

WEEK 1: GENERAL PRINCIPLES	5
Definition of crime	5
What is crime	5
Criminal and civil process	5
Role of criminal law	5
Restraining the state	6
Bill of rights	6
Law Reform Topics	6
Substantive and procedural	7
Criminal process	7
WEEK 2: PRINCIPLES OF CRIMINAL RESPONSIBILITY	8
Burden of proof and Standard of Proof	8
Burden of Proof	8
Standard of proof	8
Beyond Reasonable doubt	9
Strict and Absolute Liability	9
(1) Crimes of Strict Liability	9
(2) Crimes of absolute liability	9
Capacity	10
Legal Capacity/Special Defendants	10
Additional Information	11
Criminal Elements	11
(1) Actus Reus (Conduct/Physical Elements)	11
1. Causation	11
2. A positive act/Action	11
3. Omissions	11
4. Assumption of duty	11
5. Situational/or status offence	11
6. Voluntariness	12
(2) Mens Rea (Fault Elements)	12
1. Intention	12
2. Recklessness	12
3. Objective Standard of Mens Rea State	12
4. Negligence/Objective Standard	12
5. Knowledge	13
6. Willful blindness	13
(3) Coincidence	13
WEEK 3: SUMMARY OFFENCES	15
Introduction	15
Public Nuisance	15
Summary Offences	15
Public Order offences	15
Summary Offences Act 1988 (NSW) S4: Offensive Conduct.	15
Police powers- LEPR (Law enforcement powers and responsibilities Act)	15
Prohibited behaviour order- Western Australia Approach	16
Offensive Language	16
Summary Offences Act 1988 (NSW)	16
Offensive Language/Conduct Crimes	16

What is offensive	16
Indigenous Australians and offensive language crimes	17
WEEK 4: MURDER	18
Homicide	18
Introduction: Homicide	18
Homicide Statistics	18
Murder Causation	19
Causation	19
1. Factual causation:	19
2. Legal Causation	19
○ 1) Reasonable foreseeability test	19
○ 2) Natural consequence test	19
○ 3) Operating and substantial test	19
Murder Elements	20
(1) Actus Reus (Physical/Conduct Elements)	20
1. Voluntary act or omission of the accused	20
2. Causation: Which caused the death	21
3. Death must have occurred	21
4. Victim a human being	21
(2) Mens Rea (Fault Elements)	21
1. Intention to kill	21
2. Intention to cause grievous bodily harm	21
3. Reckless indifference to human life	22
(3) Temporal Coincide	22
(4) Case Law	23
WEEK 5: INVOLUNTARY MANSLAUGHTER	24
Homicide	24
Involuntary Manslaughter	24
1. Unlawful and dangerous act manslaughter	24
Elements of unlawful and dangerous act manslaughter	25
1. Voluntary unlawful act (not omission):	25
2. Act caused the death of the victim	25
3. The act created an appreciable risk of serious injury in the mind of a reasonable person	25
2. Manslaughter by criminal negligence	25
Elements	25
1. Voluntary Act or Omission	25
2. Act or omission caused the death	25
3. Standard of care	25
4. Gross Negligence	26
Manslaughter and malice	26
Manslaughter by negligent omission- Positive Act & Objective test	26
Where there is an unexpected incident in carrying out a common design	26
WEEK 6: VOLUNTARY MANSLAUGHTER	27
1. Extreme Provocation	27
Introduction	27
Elements	27
A) Statute	27
B) Case Law	27
C) Two Part test	27
1. Subjective: Loss of self- control after sustained period of issue	27

2. Objective	27
(D) Other	28
Intoxication and extreme provocation	28
Words as proactive conduct	28
Presence of the accused	28
Other elements:	28
2. Substantial Impairment by Abnormality of the Mind	28
Elements	28
1. Statute- Crimes Act 1900 (NSW) s 23A	28
2. Conditions	28
3. Examples	28
3. Excessive Self Defence	29
Act- 418 Self-defence—when available	29
4. Other homicide offences	29
1. Assault causing death	29
2. Drug Supply causing Death	30
3. Dangerous driving occasioning death	30
4. Infanticide	31
WEEK 7 AND 8: DEFENCES	32
1. Self-defence – Full Defence	32
2. Excessive Self-defence- partial defence	34
3. Necessity	34
4. Duress	35
5. Mental illness – Full defence	36
6. Substantial impairment of the mind- Partial defence	38
7. Automisation- Full defence	40
8. Intoxication	41
9. Extreme provocation	44
WEEK 9: ASSAULT	47
Categories of assault	47
1. Common Assault	47
2. Aggregate assault	50
3. Domestic Violence – Apprehend domestic violence orders	53
WEEK 10: SEXUAL ASSAULT	55
Introduction/Overview	55
Categories Sexual assault	56
1. Sexual Assault	56
a. Aggravated sexual Assault	57
a. Aggravated sexual Assault in company	57
2. Indecent assault	58
a. Aggravated indecent assault	59
3. Act of indecency	59
a. Aggravated act of indecency	60

