

Exam Structure

*Schonewille*¹: MR can be drawn from inferences of facts of the case.

Accused #1

- **Introduction**
 - D could be charged with ____ under ____
 - The prosecution bears the onus of proving the elements of the offence(s) BRD (*Woolmington*)
 - Potential problems with charge
 - D may seek to rely on defence of ____, D has the evidentiary burden of raising the defence
 - P/D has the legal burden of proving/negating BRD/BoP
- **Actus Reus**
 - Element #1
 - Apply facts
 - Satisfied?
 - Element #2
 - Apply facts
 - Satisfied?
 - The prosecution is entitled to presume D acted with volition (*Falconer*)
- **Mens Rea**
 - Basic or specific intent? (Relevant for intoxication)
 - Element #1
 - Infer from evidence/facts
 - Satisfied?
 - Element #2
 - Infer from evidence/facts
 - Satisfied?
- **Temporal coincidence**
 - P must establish temporal contemporaneity of AR and MR (*Authority*)
- **Defence**
 - Element #1
 - Infer from evidence/facts
 - Satisfied?
- **Conclusion**

Accused #2

- **Extension of criminal liability (Intro)**
 - Primary P1 (JCE/Innocent agent)
 - Derivative, A crime must first be committed (P2, CP, accessory after fact)
- **P1/P2/CP/Accessory after fact**
 - Element #1
 - Infer from evidence/facts
 - Satisfied?
- **Conclusion**

¹ *R v Schonewille* [1998] 2 VR 625.

FRAUD

- Covered by legislation (192E)²
 - Any person who by any **deception**³, **dishonestly**⁴
 - Obtains property⁵;
 - Gains financial advantage, causes financial disadvantage⁶
 - Liable to imprisonment for ten years.⁷
 - Can deception over period of time⁸
- Specific intent

Obtaining property

Actus Reus	Mens Rea
By any deception	Intentional or reckless deception
Obtains property belong to another	Intention to permanently deprive
Deception causes the obtaining	Dishonesty

Obtaining financial advantage

Actus Reus	Mens Rea
By any deception	Intentional or reckless deception
Obtains financial property	Dishonesty
Deception causes the obtaining	

Causing financial disadvantage

Actus Reus	Mens Rea
By any deception	Intentional or reckless deception
Causes financial disadvantage	Dishonesty

Actus Reus

- **Deception** defined by (192B)
 1. Any deception by words or conduct, as to fact or law
 - a. A deception as to the intentions of the person deceiving (implied representation)
 - b. Conduct by person who causes any electronic device to make a response that a person is not authorized to make
 2. Deception must be intentional or reckless (MR)
- Includes false statements (complete or partial)⁹
 - Do not include exaggeration¹⁰
 - Can be deception of past, present or future¹¹
- Includes deception by conduct or silence
 - Implied representation (conduct)¹²

² Crimes Act 1900 (NSW) s 192E.

³ Crimes Act 1900 (NSW) s 192B.

⁴ Crimes Act 1900 (NSW) s 4B.

⁵ Crimes Act 1900 (NSW) s 192C.

⁶ Crimes Act 1900 (NSW) s 192D.

⁷ Crimes Act 1900 (NSW) s 192E(1).

⁸ Crimes Act 1900 (NSW) s 192E(3).

⁹ M [1980] 2 195.

¹⁰ R v John Bryan [1857] 169 ER.

¹¹ R v Freeman [1981] 2 NSWLR 686.

