

# CRIM 2 FINAL EXAM

## NOTES

**NB: all criminal liability offences you need to talk about defences**

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# T1: INTRODUCTION AND REVIEW OF PRINCIPLES

## GENERAL

- CRIME = legal wrong that can be followed by criminal proceedings which may result in punishment
  - o Crimes usually involve some element of publicness and moral wrongdoing
  - o Preventing harm v enforcing moral s
  - o Crimes often result in significant punishment
  - o There are different aims of criminal law: regulating behaviour, social control, punishment, deterrence, morality
    - R v Brown – considered consent to BDSM
  - o What role should criminal law play?
    - Pro-civil liberties (JS Mill), minimal role (HLA Hart), active role (Lord Devline)
- State and Federal sources of criminal law
  - o There are different state criminal laws
- Principles of criminal law
  - o Rule of law and equality before the law
  - o Presumption of innocence – golden thread
  - o Beyond Reasonable Doubt (BRD) – high standard of proof
    - At the start of each offence: **The standard of proof for this offence will be beyond reasonable doubt.**
  - o Some fundamental principles enshrined in Charter of Human Rights and Responsibilities Act – aspirational only

## ELEMENTS OF A CRIME

- Actus reus (physical element) (Act) + Mens Rea ( mental element) – defence = guilty
  - o Prosecution usually has legal and evidentiary burden
  - o The defendant has the evidential burden to raise a defence
  - o The prosecution must disprove nay defences BRD
  - o Actus Reus:
    - Refers to the non-mental or External elements of an offence.
  - o Mens Rea:
    - Refers to the mental or Fault elements of an offence
- Voluntariness
  - o This is an element of all offences
  - o Relates to free will

- The accused must not be convicted for an act which was independent of his or her will (*per falconer*)
- An act is committed voluntarily if it is subject to the control and direction of the accused's will per falconer
- D bears the evidential burden in relation to voluntariness
  - Involuntary: spasms, reflex acts, acts performed while asleep, accidental acts, acts performed in a state of automatism (dissociative state), state of gross intoxication
  - If an act is involuntary then it will lead to acquittal
- Causation: original violence must be substantial, operating cause of the crime
- Hallet**
  - Only 3 reasons why violence could not be the operating, substantial cause
    - Act of god
    - 3<sup>rd</sup> part
    - Act of the victim

## JURISDICTION

- Who can be convicted of a crime?
  - Any legal person, including companies
  - Not some children
    - Children under 10 cannot be charged – doli incapax (incapable of wrongdoing)
    - Children between 10-14, there is a rebuttable presumption that they lack the necessary level of mental culpability
  - Not people who were mentally impaired AT the time of offence
- Where is a crime prosecuted?
  - The jurisdiction is where acts or omissions caused the substantial harm or death
- When can a crime be prosecuted?
  - Indictable – no time limit
  - Summary – generally within 12 months from the offence – 6 months for children
- Which court?
  - Most crimes are heard in the magistrate's court
  - Ss27-30 criminal procedure act 2009 (Vic) = summary offences are heard and determined summarily (some indictable offences are triable summarily)
  - Most indictable crimes are prosecuted on behalf of the DPP in the county court before a judge and jury of 12 (it can also hear appeals from Magistrate Court matters)
  - The most serious indictable crimes (e.g. homicide/treason) are heard in the Supreme Court before a judge and jury of 12. It also has the Court of Criminal Appeal to hear appeals from the courts below.

## T2: CRIMINAL PROCEDURE

**NB: Answer the question chronologically**

### STEP (1): CATEGORISING THE OFFENCE

Is the [offence] an indictable or summary offence?

Indictable Offence (IO)	Summary Offence (SO)
<ul style="list-style-type: none"><li>• All <b>common law offences</b></li><li>• All <b>Crimes Act offences</b> unless otherwise specified (<a href="#">s 2B CA</a>)</li><li>• Tried by judge and jury</li><li>• All other offences punishable at penalty levels 1 (life) – 6 (5 yrs)</li></ul>	<ul style="list-style-type: none"><li>• Generally specified to be summary by statute – <a href="#">Summary Offences Act 1966 (Vic)</a></li><li>• Heard by a magistrate</li><li>• Max 5 yrs prison sentence</li></ul>

