.
- With the exceptions of involuntary manslaughter and nuisance, all common law offences are of the *mens rea* type.

Actus reus:

- All crimes have an *actus reus* component.
- All of the non-*mens rea* elements of a crime are collectively referred to as the *actus reus*.
- Requires that the non-*mens rea* elements must be the result of a voluntary act or omission to act where the law imposes a duty to act.
- Causal connection between the act or omission and the non-*mens rea* elements of the crime.
- Rare instances in which Parliament defines an offence in such a way as to dispense with this requirement = situational offences.
- Voluntary acts consist of some willed muscular movement.
- A muscular movement is deemed as willed if it results from a conscious decision – as an omission to act is a conscious decision to refrain from acting.
- Whilst *actus reus* generally denotes the non-*mens rea* elements of a crime, it does have a minimal mental component.
- This being the requirement of a willed muscular movement.
- An omission can form the *actus reus* of an offence only where a person is under a legal duty to act.
- A duty to act will arise in the following circumstances:
 - (i) Where one is under a contractual duty to act (hired body guard).
 - (ii) Where one is under a statutory duty to act (police officers).
 - (iii) Where one is deemed to have voluntarily assumed a duty to act by undertaking to rescue someone in peril.
 - (iv) Where the defendant and victim have a special relationship.
- A special relationship is generally found when the victim is relying on the defendant to protect him or her, the reliance is reasonable under the circumstances and the defendant knows or has reason to know of the victim's reliance.
- Note: a conscious decision to refrain from acting must also be a voluntary one if it is to serve as a predicate for criminal liability.
- *Actus reus* of an offence consists of:
 - The non-*mens rea* elements of the offence as defined by its statutory or common law definition.
 - The voluntary act or omission to act which brings about those non-*mens rea* elements.

Doctrine of temporal coincidence:

- Where the *mens rea* and the voluntary act or omission which brings about the non-*mens rea* elements concur in time.
 - Denotes a concurrence in time between the *mens rea* and the volitional act(s) (e.g. pressing accelerator, turning wheel to aim in direction of victim) which give rise to the non-*mens rea* elements of a crime.
- Act and intent must coincide.

Defences:

- There are **2 types of criminal defences**:

1. Primary or 'denial' defence:

- Asserts, based on the evidence adduced, that prosecution has failed to prove 1 or more of the constituent elements of an offence with which an accused is charged; and/or
- Accused is the person who committed the alleged crime.

2. Secondary or 'affirmative' defence:

- Accused is asserting that even if the prosecution has proven each of the constituent elements of the offence and the accused's complicity therein, s/he is nonetheless entitled to an acquittal because of a defence that is recognised in law and supported by the evidence adduced at trial.
- A classic example would be that of self-defence to a charge of assault.

Strict liability:

- Law of strict liability denotes some legal definitions and principles that depart from the core components of a crime.
- Strict liability crimes are those that, by way of express statutory statement or judicial interpretation, do not require proof of fault.
- Thus, this distinction of crime does not require the prosecution to prove the accused acted with ordinary negligence or any of the recognised *mens rea*.
- E.g. parking and speeding fines.
- There are 2 additional defences which are of specific application to strict liability crimes:
 - Consists of an honest and reasonable belief in the existence of facts that, if true, would have made the accused's conduct perfectly lawful (Proud-man defence).
 - 'External intervention' defence which requires the accused to show that (divine intervention):
 1. His/her conduct occurred as the result of a stranger or non-human act.
 2. S/he had no control over that conduct; and
 3. S/he could not have been reasonably expected to guard against such external intervention.

Inchoate crimes:

- Like strict liability, this is another category of legal rules that departs from the legal image of the typical crime.
- This distinction of crime encompasses attempt, incitement and conspiracy.
- Those in which the mental element of the crime, although formed, is not fully expressed in the conduct of the accused.
- Attribution of liability for inchoate crimes makes it possible for the law to intercede pre-emptively, rather than stand by until the contemplated crime reaches fruition.
- Criminal law comes closest to holding people criminally responsible for their thoughts alone.
- Incitement consists of encouraging or attempting to induce or persuade another person to commit a crime.
- Conspiracy consists of an agreement between or among 2 or more persons to commit an illegal act.