WEEK 11: DISHONEST ACQUISITION	62
1. Larceny	62
History	62
Elements of larceny: AR and MR need to coincide	63
Physical (Actus Reus)	63
Mens Rea (Fault Elements)	64
2. Aggravated forms of larceny	67
(1) Robbery	67
(2) Aggravated Trespass offences	67
3. Fraud: Deception + Dishonesty	68
4. Receiving stolen property	70
5. Goods in custody: Receiving	70
WEEK 12: DRUG OFFENCES	72
WEEK 13: EXTENDED CRIMINAL LIABILITY	77
Introduction	77
1. Attempt	77
Introduction	77
Elements of attempt	78
Physical element of attempt	78
Fault element for attempt	78
2. Conspiracy	79
Introduction	79
Elements	79
Physical element	79
Fault elements	79
3. Complicity	81
Introduction	81
Statutory provisions relating to complicity	81
1. Principal of the first degree (Principal Offender)	82
2. Principal of the second degree	82
3. Accessory before the fact	82
4. An accessory after the fact of that crime	83
Elements of accessory after the fact	83
Misprision of felony	83
Joint criminal enterprise	85
Introduction	85
Scope and application of joint criminal enterprise	85
Attribution of facts	85
Extended common purpose	86
Constructive murder and joint criminal enterprise	86
Manslaughter from participation of a joint criminal enterprise	86
Withdrawal of complicity	86
Requirements for withdrawal → White v Ridley	86

Week 1: General Principles

Definition of crime

- Criminal law connotes only the quality of such acts or omissions as we are prohibited under appropriate penal provisions by authority of the state
- asking whether the two essential characteristics of crime are present, namely: Is the conduct prohibited & Is the correspondence of engaging in the prohibited conduct punishment
- **In Evans v New South Wales (2008) 168 FCR 576; 250 ALR 33**
 - Although Evans is an example of the limited capacity of the courts to strike down criminal legislation, it remains the case that there is usually little value in arguing before a judge that the matter before the court should not be a crime if the legislation has said that the alleged conduct is a crime
 - Crime is a crime whether it is legislature or the common law has determined that such conduct is prohibited and the consequence of engaging in that conduct is punishment

What is crime

- A crime (or offence) is a legal wrong that can be followed by criminal proceedings which may result in punishment
- **Definition:** The criminal quality of an act cannot be discerned by intuition, nor can it be discovered by any standard, but one: Is the act prohibited with penal consequences?

How should the content of Criminal Law be determined?

- The Prevention of Harm → The Enforcement of Morality → Preserving Community Welfare and the Public Interest

Universal Declaration on Human Rights- Article 29

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and **respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society**
 - Different countries have different understanding/notion of human right

The prevention of Harm- Liberalism

- John Stuart Mills, *On Liberty* (Penguin, reprint 1947) 68:
 - '... The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That is only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.'

Criminal and civil process

Civil Proceedings

- **The civil penalty process** is one where a person can be ordered to pay a penalty without being classified as having been convicted of a crime e.g. Taxation Administration Act 1996 (NSW) may impose a penalty by way of 'penalty tax- Penalty tax is a debt due to the Chief Commission of State Revenue and can be recovered in the civil courts
- **Civil penalty proceedings** are civil proceedings and therefore an adversarial contest in which the issues and scope of possible relief are largely framed and limited as the parties may choose
- **standard of proof is upon the balance of probabilities** and there respondent is denied most of the procedural protections of an accused in criminal proceedings
- In civil proceedings there is generally very considerable scope for the parties to agree on the facts and upon consequences

Criminal Proceedings

- A Criminal prosecution is an accusatorial proceeding which is governed by the fundamental principle that the burden lies in all things upon the Crown to Establish **the guilt of the accused beyond reasonable doubt** by the companion rule that the accused cannot be required to assist in proof of the offence charged
- In criminal proceedings the imposition of the punishment is a uniquely judicial exercise of intuitive synthesis of the sentencing facts as found by the sentencing judge and the judges relative weighting and application of relevant sentencing considerations in accordance with established sentencing principle