**Indictable offence triable summarily?**

If the [indictable offence] is one listed in schedule 2 or one punishable by level 5/6 penalty, no more than 10 years imprisonment ([s 28 CPA](#)) then it is possible that it can be tried summarily. For this to occur, D must consent AND the court must consider it appropriate ([s 29 CA](#))

In determining appropriateness, the Magistrates' Court must have regard to ( s 29(1)(b) CA):

- a. **Seriousness** of the offence including –
  - i. The **nature** of the offence; and
  - ii. the **manner in which** the offence is alleged to have been committed, the apparent **degree of organisation** and the **presence of aggravating circumstances**; and
  - iii. whether offence forms part of a **series of offences** being alleged against D; and
  - iv. the **complexity** of the proceeding for determining the charge; and
- b. **adequacy of sentences** available to the court, having regard to D's criminal record; and
- c. whether a **co-accused** is charged with the **same offence**; and
- d. **any other matter** that the court considers relevant

## ARREST

**Intro:** [D] will argue that they were not lawfully arrested. The power to arrest is governed solely by statute ([s457 CA](#)). Generally, arrest requires a warrant ([s 457 CA](#)).

**With or without a warrant? Go to relevant section!**

### ARREST WITH A WARRANT OR

#### 1. ISSUE OF ARREST WARRANT

Having charged the accused with an offence, an application may be made to a Magistrates' Court registrar (or judge of another court), (prior to the matter being listed for court – **s61 Magistrates Court Act**) to issue (**s 12 Criminal Procedure Act (CPA)**)

- a) A **summons** to answer to the charge directed to the accused; or
  - a. May be made by the informant or a person on their behalf (s 12 (2) CPA)
- b) A warrant to arrest in order to compel the attendance of the accused must be made by the informant personally s12(2)CPA

An application must be supported by **evidence** on oath or affirmation or by affidavit (**s 61(2) MCA**)

Registrar must not issue a **warrant** to arrest unless satisfied that (**s 12(5) CPA**):

- a) It is probable that D will not answer a summons; or
- b) D has absconded, is likely to abscond or is avoiding service of a summons; or
- c) A warrant is required or authorised by any other Act or for other good cause

Otherwise, the court must issue a summons (**s 12(4) CPA**). If D does not appear when required, the Magistrates' Court may issue a warrant for D's arrest (**s 80-81 CPA**).

## 2. CONTENT OF THE WARRANT

The warrant must include (**s 13 CPA**): a copy of the charge sheet, summary of the charges and a notice advising D to seek legal advice and that D has the right, if eligible to legal aid. The warrant may direct that D be released on certain bail conditions (s 62 MCA).

- The warrant must include:
  - A copy of the charge-sheet
  - A notice that contains a summary of the preliminary or hand-up brief
  - Advice that D should seek legal advice
  - Advice that D has the right (if eligible) to legal aid
  - Details for contacting Victoria Legal Aid
- The warrant may direct that D be released on certain bail conditions (MCA s.62).

## 3. EXECUTING A WARRANT

Warrant may be directed to a particular PO, all POs, or anyone authorised to arrest (**s 63(1) MCA**) but other POs and PSO's can execute the arrest, even if specific officer named (**s 65 MCA**).

- Arresting officer must usually have a copy of the warrant for D, but can execute warrant without (**s 65(1) MCA**)

- PSO must hand the person into the custody of a police officer as soon as practicable after the person is arrested (**s 63(3) MCA**)
- Upon arrest under s 65(1) by a police officer or a PSO handing D to a PO, PO must bring D before a bail justice or Court within a reasonable time (**s 65(2) MCA**)
- In determining what constitutes a reasonable time, may consider the matters specified in s 464A(4) of the CA (**s 65(6) MCA**) (look under ‘protections in custody’)

Therefore, it appears that D [was/was not] validly arrested with a warrant.

