

Disclaimer: These notes take the first page of my notes and then only one of the exemplar answer structure scaffold, which I normally have at the end of my notes. This is done for the sake of demonstrating the distinct features of the notes.

1. Principles of Criminal Responsibility

➢ Criminal standard of proof: BRD – **Woolmington v DPP [1935], Evidence Act 1995 (NSW) s141**. Exceptions:

- If the onus shifts to the defendant, the standard of proof is reduced to a balance of probabilities
 - Defences II
 - Offensive language was a reasonable excuse
- The civil standard of proof is used in relation to the case of a defendant.

Extraneous evidence: any oral/written matter not contained in the single written contractual document—eg pre-contractual statements, prior drafts, notes, emails, invoices, or receipts.

0. Capacity

➢ Age of crim resp. is 10 (**s 5 Children (Criminal Proceedings) Act 1987 (NSW)**)

➢ No child under the age of 10 is guilty of a crime (**RP v The Queen (2016)**).

➢ **Doli incapax:** presumption that children between the ages 10-14 are incapable of wrongdoing (see **CROC & R v CRH (2016)**).

I. Conduct elements

Physical elements of a crime.

Fowler v Padget (1798) 101 ER 1103, 1106:

- "... actus non facit reum nisi mens sit rea."
- "the act is not culpable unless the mind is guilty"

➢ The **actus reus** consists of:

1. Prohibited conduct (eg, assault, speeding);
2. Prohibited circumstances (eg, sex without consent); and
3. Prohibited consequences—or result (eg, causing death).

➢ **Positive act** – doing smth // omission – failing to do smth

a. Omission

R v Miller [1983] — DANGEROUS SITUATION

- "conduct which consists of failing to take measures that lie within one's power to counteract a danger that one has oneself created"
- D fell asleep with a lit cigarette, causing his mattress to catch fire. He woke up, saw the fire, moved to another room, and did nothing.
- A person who creates a dangerous situation has a duty

to act to prevent or reduce the harm.

- D was liable for arson because his failure to act after becoming aware of the danger he caused amounted to the **actus reus**.

R v Taktak (1988) — RELATIONSHIPS

- D picked up a prostitute who was unconscious from drugs and took her to his flat, where she later died.
- A duty to act arises where D has assumed responsibility for another's life or safety.
- D owed a duty once he took control of her care; failure to obtain medical help could satisfy the **actus reus** of manslaughter

Sam v The Queen (2011) — RELATIONSHIPS

- D failed to seek medical help for his de facto partner's child, who died from injuries inflicted by the mother.
- A duty arises where a person voluntarily assumes care of a child, even if not a biological parent.
- guilty of manslaughter; by assuming a parental role, he was under a legal duty to protect & seek aid for child.

R v Russell [1933] — RELATIONSHIPS

- Facts: D watched his wife drown while saving their children and made no effort to help her.
- A duty to act may arise from special relationships, such as between spouses or parents and children.
- Omission amounted to manslaughter; marital relationship created duty to assist in life-threatening situations.

b. Voluntariness

Bratty v A-G (Northern Ireland) [1963] — involuntary act

- An involuntary act ... means an act which is done by the muscles without any control of the mind such as a spasm, a reflex action, or a convulsion; or an act done by a person who is not conscious of what he is doing as such as an act done while suffering from concussion or whilst sleepwalking.'

R v Falconer (1990) — presumption of voluntariness

- The prosecution is entitled to presume voluntariness.
- The evidentiary burden is therefore on the accused if they wish to raise voluntariness.

Ryan v The Queen (1967) — Voluntariness

- D held up a shop; gun accidentally discharged, killing the victim.
- Principle: The **actus reus** must be voluntary; however, a preceding voluntary act that leads to an involuntary one

may still establish liability.

ANSWER SCAFFOLD FOR JCE & EJCE

Joint Criminal Enterprise

1. Agreement: Was there an agreement BRD?

2. Participation: Did the accused participate in the enterprise BRD?

3. Commission of the crime: Did the crime happen BRD? This will require setting out all elements of the specific crime and considering whether each required element can be proven BRD.

Then, only as necessary depending on the facts:

4. Withdrawal: Did the accused withdraw from the agreement? Required to be proven by the accused on the balance of probabilities. You would not consider this until now because if the prosecution cannot first prove BRD that there was an agreement then there is no need for the accused to prove that they withdrew from an agreement.

5. Defences: Are any of the complete defences raised to the evidential standard? If so, can the prosecution disprove the defence BRD? Again, you would not consider defences until after 1, 2 and 3 because **if the prosecution cannot first prove the JCE then there is no need.**

EXTENDED JCE, it's all that plus a couple more elements:

1. Agreement: Was there an agreement BRD?

2. Participation: Did the accused participate in the enterprise BRD?

3. Commission of the crime: Did the crime happen BRD? This will require setting out all elements of the specific crime and considering whether each required element can be proven BRD.

4. Further Crime Committed: Did one of the participants to the enterprise, during the course of committing the agreed crime/s, commit a further crime BRD? This will require setting out all elements of the specific crime and considering whether each required element can be proven BRD.

5. Subjective foresight: Did the accused subjectively foresee the possibility of that further crime and continue in the enterprise nonetheless, BRD?

Then, only as necessary depending on the facts:

4. Withdrawal: as above

5. Defences: as above.

IMPORTANT TUTORIAL NOTES:

1. Onus of proof: Caveat: On occasion, the defence bears the onus of proof+to the civil standard.

a. Eg: **s23A(4) CA** regarding substantial impairment under Homicide.

2. Voluntariness definition: An act which is done in a manner that is **conscious & willed**. A conduct element.

a. **Ryan v The Queen (1967); R v Falconer (1990).**

<i>Mens rea state</i>	<i>Description</i>	<i>Subjective/ Objective</i>
Intention	Where the accused foresaw the consequences of his or her actions or culpable omissions and actively desired that the consequences should occur.	Subjective
Recklessness	Where the accused foresaw the consequences of his or her actions or culpable omissions but proceeded in the face of that foresight.	Subjective
Negligence	Although the accused did not foresee that the consequences of his or her actions would occur, a reasonable person in the accused's position would have had that foresight.	Objective

Tip: Refer to relevant law to see if the foresight required is the possibility or probability of the consequences.

Refer to relevant law to determine if special knowledge, attributes/ idiosyncrasies of the accused are relevant.

Where did you find it? Lec Slides/Notes from Week 2 'Principles of Criminal Responsibility'?