

CRIM 2 FINAL EXAM NOTES

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

Table of contents

***T1: INTRODUCTION AND REVIEW OF PRINCIPLES* 4**

GENERAL.....4

ELEMENTS OF A CRIME4

JURISDICTION.....5

T2: CRIMINAL PROCEDURE

.....
C

**STEP (1): CATEGORISING THE
OFFENCE**
.....6

ARREST6

ARREST WITH A WARRANT **OR**.....6

ARREST WITHOUT A WARRANT8

EXECUTING AN ARREST9

CONSEQUENCES OF UNLAWFUL
ARREST
.....11

**DETENTION, CUSTODY,
QUESTIONING AND FORENSIC
PROCEDURES** 11

REQUIREMENT TO GIVE NAME AND
ADDRESS11

CUSTODY.....11

QUESTIONING // once in custody //

DUTIES AFTER ARREST13

FINGERPRINTING16

FORENSIC PROCEDURES17

SEARCH AND SEIZURE 20

SEARCH AND SEIZURE20

BAIL 21

**OTHER CRIMINAL PROCEDURE
NOTES**
.....21

***T3: CRIMINAL RESPONSIBILITY AND DEFENCES* 24**

FITNESS TO STAND TRIAL (s C CMIA)..24 MENTAL	
IMPAIRMENT □ S20 CMIA.....	26
AUTOMATISM.....	2G
DURESS.....	31
REASONABLE BELIEF	31
THREAT OF HARM	32
THREAT WILL BE CARRIED OUT	32
ONLY WAY TO AVOID THE HARM	32
REASONABLE RESPONSE	33
VOLUNTARY ASSOCIATION.....	33
CONCLUSION	33
SUDDEN OR EXTRAORDINARY EMERGENCY.....	33
REASONABLE BELIEF	34
WAS THERE A SEE?.....	34
ONLY WAY TO DEAL WITH THE SEE?..	35
REASONABLE RESPONSE	35
CONCLUSION	35
INTOXICATION: ELEMENTS s DEFENCES.....	35
NEGATING ELEMENTS OF AN OFFENCE 35 USING INTOXICATION TO PROVE A DEFENCE [‘Reasonable Person test’].....	37
CONCLUSION	38
ATTEMPTS	38
AR S321N(1): ATTEMPT	38
MR (s 321n(2)): INTENTION	40
STEP 1 - INTENTION THAT PRINCIPAL OFFENCE BE COMMITTED	40
STEP 2 - INTENTION OR BELIEF IN FACTS OR CIRCUMSTANCES	40
VOLUNTARY DESISTANCE	41
IMPOSSIBILITY: FACTUAL + LEGAL	41
FACTUAL IMPOSSIBILITY.....	41
LEGAL IMPOSSIBILITY	42
PENALTY	42
PROPERTY OFFENCES	42
THEFT.....	43
Step 1: PROPERTY.....	44
STEP 2: BELONGING TO ANOTHER.....	45
STEP 3: APPROPRIATES.....	47
STEP4: INTENTION TO PERMANENTLY DEPRIVE	49
STEP 5: DISHONESTY	51
STEP 6: CONTEMPORANEITY	53
STEP 7: PENALTY.....	53
OBTAINING PROPERTY BY DECEPTION	53
STEP 1: PROPERTY.....	53
STEP 2: BELONGING TO ANOTHER.....	54
STEP 3: OBTAINING.....	54
STEP 4: INTENTION TO PERMANENTLY DEPRIVE	54
STEP 5: DECEPTION.....	54
STEP 6: DISHONESTY	58
STEP 7: PENALTY.....	58
OBTAINING FINANCIAL ADVANTAGE BY DECEPTION.....	58
step 1: OBTAINING.....	58
STEP 2: FINANCIAL ADVANTAGE	58
STEP 3: DECEPTION.....	59
STEP 4: DISHONESTLY	59
STEP 5: PENALTY/CONCLUSION (not necessary unless specified).....	59
ROBBERY.....	5G
STEP 1: D STEALS	60
STEP 2: USE OF FORCE OR FEAR OF FORCE	60
STEP 3: TIMING – IMMEDIATELY BEFORE OR DURING	61
STEP 4: VICTIM.....	61
STEP 5: IN ORDER TO STEAL.....	62
STEP 6: CONCLUSION.....	62
ARMED ROBBERY – s75A.....	62
COMMITTED ROBBERY	62
D WAS ARMED	62
ITEM WAS WITH D	64

