

## Drug Offences

<b>LEGISLATION</b>	<b>EXAM RESPONSE</b>
<p><i>Drug Misuse and Trafficking Act 1985 (NSW)</i></p> <p><b>S 10</b> – Possession of prohibited drugs</p> <p>1) A person who has a prohibited drug in his or her possession is guilty of an offence.</p>	<p>___ may be charged with possession of ___, under <b>s 10</b> of the <i>Drug Misuse and Trafficking Act 1985 (NSW)</i>. The prosecution must prove that ___ had exclusive physical control of the drug, they knew the substance was a prohibited drug, and there was intention to control a prohibited drug.</p> <p><i>Filippetti</i> provides that to be charged with possession, ___ must have exclusive physical control of the drug. This case is similar to ___, where ...</p> <ul style="list-style-type: none"> <li>- <i>Dib</i> = if there is joint control, the accused must have the right to exclude others from possession</li> <li>- <i>Delon</i> = if the drug is hidden, you are in possession if you can retrieve the drugs at any time you choose</li> <li>- <i>Williams</i> = possession requires knowledge of the thing being possessed – minute quantities are only capable of being discerned by scientific means do not come under the scope of the act</li> <li>- <i>Paul v Collins Jnr</i> = possession of a dangerous drug includes any amount of a drug, and what it is mixed with</li> </ul> <p>Therefore, the test for possession has/has not been satisfied.</p> <p><i>He Kaw Teh</i> provides the authority that ___ required an intention to control the prohibited drug. ___ had this intention, as shown by ...</p> <ul style="list-style-type: none"> <li>- <i>He Kaw Teh</i> = possession requires knowledge of the thing possessed, and intention to control it</li> <li>- <i>Saad</i> = intention is proved if the accused is aware of the likelihood of the existence of the drug</li> <li>- <i>Amanatidis</i> = knowledge and intention cannot be proved, if the place in which the drug was found had shared physical control (e.g. a car shared between two people)</li> </ul> <p>Therefore, the test of intention has/has not been satisfied.</p> <p>Based on the facts, the prosecution is likely to charge ___ with possession of prohibited drugs under <b>s 10</b> of the <i>Drug Misuse and Trafficking Act 1985 (NSW)</i>.</p> <p>Based on the facts, it is unlikely that the prosecution will succeed in charging ___ with possession of prohibited drugs under <b>s 10</b> of the <i>Drug Misuse and Trafficking Act 1985 (NSW)</i>.</p>

<p><b>S 11</b> – Possession of equipment for the administration of prohibited drugs</p> <p>1) A person who has in his or her possession any item or equipment for use in the administration of a prohibited drug is guilty of an offence</p> <p>1a) Subsection (1) does not apply to or in respect of a hypodermic syringe or needle.</p>	<p>___ may be charged with possession of equipment for the administration of prohibited drugs under <b>s 11</b> of the <i>Drug Misuse and Trafficking Act 1985 (NSW)</i>. The prosecution must prove that ___ had exclusive physical control of the equipment, and there was an intention to control the equipment.</p> <p><i>Filippetti</i> provides that to be charged with possession, ___ must have exclusive physical control of the drug. This test can be extended to prohibited drug equipment. ___ had/did not have physical control of the equipment, based on the evidence that ...</p> <p>Therefore, the test for possession has/has not been satisfied.</p> <p><i>He Kaw Teh</i> provides the authority that ___ required an intention to control the prohibited drug. This can be extended to an intention to control possession of equipment for the administration of prohibited drugs. ___ had this intention, as shown by ...</p> <ul style="list-style-type: none"> <li>- <i>He Kaw Teh</i> = possession requires knowledge of the thing possessed, and intention to control it</li> <li>- <i>Saad</i> = intention is proved if the accused is aware of the likelihood of the existence of the drug</li> <li>- <i>Amanatidis</i> = knowledge and intention cannot be proved, if the place in which the drug was found had shared physical control (e.g. a car shared between two people)</li> </ul> <p>Therefore, the test of intention has/has not been satisfied.</p> <p>Based on the facts, the prosecution is likely to charge ___ with <b>s 11</b> of the <i>Drug Misuse and Trafficking Act 1985 (NSW)</i>.</p> <p>Based on the facts, it is unlikely that the prosecution will succeed in charging ___ with <b>s 11</b> of the <i>Drug Misuse and Trafficking Act 1985 (NSW)</i>.</p>
<p><b>S 11A</b> – Sale and supply of waterpipes and ice pipes</p> <p><b>S 11B</b> – Possession of a tablet press or drug encapsulator</p> <p><b>S 11C</b> – Possession of instructions for manufacture or production of prohibited drugs</p> <p><b>S 12</b> – Self-administration of prohibited drugs</p> <p><b>S 13</b> – Administration of prohibited drugs to others</p> <p><b>S 14</b> – Permitting another to administer prohibited drugs</p> <p><b>S 15</b> – Forging etc. prescriptions</p> <p><b>S 16</b> – Obtaining etc. prescriptions by false representation</p> <p><b>S 17</b> – Obtaining prohibited drug by false representation</p> <p><b>S 18</b> – Obtaining prohibited drugs from medical practitioners, nurse practitioners or midwife practitioners</p>	<p>___ may be charged under s ___ of the <i>Drug Misuse and Trafficking Act 1985 (NSW)</i> which makes it an offence to ___. The prosecution only need to prove actus reus for this offence.</p> <p>This is pursuant to the facts, since ___ ...</p> <p>This section would apply in its simple form due to sufficient evidence, it is likely that the ___ would be charged.</p> <p>This section would apply in its simple form, yet due to a lack of evidence, it is unlikely that ___ would be charged.</p>