- **Obtaining property belonging to another (192C)**
 1. Obtains property
 - a. Obtains property for himself/another person
 - b. Enables property to be retained for himself/another person
 - c. Induces 3rd party in obtaining/retaining for himself
 2. Intention to permanently deprive (MR)
 3. Property belongs to another if:
 - a. Person has possession/control
 - b. Has proprietary rights or interest (equitable interest for constructive trust excluded)
 4. Appropriates the property as if own still intent to permanently deprive notwithstanding claim of return in the future
- **Obtaining financial advantage (192D)**
 1. Obtaining financial advantage
 - a. Obtains advantage for himself/another person
 - b. Induces 3rd party in obtaining for himself
 - Does not matter whether permanent or temporary (MR)
 - Left undefined, broad scope¹³
 - No need to prove D intended to use money for purposes different from those V expected¹⁴
 - Financial advantage does not have to be gained from person deceived¹⁵
- **Causing financial disadvantage (192D)**
 2. Causes financial disadvantage
 - a. Cause financial disadvantage to another person
 - b. Induces 3rd party to cause financial disadvantage
 - Does not matter whether permanent or temporary (MR)
 - D need not have to have gained a financial advantage
- **Deception caused the obtaining**
 - Prosecution must prove accused 'obtained by deception' (I.e. causation) must have substantially contributed¹⁶
 - Deception must be operative¹⁷
 - V needs to have believed in deception¹⁸

¹² *DPP v Ray* [1974] AC 370;

¹³ *R v Vasic* [2005] VSCA 38.

¹⁴ *Balcombe v De Simoni* (1972) 126 CLR 576.

¹⁵ *R v Kovacs* (1974) 1 WLR 370.

¹⁶ *Ho v Szeto* (1989) 17 NSWLR 608.

¹⁷ *R v Lambie* [1982] AC 449.

¹⁸ *Kassis v Katsantonis* [1984] 3 NSWLR 330.

Mens Rea

- **Intentional or reckless deception** (192B(2) – definition of deception)
 - Intended to deceive
 - Reckless as to truthfulness of their statements (possibility)¹⁹
 - If an element of crime is recklessness, maybe be established by proof of intention or knowledge²⁰
- **Dishonest** (s 4B – definition of dishonesty)
 - According to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people (**subjective + objective**)
 - It is likely that defence of claim of right will continue under this fraud legislation. It was held that if D has bona fide belief in claim of legal right, this will negate an intention to defraud²¹
- **Intention to permanently deprive** (only for obtaining property) (192C(2))
 - Mirrors common law requirement in mens rea for larceny
 - If appropriates the property as his own, equivalent intention to permanently deprive, notwithstanding intention to eventually return (192C(4))

Temporal Coincidence

- **AR and MR must coincide**²²

¹⁹ *Stokes & Difford* (1990) 51 A Crim R 25.

²⁰ *Crimes Act 1900 (NSW)* s 4A.

²¹ *R v Kastratovic* (1985) 42 SASR 59.

²² *DPP v Ray* [1974] AC 370.

DPP v Ray [1974] AC 370

Facts

Ordered a meal under the impression that his friends were going to pay for him, since he had no money. Once meal was finished, his friends decided to not pay for the meal and they all bolted without paying.

Held

Argued that they ordered the food initially without deception, hence subsequent MR did not coincide with AR. Judge held their conduct was implied representation by sitting down at the restaurant was that they were going to pay, covered the whole transaction up to and including the payment. Therefore, change of mind to not pay coincided with the act.

Deception includes conduct or silence (implied representation)

R v Lambie [1982] AC 449

Facts

D used credit card to pay for items knowing she was well over the limit. Argued that she did not deceive the shopkeeper since she did not say anything.

Held

D did deceive the shopkeeper, false representation via silence. Also the deceiving was operative, as the shopkeeper would not have allowed the transaction if she knew that D was over the limit

Deception must be operative in causing the obtaining

R v Vasic (2005) 11 VR 380

Facts

D wrote a cheque for \$32000, knew that the cheque would be dishonoured.