Role of criminal law

- Hon Murray Gleeson ACQC, argued we 'are ruled by laws and not by people'.
- purpose of the criminal law as being 'to keep the peace, to that people can lead their lives and go about their affair, in reasonable security'
- This legal prohibition and threat of punishment that our liberty to do what we like is, to some extent at least, restrained by the most criminal law, but this is accepted as it promotes a safer environment where most people can go about their business protected from interference from others

Restraining the state

- Significant function of the criminal law (both substantive and procedural) is thus to impose a limit on the states power; to ensure that people of accused crimes are dealt with fairly and according to the law to act as the arbiter between the state (prosecutor) and the individual
- Other safeguard is the **presumption of innocence**. An accused person is **presumed innocent unless and until proven guilty in court**
- what standard is prohibited and it must prove, **beyond reasonable doubt that** the individual did what was prohibited- Only then might the person be labelled as a 'criminal'
- the courts are instruments that stand between the state (**the prosecutor**) and the citizen (**the defendant**) to ensure that the state proves its case in circumstances that are fair to both sides

Bill of rights

- Without the Bill of Rights a New South Wales court cannot determine that a penalty is correctly labelled criminal and insist that any accused person must be given the standard protections of the criminal law; for example, the right to a face his/her accusers in a trial governed by law and that the case be proved beyond reasonable doubt
- Dangerous Prisoners (Sexual Offenders) Act 2003 to provide for the ongoing detention of prisoners who pose risk to the community, but who have served their sentences for what they have done
- Other states have also proceeded to enact legislation to impose control orders e.g. Crimes (High Risk Offenders) Act 2006 (NSW) provides for extended supervision orders and continuing detention orders to allow 'high risk sex offenders' and 'high risk violent offenders' to be subject to contro
- Commonwealth law also provides for the control of people for fear of the offences that they may commit (see criminal code act 1995 (cth) and **Thomas v Mowbray (2007) 233 CLR 307**)
- Commonwealth law also allows for persons to be detained without charge and held in secret away from their families, friends and legal advisers to allow the Commonwealth authorities to investigate potential criminal activity

Law Reform Topics

Positive school: Cesare Lombroso examined criminal behaviour through biology. He examined cadavers and notes similarities of convicted criminals such as atavistic anomalies meaning they appeared primitive and inferior. Thus they were born criminal

Liberalism

- Conceives personal liberty and autonomy of utmost importance. Individual freedom should not be limited to promote public morals or interest of the state. 19th century by John Stuart Mill. Restriction of livery only justifiable in order to prevent harm to others. Criminal law should not be used to prohibit non harmful behaviour or prevent individuals from themselves. Raises questions;
 - 1. Must harm be direct or indirect
 - 2. What types of harm should be included (physical, psychological, economic or environmental
 - 3. To what extent, does the principle accommodate the potential for harm

The Harm principle

- What do we mean by harm? How do we measure it?
- Is being offended by something the same thing as being harmed?
- Must the harm be direct, or do we include indirect forms of harm?
- Does the principle accommodate concerns of potential harm?
- Are there really no other circumstances in which the criminal law should be involved?

The enforcement of Morality

- Lord Devlin, *The Enforcement of Morals* (OUP), 1965) 179
 - ' A society may use the law to preserve morality in the same way as it uses it to safeguard anything else that is essential to its existence
 - Test for immorality: If conduct arouses feelings of indignation(outrage) or **revulsion** (disgust) in **ordinary people**

Crimes as Immorality- Analysis

- 'Wrongness'- inherent moral values
- In systems where law and religion aligned, morality is inherently a legal force- the relationship sin and crime
- Beyond religion ideas to concept of **common social morality**
- Criminal Law gauged by sense of **Public Outrage**
- Whose Morality? The Majority

Community welfare

- Criminal law as what is best for the community as a whole
- Maintenance of social order and national security
- Considerations of costs to the community- financial, social etc.
- How far can the protection of community welfare go?
- The interdependence of autonomy and welfare

Substantive and procedural

- Substantive: What makes a person guilty or not guilty of a crime?
- Procedural
 - What powers do police have, and what are the limits of those powers?
 - **To arrest, to use force, what happens when you get charged**
 - **Charged:** done by the police when you're first arrested. Initial charge
 - **Court:** court determines the charge and determines if you're guilty or not guilty of that charge. If you are found to be guilty beyond reasonable doubt you are convicted
 - Bail
 - Presumed innocent; set free on bail
 - Sentencing
 - Wide range
 - Arrest, use of force, charging, rights in custody, search etc.

