

JURD7121 Crime and the Criminal Process

Master Cheat Sheet

The whole paper on one map: sequences, quantities and traps

Master Cheat Sheet

The paper, and how to spend the time

One fact scenario drives Q1 to Q3. Q4 is the essay plus your observation log.

Q	Topic	Marks	Suggested time
1	Police powers under LEPRA	20	35 min
2	Offences, elements, admissibility	20	35 min
3	Bail under the Bail Act 2013	10	20 min
4	Criminal process essay	37.5	55 min
4	Court observation log	12.5	already written

The three things the examiner rewarded across Q1 to Q3: fixing the **moment** a power was exercised, using the **statutory doctrines that help the prosecution** rather than stopping at the obvious charge, and naming **actual conditions** rather than concluding "bail should be granted".

Q1 Police powers, run it in this order

STEPS

1. **Who exercised what power, and when.** List each act separately. A search, an arrest and a use of force are three exercises, each needing its own justification.
2. **Which search power?** Three of them, and they are not interchangeable. No arrest: **s 21**, on one of the four closed **s 21(1)** circumstances (a dangerous implement in a public place or school is **s 23** instead, and the seizure power in **s 23(5)** is confined to the same). At or after arrest: **s 27**, available to the arresting officer or any officer present, on reasonable grounds that it is **prudent** to search to ascertain whether the person is carrying a listed thing. Only **s 27(1)** carries the evidence limbs (c) to (e); an arrest merely to take someone into lawful custody drops you to **s 27(2)**, safety and escape only. Once in lawful custody after arrest, at a station or in transport: **s 28A**, no suspicion required, anything found may be seized. **s 27(4)** says the two are cumulative, not competing, so on a street arrest run **s 27** as the primary power and **s 28A** for anything done at or on the way to the station. Ancillary mouth and hair power is **s 21A** for a **s 21** search and **s 28** for a **s 27** search, nothing for **s 28A**. Whichever power, the Div 4 manner rules still bite.
3. **Reasonable suspicion, at the moment of exercise.** **s 21(1)** plus *Rondo*. Suspicion must exist when the power is used. What the officer learns afterwards is too late. A second officer must form her own suspicion; a briefing is not automatically enough.
4. **Which search is it?** General search **s 30**, strip search **s 31**, ancillary **s 21A**, consent **s 34A**. **s 30(a)** is quickly running hands over outer clothing; **s 30(b)** allows removal of a coat, jacket, gloves, shoes, socks and hat but not all clothing. Anything more is a strip search.
5. **If strip search:** **s 31(b)** is two cumulative requirements, seriousness and urgency. Kill the second one specifically. Then **s 32** privacy safeguards and **s 33** rules.
6. **Arrest.** **s 99(1)(a)** suspicion on reasonable grounds, then separately **s 99(1)(b)** reasonably necessary for one of the listed reasons. (a) can be satisfied while (b) is not, because police could seize under **s 21** instead. Then *Carr*, arrest as a last resort, and **s**

6. Actus reus (voluntariness, act/omission, causation)

FLOWCHART, actus reus (RAIC) , P proves each element BRD

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[1] VOLUNTARINESS, was the act WILLED? (the gateway; part of the AR, so required
    EVEN for strict/absolute liability) ..... Ryan (a willed muscle
movement)
    |
    | involuntary (reflex / asleep / automatism)?
    | -> look for PRIOR FAULT or a contemporaneous willed act ..... Jiminez
(asleep)
    |
    | -> if raised, a SEPARATE voluntariness direction is required ..... Ugle
    | no willed act at all -> AR NOT PROVED
    v
[2] IDENTIFY each AR element: ACT | OMISSION | CIRCUMSTANCE | CONSEQUENCE
    | OMISSION? liable only if a LEGAL DUTY exists (no general duty to rescue)
    | duty from: statute / contract / relationship / assumed care / danger (Fagan)
    v
[3] TEST each element on the facts
    v
[4] CAUSATION (if a consequence is an element): a common-sense question ..... Royall
    (intervening acts, thin-skull, natural consequences)
    v
[5] COINCIDENCE with the mens rea (Topic 5)
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The fill-in answer bank

[1] Voluntariness

FILL-IN

- The actus reus must be **voluntary**, a willed muscle movement: *Ryan*; voluntariness attaches to the **act** and is part of the actus reus, so it is required even for strict and absolute liability.
- Here the act was [willed / arguably involuntary because ____ (reflex, asleep, automatism)].
- [If involuntary] look for **prior fault**, a contemporaneous voluntary act that answers the involuntariness: *Jiminez* (falling asleep is met by the earlier decision to keep driving). If there is none, the actus reus is not proved.
- [If raised on the evidence] a **separate voluntariness direction** would be required: *Ugle*.