Participation:

- Association with others can form the basis of criminal liability.
- At common law, the basic distinction of participatory liability is between principal parties and accessories.
- A principal in the first degree is a party who personally performs part or all of the *actus reus* of the crime.
- The term principal in the first degree also encompasses those who are both present at the scene and 'acting in concert' as part of a pre-conceived agreement, express or implied, to commit a crime.
- A principal in the second degree is one who is present at the scene of the crime and, though providing assistance and/or encouragement to the principal(s) in the first degree, does not significantly contribute to or actually perform any portion of the *actus reus* of the ulterior crime.

- An accessory before the fact is a party who provides the same type of assistance or encouragement as a principal in the second degree, except that s/he is not present at the scene where the ulterior crime takes place.
- There can be no liability for such secondary parties unless the prosecution is able to persuade the fact-finder of the guilt of at least 1 principal in the first degree by the requisite standard of proof beyond a reasonable doubt.
- Contrastingly, the liability of each joint principal in the first degree is not derivative, but primary in the sense that the act(s) of 1 is regarded as the act(s) of the others.
- Accessories after the fact take affirmative steps after the crime's commission to secrete 1 or more of the aforementioned participants and assist them in avoiding apprehension or prosecution.
- Under common law doctrine, an accessory after the fact is also liable to the same extent as a principal in the first degree.
- All participants to crime, other than principals in the first degree are referred to as secondary parties.
- Under the *common purpose doctrine*, secondary parties are not only liable to the same extent as a principal(s) in the first degree for the offence(s) that were actually contemplated by the secondary parties and committed by the principal(s) in the first degree;
- But also for any other crimes committed by them which the secondary parties contemplated might be committed as incidental to the offence(s) actually contemplated.
- The *common purpose doctrine* denotes the situation in which the parties to crime acting in concert pursuant to an agreed upon or pre-conceived plan to commit 1 or more offences.

Transferred malice:

- Accused acts with the requisite *mens rea* to commit an offence against a particular person/property and instead succeeds in causing the same type of harm to another person or property, the law treats the accused in the same manner as if s/he had carried out the crime as intended.
- Law regards the *mens rea* as being transferred from the intended person or property to that which is actually harmed.
- This doctrine doesn't apply unless the accused ultimately achieves the same offence that s/he intended.

Burdens of proof:

- 2 types – legal burden and evidential burden.
- Legal burden of proof = persuading the fact-finder of the existence, or non-existence, of a disputed fact by whatever standard of proof is required by law.
 - Crown carries the legal burden with respect to each and every offence(s) charged, and the identity of the accused as the perpetrator.
 - The standard of proof by which the Crown must satisfy the jury of these is *beyond reasonable doubt*.
- Evidential burden of proof = persuading the court that there is ample evidence in support of a claim or defence to warrant a determination by the fact-finder as to whether the legal burden has been discharged.
 - Crown bears the evidential burden with respect to each and every element of the offence(s) charged, and the identity of the accused as the perpetrator.
 - Test for determining whether the Crown has satisfied this burden is to ask whether the evidence, looked upon in the light most favourable to the Crown, is such that a jury (or judge) could reasonably find that these facts have been proven beyond a reasonable doubt.
 - If yes, the burden has been discharged and the Crown's case will be submitted to the jury (or judge in event of bench trial).
 - If no, the charge(s) will be dismissed without the jury's consideration.
- When accused is asserting a secondary defence, the situation becomes more complex.
- Since the accused is the one asserting the defence, it is/he who bears the evidential burden with respect to each of the constituent elements of the defence.
- Test for determining whether the accused has satisfied the burden is to ask whether the evidence, looked upon in the light most favourable to the accused, is such that a jury (or judge) could reasonably find that the Crown has failed to negate 1 or more of the elements of the defence beyond reasonable doubt.
- If yes, burden has been met and the defence will be submitted to the jury (or judge in event of bench trial).
- If no, the defence will not be submitted to the fact-finder.
- If the accused meets the evidential burden, the Crown then assumes an additional legal burden of negating the defence beyond reasonable doubt.

- As a matter of common law doctrine, the accused is never saddled with a legal burden with 1 notable exception.
- This is when insanity and diminished responsibility defences are interposed – bears both burdens of proof.