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I. Principles of Criminal Responsibility

Burden & Standard of Proof

The prosecution bears the legal burden to prove every element of an offence beyond a reasonable doubt [Woolmington]. This standard is a matter of common sense and general application that trial judges should avoid defining with analytical "glosses," as it requires a jury to be satisfied of guilt to the exclusion of any other reasonable possibility [Evidence Act 1995 (NSW) s 141; Green; Thomas; Dookhea]. While the accused generally bears no burden to prove anything, they may carry an evidentiary burden for specific statutory exceptions or the defence of mental health, which is proven on the "balance of probabilities".

- **Woolmington v DPP** established the "golden thread" of English criminal law, affirming that the prosecution bears the burden of proving the accused's guilt beyond a reasonable doubt for all elements of an offence.
 - **Evidence Act 1995 (NSW) section 141** codifies the English common law by stipulating that in criminal proceedings, the court cannot find a case proved unless it is satisfied "beyond reasonable doubt".
 - (1) *In a criminal proceeding, the court is not to find the case of the prosecution proved unless it is satisfied that it has been proved beyond reasonable doubt.*
- **Green v R (1971)** the High Court held that "beyond reasonable doubt" is a phrase of general application well-understood by the community and should generally not be further defined by trial judges to avoid confusing the jury.
- **Thomas v R (1960)** warned against "glosses" or analytical definitions of the phrase "reasonable doubt" which may blur or obscure the crucial role and job of the jury.
- **R v Dookhea (2017)** Reaffirmed that attempts to explain the meaning of "reasonable doubt" are more likely to exacerbate a jury's uncertainties than alleviate them.

Capacity of Children & Corporate Bodies

Children under the age of 10 are conclusively presumed by law to be incapable of committing any criminal offence [Children (Criminal Proceedings) Act 1987 (NSW) s 5]. For children aged 10 to 14, the rebuttable presumption of doli incapax applies; the prosecution must prove the child had the intellectual and moral development to know their conduct was "seriously wrong" or "morally wrong" as opposed to "merely naughty" [RP v R; AL v R].

- **Children (Criminal Proceedings) Act 1987 (NSW) s 5:** codifies the statutory age of criminal responsibility, as well as the rebuttable age of criminal responsibility.
 - (1) *It is conclusively presumed that a child who, at the time of the alleged commission of an offence, is under 10 years of age cannot be guilty of the offence.*
 - (2) *It is presumed that a child who, at the time of the alleged commission of an offence, is 10, 11, 12 or 13 years of age cannot be guilty of the offence.*
 - (3) *The presumption in subsection (2) is rebutted only if the prosecution proves beyond reasonable doubt that the child knew at the time of the alleged commission of the offence that the child's conduct was seriously wrong.*
- **RP v R (2016)** is The leading High Court authority on doli incapax, which requires the prosecution to prove that a child aged 10–14 knew their conduct was "seriously wrong" as opposed to "merely naughty"
- **AL v R** applied the principles of **RP v R** (ref. ^) to uphold a finding regarding a child's capacity for a serious sexual offence.

Corporations are also "legal persons" that are capable of being charged with crimes, with liability often being established through the "directing mind and will" doctrine, where the actions of a controlling manager or director are attributed to the company [Tesco; Presidential; Mousell].

- **Tesco Supermarkets Ltd v Nattress** established the "directing mind and will" doctrine, where a corporation is held liable for the acts of individuals who represent the company's controlling mind.
- **Presidential Security Services of Australia Pty Ltd v Brille (2008)** explored corporate liability for the criminal actions of a managing director, noting that companies generally cannot be vicariously liable for offences requiring mens rea.
- **Mousell Brothers Ltd v London and North-Western Railway Co** is an early authority discussing circumstances under which a legislature may prohibit an act such that a master becomes liable for the servant's conduct.

Physical Elements (Actus Reus) & Voluntariness (cont. ch II)

The actus reus of a crime comprises the physical conduct, prohibited circumstances (such as lack of consent), or the resulting consequences (such as death) [EA s 141 ch I. Burden & Standard of Proof]. To be liable, this conduct must be "voluntary," meaning it was a willed and conscious act; involuntary movements, such as a reflex or being pushed, do not attract criminal responsibility [Ryan]. Furthermore, while crimes generally require positive acts, an omission could satisfy the physical element if the accused failed to perform a legal duty, such as a duty arising from a relationship or from creating a dangerous situation themselves [Miller].

- **Ryan v R (1967)** is an important case on voluntariness; the High Court held that pointing a loaded gun at a victim is a voluntary act, and the accused is responsible even if the discharge of the weapon is claimed to be a reflex.
- **R v Miller** established that an accused may be liable for an omission if they accidentally create a dangerous situation (e.g., a fire) and fail to take reasonable steps to counteract that danger.
- **Fagan v Metropolitan Police Commissioner** developed the "continuing act" doctrine, where a physical act (parking a car on a foot) that was initially unintentional becomes a crime once the accused forms the necessary mens rea and fails to remove said car.

