

HIGH DISTINCTION CRIMINAL LAW NOTES

Structure topics in order as follows:

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Fraud: Dishonestly obtaining property

- The Defendant has been charged with fraud under section 192E of the *Crimes Act 1900* (NSW) ('The Act')
- The Prosecution ('P') must prove all elements of the offence beyond reasonable doubt ('BRD') (*Woolmington*)
- D can be charged with more than one type of fraud offence

Actus Reus ('AR')

The P must prove that the D voluntarily engaged in deceptive conduct to obtain property belonging to another

a) Voluntariness

The P is entitled to presume that the D's conduct was 'conscious and willed'
(*Ryan v The Queen*)

***Ryan v The Queen*
(1967)**

b) Accused engaged in deception:

i) Deceiving others

- 1) Making of a false statement
 - (a) Difference between deception and exaggeration
- 2) Omission of material facts
- 3) Conduct and silence

Section 192B of *Crimes Act 1900* (NSW)

ii) Conduct by a person that causes a computer, a machine or any electronic device to make a response that the person is not authorised to make

c) The D obtained property if:

- i) D obtained ownership, possession or control of the property for himself or herself or for another person

OR

- ii) D enabled ownership, possession or control of the property to be retained by himself or herself or by another person

OR

- iii) D induced a third person to do something that results in the D or another person obtaining or retaining ownership, possession or control of the property

Section 192C(1) of *Crimes Act 1900* (NSW)

d) Property belongs to a person if:

- i) The person has possession or control of the property

OR

- ii) The person has a proprietary right or interest in the property

Section 192C(3) of *Crimes Act 1900* (NSW)

e) Property includes every description of real and personal property:

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| <ul style="list-style-type: none"> - Money - Valuable securities - Debts - Legacies - Deeds and instruments relating to, or evidencing the title or right to any property - Deeds and instruments giving a right to recover or receive any money or goods - Includes property originally in the possession or under the control of any person - Includes property that has been converted or exchanged, whether immediately or otherwise - Intangibles and fungibles | Section 4 of Crimes Act 1900 (NSW) |
| e) D obtained property through deception | |
| <u>The P will be successful/unsuccessful in proving BRD that the D satisfied the AR elements of fraud by/through...</u> | |
| Mens Rea ('MR') The P must prove that the D dishonestly obtained property belonging to another through intentional or reckless deception with an intention to permanently deprive. | |
| a) Intentional or reckless deception <ul style="list-style-type: none"> i) Must have knowledge of falsity of statements ii) Must have intent to defraud | Section 192(B)(2) of Crimes Act 1900 (NSW) |
| b) Intention to permanently deprive <ul style="list-style-type: none"> i) The P must prove that the D had intent to deprive the V of the property | Section 192C(2) of Crimes Act 1900 (NSW) |
| c) Dishonesty <ul style="list-style-type: none"> i) Defined as: Dishonest means dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people. | Section 4B of Crimes Act 1900 (NSW) Applies test from R v Ghosh [1982] |
| <u>The P will be successful/unsuccessful in proving BRD that the D satisfied the MR elements of fraud by/through...</u> | |
| Conclusion The D will be charged with fraud as the P can successfully prove BRD that the D satisfies the AR and MR elements of fraud <u>OR</u> The D will not be charged with fraud as the P cannot successfully prove BRD that the D satisfies the AR and/or MR elements of fraud | |

Extreme Provocation - Partial Defence → From murder to voluntary manslaughter

- The Defendant has been charged with murder under section 18 of the *Crimes Act 1900* (NSW) ('The Act')
- The Defence raises the partial defence of provocation which will reduce the charge of murder to manslaughter
- The **Defence** has the burden of proving the possibility of the defence on the balance of probabilities → must satisfy evidential burden
- The **Prosecution** then bears the burden of disproving the defence beyond reasonable doubt

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| 1. Identify provocative conduct | |
| 2. Determine if the provocative conduct was towards/affecting the accused | Section 23(2)(a) of <i>Crimes Act 1900</i> (NSW) |
| 3. The conduct was a serious indictable offence in itself <ul style="list-style-type: none"> a. Do not have to prove how the conduct was seriously indictable b. Serious indictable offence means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more, including: <ul style="list-style-type: none"> i. Attempted murder ii. Wounding or GBH iii. Assault occasioning ABH iv. Sexual assault | Section 23(2)(b) of <i>Crimes Act 1900</i> (NSW) Section 4 of <i>Crimes Act 1900</i> (NSW) |
| 4. Exclusionary criteria → not provocation if: <ul style="list-style-type: none"> a. Deceased's conduct was a non-violent sexual advance (e.g. kiss) b. The accused incited (encouraged) the conduct in order to provide an excuse to use violence against the deceased | Section 23(3)(a) of <i>Crimes Act 1900</i> (NSW) Section 23(3)(b) of <i>Crimes Act 1900</i> (NSW) |
| 5. Conduct of the deceased may constitute extreme provocation even if the conduct did not occur immediately before the act causing death <ul style="list-style-type: none"> a. In cases of domestic violence abuse, there needs to be a 'final provocative act' which triggered the loss of self-control b. For e.g. a slap could have been the trigger act → although it is not a serious indictable offence, the years of domestic violence abuse the Defendant endured make the slap a provocative act ("slow burn situations") | Section 23(4) of <i>Crimes Act 1900</i> (NSW) |
| 6. Conduct of the deceased caused the accused to lose self control | Section 23(2)(c) of <i>Crimes Act 1900</i> (NSW) |
| 7. Objective ordinary person test <ul style="list-style-type: none"> a. Conduct of deceased could have caused ordinary person to lose self-control to the extent of intending to kill or inflict GBH on the deceased | Section 23(2)(d) of <i>Crimes Act 1900</i> (NSW) |
| <u>The P will be successful in disproving BRD the D's partial defence of provocation → charged with murder</u> <u>OR</u> <u>The P will be unsuccessful in disproving BRD the D's partial defence of provocation → charged reduced</u> | |