Criminal process

1. An alleged crime occurs. Either it is reported to police, or police witness it themselves: **Somebody does something**
2. Police decide to investigate: **Police can choose not to investigate**
3. Police gather evidence: Talk to witnesses, take statements, any other forms of evidence CC TV, damage to property, wounds to people, blood spatter, physical evidence and what victim says
4. Police arrest a suspect : Enough evidence to charge you
5. That suspect is charged, and is now known as the **accused or the defendant**
 - a. The charging is an accusation of the charged
6. The accused is either given bail or remanded in custody
 - a. Free to go with conditions or remanded in custody (can take 2 years for the matter to be resolved);
7. Police and/ or the DPP continue to build a case. The evidence against the **accused** must be given to them
8. The **accused** pleads guilty or not guilty
 - a. Plead guilty: straight to sentence
9. If **not guilty**, then the matter is set down for hearing (Local Court in front of a magistrate alone for less serious matters & will determine if you're guilty not guilty) or a trial (District Court or Supreme Court, in front of a judge or jury)
10. The magistrate or the jury hear the evidence and decide either 'guilty' or 'not guilty', to the **standard beyond reasonable doubt**
 - a. **Judge** decides the law
 - b. **Jury** decides the facts
 - i. **WHAT MAKES A PERSON GUILTY OR NOT GUILTY**
11. If guilty, then the person is referred to as the '**offender**' rather than the accused, and is sentenced
 - a. **No longer a defendant & become an offender**

Week 2: Principles of Criminal Responsibility

Burden of proof and Standard of Proof

Burden of Proof

- Refers to the obligation on a party to prove the facts
 - Who has the burden to prove the facts? Prosecution must prove the case **beyond reasonable doubt**
 - Prosecution brings the charge & it is upon them to prove it and **defence** not to do anything
 - **Prosecution** always goes first and **defence** cross examines prosecution witnesses
- The phrase 'burden of proof' is used in two distinct senses:
 - The *legal* burden (the generic term): **Onus is on the state to prove guilty**
 - The *evidential* burden
 - Needs to be actual evidence by the; video
 - Has to be evidenced by the prosecution
 - Standard of proof in relation to the evidential burden is 'reasonable possibility'
 - Can shift between prosecution and defence

Chapter Notes

Burden of Proof

- Safeguards against injustice is the presumption of innocence
- A person should be found guilty of an offence only if the state (crown) can satisfy the jury/magistrate/judge that the accused is guilty beyond reasonable doubt
 - A reasonable doubt is a doubt which the particular jury entertain in the circumstances
- The prosecution must prove the guilt of the prisoner is part of the common law of England and the 'golden thread' of English criminal justice has been confirmed in statute.
- Evidence Act 1995 (NSW): In a criminal proceeding, the court is to find the case of the prosecution proved unless it is satisfied that it has been proved beyond reasonable doubt

Steps:

- The Crown must prove elements of an offence
- The defendant does not have to offer any rebuttal
- The defendant (accused) does not have to prove anything. All the accused has to do is raise doubt about the prosecution case
- The accused is then entitled to the benefits of that doubt
- The accused person may have available one or more of the various 'defenses' recognized by the criminal law
- Some cases the burden to prove a defence falls upon the accused. This is the case where accused relies on the Defences mental illness or substantial impairment due to the abnormality of the mind or where a particular statute places the burden on proof on the accused
- Criminal proceedings: standard of proof: In a criminal proceeding, the court is to find the case of a defendant proved if its satisfied that the case has been proved on the balance of probabilities

Standard of proof

- The *quantum* of proof that must be met by the party bearing that burden on a particular issue
 - **Criminal standard:** beyond reasonable doubt
 - This is the criminal standard and the prosecution must prove **beyond reasonable doubt.**
 - Jury must be convinced **beyond reasonable doubt**
 - **Civil standard:** balance of probabilities

Burden and Standard of proof

- Woolmington V DPP [1935] AC 462 (House of Lords) per Lord Sankey:
 - Throughout the web of the English criminal law one **golden thread** is always to be seen- that is the duty of the **prosecution to prove** the prisoner's guilt... If at the end of and on the whole case, there is a **reasonable doubt**, created by the evidence, the prosecution has not made the case and the prisoner is entitled to an acquittal
- What does beyond reasonable doubt mean BRD?
 - 'A reasonable doubt is a doubt which the particular jury entertain in the circumstances. Jurymen (sic) themselves set the standard of what is reasonable in the circumstances'
 - Green v R (1971) 127 CLR 28