## ARREST WITHOUT A WARRANT

**INTRO:** As D was arrested without a warrant, the arrest will only be lawful if allowed under **s 458** or **459 CA**.

### Who did the arrest??

<b>S 458(1)</b> <b>Anyone</b> <b>(police, PSO,</b> <b>citizen)</b>	<p>Any person (a police officer, PSO or private citizen) can arrest D without a warrant if they (<b>s 458(1) CA</b>):</p> <p>(a) <b>find them committing</b> an offence and believe on <b>reasonable grounds</b> that X's apprehension is necessary for one of more of the following reasons:</p> <ol style="list-style-type: none"> <li>To ensure their attendance at court</li> <li>To preserve public order</li> <li>To prevent further offending; or (<i>most common</i>)</li> <li>For the safety or welfare of members of the public or for the offender; (<i>2<sup>nd</sup> most common</i>)</li> </ol>
<i>Citizens arrest</i>	<p><b>OR</b></p>
<i>Security guard</i>	<p><i>NB: cannot be for a failure to comply with rules, regs or subordinate leg (s 458(2)) e.g. not for breaching parking rules</i></p> <p>(b) are <b>instructed</b> to make the arrest <b>by any police officer</b>;</p> <p><b>OR</b></p>
	<p>(c) believe on <b>reasonable grounds</b> that it is necessary to do so to stop a person escaping, or helping someone to escape, from legal custody or lawful apprehension</p> <p><b>Requisite intention:</b> Their purpose must be to take the offender to a court to be dealt with according to law, or to deliver them to a police officer (<b>s 458(1) CA</b>). <i>NB if on the facts it says they are brought to the police/ police station, state:</i> their intention was to bring them to police as on the facts they are brought in for questioning.</p> <p><b>'Finds committing':</b> Whilst D does not need to be caught in the act, [arresting person] must find D doing any act or behaving in such circumstances that [arresting] person believes on reasonable grounds that D is guilty of an offence (<b>s 462 CA</b>). Here _____</p>

	<p><b>Reasonableness:</b> might need to consider the accused's characteristics</p> <p><i>Suspicious behaviour alone does not establish reasonable grounds</i></p>
<p><b>S 459 Police or PSO</b></p> <p><i>Specifically by a police officer</i></p> <p><i>Security guard is NOT a PSO</i></p>	<p><b>NB:</b> this is only for an indictable offence double check that the offence is indictable!!</p> <p>Assuming that [insert offence] is an indictable offence, P may also have grounds to arrest D under <b>s 459. s 459(1)(X)</b> enables [PSO/PO] to arrest D without a warrant if they believe on reasonable grounds that:</p> <ul style="list-style-type: none"> <li>a) D has <b>committed an indictable offence in Vic</b> (including any IOTS); or <ul style="list-style-type: none"> <li>▪ State what the offence would be? Ie 71AC</li> </ul> </li> <li>b) D has <b>committed an offence elsewhere</b> which if committed in Vic would be an <b>indictable offence</b> against the law of Vic (including any IOTS)</li> </ul> <p>If the arrest was made by a PSO</p> <ul style="list-style-type: none"> <li>▪ Must be in a <b>designated place</b> (<b>s 459(2A) CA; s 65(1B) MCA</b>)</li> <li>▪ D must be <b>given to a PO</b> as soon as practicable after the arrest (<b>s 459(2) CA; s 65(1A) MCA</b>)</li> </ul> <p>Police must have <b>subjective belief</b> he committed an IO (belief formed by reference to objective circumstance) (<i>George v Rocket</i>). P did/not have <b>more than mere suspicion</b> as...</p>

**CONCLUSION:** Overall, it appears that P did / did not have sufficient grounds to arrest D without a warrant under s 458/9.

**Note:**

- An arrest will **not be unlawful** if it is made under a reasonable belief (in accordance with **ss 458/459**) if is subsequently found that **D did not commit the alleged offence** (**s 461(1) CA**)
- Police are not bound to take a person found committing an offence into custody if they believe on reas grounds that proceedings can effectively be brought by summons (**s 461(2) CA**)

## **EXECUTING AN ARREST**

**NB:** talk about all!

For D's arrest to have been conducted lawfully, [PO] must have conveyed to D that they are **no longer at liberty** (**s 21(4) Vic Charter**), (**statement of you are under arrest**) [PO] did/did not do this on the facts as [ insert action of no longer being able to leave].

- *However, if this is not done on the facts, if they try to escape the onus is not on the person executing the arrest at this instance*

D must know on suspicion of **what crime** they are being arrested (**s 21(4) Vic Charter; 464A(2)(a) CA**) and if there is a charge sheet filed, D is entitled to a copy. On the facts [insert from below dp's then continue w last sentence]...

- **D can presume the crime from the circumstances:** although the crime was not conveyed to D, it will be argued that D could presume the crime from the surrounding circs, given that \_\_\_\_\_.