Held

Any delay is a financial advantage, as you can use that delay to invest and gain an advantage. Also obtained benefit of further time to pay and did not have to pay the value of the cheque

Financial advantage is interpreted in a broad sense

Defence – Intoxication

- Intoxication is not a defence to, but may negate certain elements of crime
 - Plea of automatism: arguing AR involuntariness (if not self induced)
 - Defence of insanity: intoxicant triggered underlying disease of mind
 - Denying that D had necessary MR (intent dependent)
- Reasonable person is considered sober²³
 - Except for manslaughter, intoxication considered when RP test²⁴
- Still need to prove that intoxication caused inability to form AR or MR
 - Coincidence of intoxication is not enough

Burden of Proof

- D will bear **evidentiary burden** of raising intoxication, D's evidence has to be **reasonably persuasive** before it is determined that the issue can be left to the judge²⁵
- **Legal burden** is on P to prove voluntariness or MR beyond a reasonable doubt
 - Exception is intoxication in relation to insanity, D must prove insanity on BoP

Legislation

• S 428 – Intoxication (*Crimes Act 1900*)

- A. Definitions
 - Intoxication means intoxication because of the influence of alcohol, a drug or any other substance
 - Also defines what is self induced/involuntary intoxication
- B. Offences of specific intent to which part applies
- C. Intoxication in relation to offences of **specific intent**
 1. Intoxicated self-induced or not, **does** affect MR in specific intent
 2. Intoxication **does not** affect **MR** if
 - a) D already decided to perform act before intoxication or;
 - b) Used intoxication in order to strengthen resolve (**dutch courage**)
- D. Intoxication in relation to **other offences (basic intent)**
 - a) self-induced cannot take into account
 - b) not self-induced can take into account
- E. Intoxication in relation to murder, manslaughter, assault causing death
- F. Intoxication in relation to the reasonable person test
- G. Intoxication and the **actus reus** of an offence
 1. Self-induced intoxication cannot be taken into account
 2. Person is not criminally responsible if the relevant conduct resulted from non self-induced intoxication
- H. Abolition of common law relating to self-induced intoxication

²³ *Crimes Act 1900 (NSW)* s 428F.

²⁴ *Crimes Act 1900 (NSW)* s 428E

²⁵ *Shaw v R* (1981) 2 NSWLR 648.

Self-induced vs. involuntary intoxication (s 428A)

- Intoxication is self induced unless it was
 - a) Involuntary
 - b) Fraud/emergency/accident/reasonable mistake/duress/force
 - c) Done according to medical needs, prescription drug in accordance with instructions
- Section not concerned with voluntary consumption, common sense approach should be adopted to the issue of causation²⁶ (*Hadba v R 2004*)

Intent

Specific intent

- Specific intent crimes listed in s 428B
- Requires an intention to bring about a particular consequence
 - Offences of which an intent to cause a specific result is an element
- Murder is an offence of specific intent even where Crown relying upon reckless indifference towards human life²⁷
- Intoxication to be taken into account regardless of self-induced or not²⁸
- **Dutch Courage**
 - Cannot rely on Dutch courage²⁹

Basic intent

- Require an intention to merely perform an act
 - E.g. assault
 - E.g. s 35 (reckless ABH)
- Intoxication only considered if not self-induced³⁰

Voluntariness

- Deals with actus reus
- Self-induced intoxication not available for defence of involuntariness³¹
- Involuntary intoxication available for defence of involuntariness³²

Availability of lesser offence

- Self-induced intoxication D who escapes conviction of a specific intent offence might then be convicted of a lesser offence which only requires basic intent

²⁶ *Hadba v R* (2004) 182 FLR 472.

²⁷ *R v Grant* (2002) 55 NSWLR 80.

²⁸ *Crimes Act 1900 (NSW)* s 428C(1).

²⁹ *Crimes Act 1900 (NSW)* s 428C(2); *Attorney-General for Northern Ireland v Gallagher* [1963] AC 349.

³⁰ *Crimes Act 1900 (NSW)* s 428D(a); *DPP v Majewski* [1977] AC 443.

³¹ *Crimes Act 1900 (NSW)* s 428G(1).

³² *Crimes Act 1900 (NSW)* s 428G(2).