

Defences

FITNESS TO STAND TRIAL

- A person cannot be tried for a criminal offence unless s/he understands the general nature of the charge and the difference between pleading guilty and not guilty
 - Common law rule (eg, *Presser*, p 547)
- Procedure now governed by *Mental Health (Criminal Procedure) Act 1990* (NSW)
- In District/Supreme Court - D's fitness to plead is determined by a jury unless D elects for a judge to determine this issue
- The issue of the accused's fitness to stand trial may be raised by either D or P.
- Proceedings are inquisitorial rather than adversarial.
- D will be found fit unless it is shown that he or she is not on the balance of probabilities.
- A person who is found to be unfit to stand trial is usually detained pending a decision by the Mental Health Tribunal as to their status.

Common Characteristics

1. Persuasive burden
 - a. usually on the Prosecution to prove beyond reasonable doubt
 - b. however can be on the defence to prove their defence on the balance of probabilities
2. Evidentiary burden
 - a. Is there sufficient evidence available to have raised the defence
 - b. Should the onus shift back to the prosecution to negative the evidence

Bars to Conviction

The criminal law imposes a number of bars to conviction for public policy reasons, without reference to whether the accused is factually guilty of the offence alleged. These procedural rules are not defences; they do not seek to exculpate, but simply to prevent conviction. These procedural rules include: statutory limitation periods, double jeopardy, diplomatic, consular, judicial, parliamentary, sovereign and executive immunities, immunity granted in exchange for cooperation with the authorities or testimony at trial and legal incapacity

INSANITY

The M'Naughten Rules p534

D must prove:

1. At the time of committing the act;
2. D was labouring under a defect of reason;
3. Caused by a disease of the mind;
4. So that D did not:
 - (a) know the nature and quality of his or her actions; **or**