Fault Elements (*Mens Rea*) & Liability + Temporal Coincidence

Criminal liability typically requires the "guilty mind" (*mens rea*) and "guilty act" to coincide in time, known as temporal coincidence [Thabo; Fagan; Jakeman].

- **Thabo Meli v R** established that the requirement of "temporal coincidence" is satisfied if the *mens rea* exists at some point during a series of acts constituting a single criminal transaction.
 - **R v Church [1966]**: Here, the defendant struck the victim, rendering her unconscious. Believing her to be dead, he panicked and threw her into a river, where she drowned. The court applied the principle from **Thabo**, holding that the initial assault and the subsequent disposal of the body were a series of acts designed to cause death or grievous bodily harm.
- **R v Jakeman (1982)** held that an initial intent to smuggle drugs was sufficient for liability, even if the accused attempted to abandon the plan before the drugs crossed the border.

Subjective fault elements include intent (the decision to bring about a result), recklessness (subjectively foreseeing a risk and proceeding anyway), and knowledge (awareness of possession) [Zaburoni; He Kaw Teh]. Offences may also be categorised as strict liability, where the prosecution need not prove *mens rea* but the accused can raise a defence of honest and reasonable mistake of fact, or absolute liability, where no such mistake defence is available [He Kaw Teh; CTM; Sherras; Proudman; Binskin].

- **He Kaw Teh v R (1985)** is a foundational judgment categorising offences into full *mens rea*, strict liability, and absolute liability; it also established the defence of honest and reasonable mistake of fact.
- **Zaburoni v R (2016)** distinguished "intent" from "motive," defining intent as a conscious decision to bring about a particular result through conduct.
- **CTM v R (2008)** reaffirmed that the defence of honest and reasonable mistake of fact is generally available for statutory offences unless expressly or impliedly excluded by the legislature
- **Sherras v De Rutzen** Established the strong presumption that *mens rea* is an essential ingredient of every criminal offence unless clearly displaced by statute.
- **Proudman v Dayman (1941)** is an early authority for the defence of an honest and reasonable belief in a state of facts which, if true, would make the accused's act innocent.
- **Binskin v Watson (1990)** provided a practical illustration of the honest and reasonable mistake of fact defence in the context of driving an overloaded vehicle.

Objective fault, such as negligence, applies when an accused's failure to perceive a grave risk falls significantly below the standard of a reasonable person [Lavender].

- **R v Lavender (2005)** clarified the objective "reasonable person" standard applied in cases of criminal negligence, specifically regarding manslaughter.
- **De Gruchy v R (2002)** discussed how the presence or absence of motive can serve as circumstantial evidence to infer a defendant's intent at the time of the offence.
- **Ostrowski v Palmer (2004)** confirmed the common law rule that ignorance of the law is no excuse, even if the accused was provided with incomplete or incorrect information by a government department.

II. Murder

Elements of Murder

Murder in NSW is a statutory offence under the **CA s 18**, requiring the Crown to prove that a voluntary act or omission caused the death of a *human being* [CA s 18(1)(a); Ryan; Hutty]. Central to the *actus reus* is the principle of causation, whereby the accused's conduct must be an "operating and substantial" cause of death, even if intervening factors – such as medical negligence, or the victim's own attempts at self-preservation – are present [Smith; Hallett; Royall; Moffatt; Swan]. To establish the requisite *mens rea*, the prosecution must prove the accused acted with an **intent to kill, intent to inflict grievous bodily harm (GBH), or reckless indifference to human life** [Crabbe; Royall; Solomon]. Most notably, in NSW, reckless indifference is defined strictly as 'foresight of the probability of death', rather than merely the probability of GBH [Royall; Solomon].

Physical Elements – Voluntariness, Causation, & Intervening Acts

To establish the *actus reus* of murder, the Crown must prove beyond reasonable doubt that the accused committed a voluntary act or omission that caused the death of a "person in being" [CA s 18(1)(a)]. The act must be voluntary in the sense that it was a "willed" or conscious movement; spontaneous, unwilled reflex actions do not attract liability [Ryan; Katarzynski]. For the purposes of murder under the **CA s 18**, a "person" is legally defined as an infant who has been wholly born and has taken a breath [CA s 20; Hutty; Iby]. Finally, the prosecution must satisfy the common law test for causation, demonstrating that the accused's conduct was an operating and substantial cause of the death [Smith; Hallett]. This chain of causation remains intact even if the victim was particularly frail or refused medical treatment, provided the original wound is still an active contributor to the death and has not been eclipsed by a *novus actus interveniens* ('intervening act') [Moffatt; Blaue].

- **Crimes Act 1900 (NSW) section 18(1)**:
 - (a) *Murder shall be taken to have been committed where the act of the accused, or thing by him or her omitted to be done, causing the death charged, was done or omitted with reckless indifference to human life, or with intent to kill or inflict grievous bodily harm upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him or her, of a crime punishable by imprisonment for life or for 25 years.*
 - (b) *Every other punishable homicide shall be taken to be manslaughter.*
- **Crimes Act 1900 (NSW) section 20**: