

# Principles of Criminal Law & Procedure

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# Principles of Criminal Law & Procedure

## Wk1: Aims of criminal law, definition and elements, classification of offences

### What is a crime?

A crime is a legal wrong that can be followed by criminal proceedings which may result in punishment.

A legal wrong...

- Common Law (made by judges)
- Statutory law (made by Parliament) – *Crimes Act 1958* (Vic)
- Criminal law is predominately state law

Key issues in criminal proceedings

- Change (public prosecution)
- Proceedings/trial (jury)
- Verdict of guilt (standard of proof: beyond reasonable doubt)

Results in punishment...

- The 'legal wrong' is also 'public wrong'. A crime is regarded as a wrongdoing committed against the community or the state: it is a public wrong
- Criminal law is not about rectifying infringement of private rights

### Moral wrong

Punishment imposed for morally blameworthy conduct. Moral principles are not clear-cut.

The understanding of what is morally wrong conduct can change and may not be shared by large sections of society.

- Tensions and debate
- Law and policy reform

### R v Brown (1994) 1 AC 212

Sadomasochistic homosexual activity resulted in actual bodily harm to the victim. All parties involved had consented to infliction of violence.

### Judge decision

3:2 majority – consent irrelevant

**Majority:** Should consent be a defence?

- No, public policy requires it to be punished as crime
- Highlighted extreme nature of the activities which supported the need for criminalisation and punishment

**Minority:** Is there a reason to prohibit the behaviour?

- There is no public benefit in making it a crime. Consent should be a defence
- No harm to public when consensual activities are done in private and no reason to criminalise this type of behaviour.

### Elements of an offence

#### Principles of criminal law

Principle of legality or rule of law

- No arbitrary punishment
- A person cannot be punished without due process

Equality before the law

- No one is above the law

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- The criminal law applies to all equally

### Principle of criminal responsibility

- Presumption of innocence
- Criminal acts must be done with a guilty mind (mens rea)

### Actus Reus – physical act = the harmful act/conduct (voluntary)

- Does not only relate to 'acts' – refers to criminal conduct and other physical or external elements of an offence, such as circumstance (e.g., without consent) or results (e.g., injury)
- Circumstance: the act itself is not criminal but the circumstance is
- Consequence: the actus reus requires a result
- Conduct: act or omission
- Omissions: failure to act. Only criminal if there is a duty to act due to:
  - Special relationship to the victim
  - Duty according to statutory law
  - Having created a situation of danger

### Mens Rea – mental elements = culpable state of mind

- Also referred to as the fault/subjective/mental element of the offence
- Absence of honest, reasonable and mistaken belief
- Recklessness or negligence
- Intent, knowledge, intent to a specific consequence
- (Strict/absolute liability do not require mens rea)
- Intention: intending to engage in the particular behaviour and/or bring about the result
- Recklessness: engaging in particular behaviour while foreseeing the likelihood that the conduct can bring about certain consequences and proceeding nevertheless
- Negligence: engaging in the particular behaviour but with a gross departure from the standard of care that a reasonable person would have exercised

### Example

*Crimes Act 1958* (Vic) s 16

A person who, **without lawful excuse**, **intentionally** causes serious injury to another person is guilty of an indictable offence.

1. **Actus reus**
  - Voluntary/willed conduct
  - Serious injury
  - Causation
2. **Mens rea**
  - Intent (to cause serious injury)
3. **Lack of defences**
  - Without lawful excuse

### Contemporaneity\* Extra mark for mentioning it

The actus reus and mens rea must occur at the same time (be contemporaneous).

- Need both at some point in a continuous act = temporal coincidence

### Burden and standard of proof

#### Burden of proof

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- Whose obligation to provide evidence to persuade judge or jury.
- The prosecution has the burden of proof – must prove its case beyond reasonable doubt

### Evidential burden of proof

- The duty to produce sufficient evidence to support a claim
- Both parties to the case may have to produce sufficient evidence

### Legal burden of proof (persuasive burden)

- The obligation to establish that the claim is true with the risk of losing the case if the trier of fact cannot be persuaded that the claim is true (to persuade the jury to reach a verdict of guilty or not guilty)
- Higher standard of proof to minimised risk of convicting innocent individuals

### Standard of proof (legal burden)

How convincing is the evidence

Low standard of 'reasonable possibility' and high standard of 'beyond reasonable doubt'

- The prosecution carries the burden of proof and prove 'beyond reasonable doubt' (higher standard)

### Who has the burden of proof?

#### Prosecution

- Evidential burden regarding all elements of the crime (some evidence to support the claim)
- Legal burden regarding all elements of the crime (beyond reasonable doubt to support verdict)
- If a defence was raised, legal burden of rebutting nay defence (beyond reasonable doubt that the defence cannot be made out)

#### Accused

- Evidential burden of raising any defence (some evidence that defence can be made out)

### Who can be convicted of a crime

#### Age of criminal responsibility

##### Children under 10 years:

- Doli incapax = regarded as incapable of committing an offence (performing an actus reus or forming the necessary mens rea)
- Victoria has raised the age of criminal responsibility to 12 – *Youth Justice Act 2024* (Vic)

##### Children between 12-14 years:

- Presumption of doli incapax (incapable of wrong)
- Rebuttable if it can be shown that the child understood that what they did was seriously wrong – BYD that the child knew the conduct was "seriously wrong"

##### Children over 14 years:

- Presumed to be responsible for their own actions

#### Corporation

- Can be charged and prosecuted

### Classification of offences

Summary offences – less serious; no jury

Indictable offences – more serious; jury trial

Indictable offences triable summarily

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*Criminal Procedure Act ss 28-29; Sched 2*

What offences are heard at Magistrates' Court

### Court Hierarchy

Magistrates Court/Children's Court

County Court

Supreme Court/Court of Appeal

High Court

### Aims of criminal law and sentencing principles (D.R.D.P.P)

- Retribution: to impose unpleasant consequences (punishment)
- Deterrence: to deter an individual and the population at large from re-offending
- Rehabilitation: to alter the behaviour of offenders
- Denunciation: to uphold morality
- Community protection: to prevent harm to individuals and the community

## Wk 2: Assault and Bail

### Definitions

**Battery**: the actual intended use of unlawful force to another person without his consent

- Common law 'battery' involves the application of force, without any requirement the V apprehended the application of force

**Assault**: any act which intentionally or possibly recklessly cause another person to apprehend immediate and unlawful personal violence

- Requirement for common 'assault' is that V expected that force will be applied – the actual application of force is unnecessary. It is not necessary that actual harm be intended or caused to make out the offence

### Definition of 'assault' in statute

- The direct or indirect application of force by a person to the body of, or to clothing or equipment worn by, another person where the application of force is – without lawful excuse; with intent to inflict or being reckless; and results in the infliction of any such consequences (bodily injury, pain, discomfort, damage, insult)

**Conditional threat**: may constitute an assault provided that the threat causes V to apprehend the immediate application of force and the requirement of mens rea has also been satisfied

**Consent**: absence of consent is a necessary element of assault so if it is established that V consented to D's actions, D will generally not be guilty of assault – consent may be express or implied.

- However, where significant harm is inflicted, consent will not be a defence
- Majority in R v Brown established the principle that consent is irrelevant to a charge of assault occasioning actual bodily harm in circumstances where bodily harm is caused in the course of sadomasochistic sexual activity

### The circumstances of 'gross violence' s15A(2)

Any one of the following constitutes circumstance of gross violence:

- The offender planned to engage in conduct and at the time of planning – the offender intended that the conduct would cause a serious injury; or offender was reckless as to whether the conduct would cause serious injury; or a reasonable person would have foreseen that the conduct was likely to result in a serious injury

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- The offender in company with two or more people cause serious injury
- The offender entered into an agreement, arrangement, or understanding with 2 or more persons to cause serious injury
- The offender planned in advance to have with him or her and to use an offensive weapon, firearm, or imitation firearm and in fact used the offensive weapon to cause serious injury
- Offender continued to cause injury to the other person after the other person was incapacitated
- Offender cause the serious injury to the other person while the other person was incapacitated

### Introduction to Assault and the key statutory assault offences

Common law and statutory law

- The Crimes Act 1958 (Vic) has included statutory offences against the person, but common law assault still exists
- No clear distinction – co-exist
- Primarily statutory law in Vic

### Statutory assault offences

Assault: key offences

- *causing serious injury intentionally*: s 16 (without lawful excuse)
- *causing serious injury recklessly*: s 17 (without lawful excuse)
- *causing serious injury negligently*: s 24 (common law defences incl. lawful force, self-defence, duress, emergency)
- *causing injury intentionally or recklessly*: s 18 (without lawful excuse)
- *assault with intent*: s 31
- *threat to kill or inflict serious injury*: ss 20, 21- intending that other person would fear the threat would be carried out or being reckless as to whether or not the other person would fear the threat would be carried out (without lawful excuse)
- common assault: *Summary Offences Act 1966* (Vic) s 23