<p><b>S 18A</b> – Advertising or holding out that premises are available for use for unlawful administration of prohibited drugs</p> <p><b>S 18B</b> – Manufacture, production, possession and supply of certain Schedule 9 substances</p> <p><b>S 19</b> – Aiding, abetting etc. commission of offence in New South Wales</p> <p><b>S 20</b> – Aiding, abetting etc. commission of offence outside New South Wales</p>	
<p><b>S 23</b> – Offences with respect to prohibited plants</p> <p>1) A person who:</p> <ol style="list-style-type: none"> <li>Cultivates, or knowingly takes part in the cultivation of a prohibited plant,</li> <li>Supplies, or knowingly takes part in the supply of a prohibited plant, or,</li> <li>Has a prohibited plant in his or her possession, is guilty of an offence.</li> </ol> <p>1A) (1)(a) by enhanced indoor means</p> <p>2) (1) with commercial quantities</p> <p><b>S 3</b> - <i>Cultivation by enhanced indoor means</i> is cultivation of the plant:</p> <ol style="list-style-type: none"> <li>that occurs inside a building or structure,</li> <li>and involves: <ol style="list-style-type: none"> <li>Nurture of the plant in nutrient-enriched water</li> <li>Application of an artificial source of light or heat</li> <li>Suspending the plant’s roots and spraying them with nutrient solution</li> </ol> </li> </ol>	<p>It is possible that ___ will be charged with an offence of cultivating, or knowingly taking part in the cultivation of a prohibited plant under <b>S 23(1)(a)</b> of the <i>Drug Misuse and Trafficking Act 1985 (NSW)</i>. The prosecution must prove that ___ intended to cultivate the plant, or were reckless as to the fact that the plant would be cultivated.</p> <p><b><i>If relevant:</i></b> The prosecution must prove that the plant was prohibited, ___ <b>knowingly took part</b> in the cultivation of a prohibited plant, and intended to do so.</p> <p>The ___ is prohibited under Schedule 1 of the Act.</p> <p><b>S 3</b> of the act provides that <i>cultivate</i>, includes:</p> <ol style="list-style-type: none"> <li>To Sow or scatter the seed produced by the prohibited plant, and</li> <li>Plant, grow, tend, nurture or harvest the prohibited plant.</li> </ol> <p>___ cultivated the plant in question under <b>S 3</b> of the Act <i>or (case)</i> ___. This is demonstrated as per the facts which provide ...</p> <ul style="list-style-type: none"> <li>- <i>Eager v Smith</i> = watering of germinated or un-germinated seeds in order to keep alive until planted, with the intention of producing plants, is cultivation</li> <li>- <i>R v Giorgio and Romeo</i> = removal of plant/portion of a plant from soil and ancillary activities counts as cultivation</li> </ul> <p>Furthermore, ___ intended to cultivate the prohibited plant. This is demonstrated by the facts where ...</p> <p>Based on the facts, it is highly likely that the prosecution will charge ___ with cultivating/knowingly taking part in cultivating a prohibited plant.</p> <p>Based on the facts, it is unlikely that the prosecution will charge ___ with cultivating/knowingly taking part in cultivating a prohibited plant.</p> <p><b><u>SEE SUPPLY SCAFFOLD FOR S 23(1)(B)</u></b></p>