ARMED FOR THE PURPOSE OF THE ROBBERY	64	Authorised use?.....	82
PENALTY	65	CONCLUSION.....	82
BURGLARY	65	POSSESSION OF A DRUG OF DEPENDENCE –	
STEP 1 ENTRY	65	73(1)	82
STEP 2: TRESPASS	66	DOD.....	83
STEP 3: INTENTION TO COMMIT AN OFFENCE.....	68	POSESSION.....	83
STEP 4: CONCLUSION	69	ATTEMPTED POSESSION.....	87
AGGRAVATED BURGLARY		AR S321N(1): ATTEMPT.....	88
– ARMED OR PERSON – s77	6G	MR (s 321n(2)): INTENTION	89
STEP 1 BURGLARY	69	AUTHORISED.....	90
STEP 2 AGGRAVATED.....	69		
STEP 3 PENALTY/ CONCLUSION.....	72		
STRICT AND ABSOLUTE LIABILITY 72			
WHAT IS THE RELEVANT			
CONDUCT?.72 IS THERE A			
FAULT ELEMENT (MR)?	72		
step 1 LANGUAGE OF THE STATUTE ...	73		
step 2 SUBJECT MATTER OF THE OFFENCE	74		
step 3 POLICY CONSIDERATION.....	75		
IS THE OFFENCE A SL OR AL OFFENCE?			
.....	76		
did D do the prohibited conduct?	76		
HRMF (Honest and reasonable mistake of fact) Defence	77		
HONEST AND REASONABLE			
MISTAKE OF FACT (HRMF).....	77		
Did the accused make a mistake?	77		
Mistake of fact not law	77		
Honest and reasonable mistake	78		
If mistake were true, would it have rendered D’s conduct innocent?	79		
DRUG OFFENCES	73		
IS IT A DRUG OF DEPENDENCE (DOD)			
.....	7G		
USE OF A DRUG OF			
DEPENDENCE – S75 DPCSA	80		
DOD	81		
USE OF A DOD	81		
Intention to use	81		

CONCLUSION	90
TRAFFICKING	G0
DRUG OF DEPENDENCE.....	91
CL TRAFFICKING.....	91
STATUTORY TRAFFICKING.....	93
QUANTITY OFFENCES	96
AUTHORISATION AND LICENSING.....	100
OVERALL CONCLUSION	100
ATTEMPTED TRAFFICKING	101

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 any 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
 - 3rd 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">• All common law offences• All Crimes Act offences unless otherwise specified (s 2B CA)• Tried by judge and jury• All other offences punishable at penalty levels 1 (life) – 6 (5 yrs)	<ul style="list-style-type: none">• Generally specified to be summary by statute – Summary Offences Act 1966 (Vic)• Heard by a magistrate• Max 5 yrs prison sentence

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 (**s 457 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??

<p>S 458(1) Anyone (police, PSO, citizen)</p> <p><i>Citizens arrest</i></p> <p><i>Security guard</i></p>	<p>Any person (a police officer, PSO or private citizen) can arrest D without a warrant if they (<i>s 458(1) CA</i>):</p> <p>(a) find them committing an offence and believe on reasonable grounds that X’s apprehension is necessary for one of more of the following reasons:</p> <ul style="list-style-type: none"> i. To ensure their attendance at court ii. To preserve public order iii. To prevent further offending; or (<i>most common</i>) iv. For the safety or welfare of members of the public or for the offender; (<i>2nd most common</i>) <p style="text-align: center;">OR</p> <p><i>NB: cannot be for a failure to comply with rules, regs or subordinate leg (<i>s 458(2)</i>) e.g. not for breaching parking rules</i></p> <p>(b) are instructed to make the arrest by any police officer;</p> <p style="text-align: center;">OR</p> <p>(c) believe on reasonable grounds 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>Requisite intention: 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 (<i>s 458(1) CA</i>). <i>NB if on the facts it says they are brought to the police/ police station, state: their intention was to bring them to police as on the facts they are brought in for questioning.</i></p> <p>‘Finds committing’: 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 (<i>s 462 CA</i>). Here _____</p>
---	--

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