

Criminal Law and Procedure

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CRIMINAL RESPONSIBILITY

- traditionally, a person is not guilty of criminal conduct unless the act is accompanied by a 'guilty mind'
 - latin maxim – *actus non facit reum nisi mens sit rea*
- crimes divided into the
 - physical element (*actus reus*)
 - fault element (*mens rea*)

PHYSICAL ELEMENT

Nature of the Conduct

- the physical element of the offence may take the form of
 - a specific kind of conduct
 - an act
 - an omission
 - may give rise to criminal liability where there is a common law or legislative duty to act
 - ***R v Miller* [1983] 2 AC 161**
 - Facts: Miller was a homeless man who, while squatting in a property, set the bed on fire. Rather than putting it out, he moved into another room and continued sleeping.
 - Issues: whether doing nothing was a criminal omission (or act)
 - Resolution: the court held that Miller was criminally responsible since there was 'no rational ground for excluding from conduct capable of giving rise to criminal liability, conduct which consists of failing to take measures that lie within one's power to counteract a danger that one has one's self created'
 - a state of affairs or 'being'
 - being in a particular state rather than doing certain acts is criminal
 - examples such as being drunk and disorderly or vagrancy
 - conduct in specific circumstances
 - eg. rape – sexual penetration in the absence of consent
 - the results or consequences of conduct
 - eg. murder and assault – the actual way the offence was committed is not the criminal act
 - in such offences, the prosecution must prove that the accused acts caused the criminal consequence

Voluntariness

- the physical element must be performed voluntarily
- three main ways it would be considered involuntary
 - where it was accidental
 - where it was caused by a reflex action

HOMICIDE

- refers to the unlawful killing of a human being
- includes offences such as
 - murder
 - manslaughter
 - culpable driving causing death
 - industrial manslaughter
- in murder and manslaughter, the physical element of the offence is the result, rather than the action itself
 - the fact that the person died is sufficient if it was caused by an act of the A

A Human Being

- homicide is the killing of a human being

Beginning of Life

- defined in the case law as the point at which the baby is 'fully born'
 - 'a foetus has no rights of its own until it is born and has a separate existence from its mother' (*Attorney-General (Qld) (Ex rel Kerr) v T* (1983) 57 ALJR 285, 286 (Gibbs CJ))
 - 'A baby is fully and completely born when it is completely delivered from the body of its mother and it has a separate and independent existence in the sense that it does not its power of living from its mother. It is not material that the child may still be attached to its mother by the umbilical chord...' (*R v Hutt* [1953] VR 338, 339 (Barry J))
- in the NSW *Crimes Act*, 'On the trial of a person for the murder of a child, such child shall be held to have been born alive if it has breathed, and has been wholly born into the world whether it has independent circulation or not.' (s 20)

End of Life

- 'For the purposes of the law of New South Wales, a person has died when there has occurred:
 - (a) irreversible cessation of all function of the person's brain, or
 - (b) irreversible cessation of circulation of blood in the person's body.'(*Human Tissue Act 1983*, s33)

MURDER

- Under the NSW *Crimes Act*, 'murder shall be taken to have been committed where the **act of the accused**, or thing by him or her **omitted** to be done, **causing the death charged**, was done or omitted to be done with **reckless indifference to human life**, or with **intent to kill** or **inflict grievous bodily harm** upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him or her, of a crime punishable by imprisonment for life or for 25 years.' (s18 (1)(a))
 - grievous bodily harm 'includes (a) the destruction ... of the foetus of a pregnant woman, whether or not the woman suffers any other harm, and (b) any permanent or serious disfiguring of the person, and (c) any grievous bodily disease' (*Crimes Act 1900* (NSW), s4)
- the 'doing of the act which causes death ... [must be] accompanied by an intent to kill or inflict grievous bodily harm' (*R v Royall* [26], (Mason CJ))