[2] Act or omission

FILL-IN

- The relevant conduct is [an act / an omission].
- [If an omission] there is **no general duty to rescue**; liability arises only where the accused was under a **legal duty** to act, from [statute / contract / a relationship / an assumption of care / the creation of a dangerous situation]: cf *Fagan* (a continuing act).
- Here the duty [arose / did not arise] because ____.

[4] Causation

FILL-IN

- [If a consequence is an element] causation is a **common-sense question** for the tribunal of fact: whether the act **substantially or significantly caused** the result: *Royall*.
- Here the act ____ caused [result]; [any intervening act / the victim's own act / a pre-existing condition] [did / did not] break the chain (the thin-skull rule takes the victim as found).

Application	the two questions can diverge; the guilty verdict rebutted the presumption of innocence for show cause though it was not a s 18 factor.
Conclusion	two genuinely separate steps; the leading authority (rejecting <i>M v R</i>).
<i>DPP v Carr</i> [2002] NSWSC 194 (Smart AJ)	
Procedure	DPP appeal from a magistrate's dismissal of the "trifecta" (offensive language, resist arrest, assault police) against Lance Carr, an Aboriginal man; the evidence had been excluded under s 138.
Facts	Carr swore at an officer in Wellington and walked off; the officer arrested him for offensive language though he knew Carr's name and address and could have issued a field CAN; the officer said arrest was "far quicker".
Issue	was the arrest improper, so the evidence should be excluded under s 138?
Rule	arrest for a minor offence, where identity is known and there is no risk of departure and no reason a summons would fail, is improper even if within power; "improper" (s 138) is judged objectively; arrest is a last resort and the reformed s 99 did not extinguish that common-law principle.
Application	the arrest was "born of expediency", not a last resort; the escalation into the trifecta was its familiar consequence.
Conclusion	appeal dismissed, exclusion stood. lawful but improper , the leading case on last resort and s 138.
<i>DPP v Greenhalgh</i> [2022] NSWSC 980	
Procedure	DPP appeal (a question of law) from a magistrate's acquittal of a police officer; from the LECC's Operation Tambora (which found the force unreasonable and serious misconduct).
Facts	a Byron Bay officer struck a young person ~19 times with a baton; the young person had Asperger's, had unknowingly drunk an LSD-spiked drink, was disoriented and naked, had committed no offence and threatened no one; the magistrate acquitted, accepting the police account of resistance.
Issue	is "reasonably necessary" force under s 230 judged subjectively or objectively?
Rule	objectively : whether a reasonable person in the officer's position would consider the force disproportionate to the risk or danger sought to be prevented (adopting <i>R v Turner</i> / <i>Woodley v Boyd</i>).
Application	the magistrate erred by weighing only the officers' subjective view of the resistance, not the objective proportionality of the baton strikes.
Conclusion	appeal allowed, remitted for rehearing. the leading statement that reasonable force is judged objectively .
<i>DPP v Morgan</i> [1976] AC 182	
Procedure	House of Lords (UK), appeal against convictions for rape.
Facts	Morgan invited three men to have sex with his wife, telling them she would feign resistance for arousal; the men claimed they honestly believed she consented despite her protests.
Issue	Does an honest but unreasonable belief in consent negate the mens rea for rape?
Rule	Mens rea is wholly subjective: an honest belief in a fact (here, consent) negates intent however unreasonable that belief, because the prosecution must prove the accused intended to act without consent.

P

Parker v The Queen (1963) 111 CLR 610	
Procedure	HCA, appeal against conviction for murder (provocation also in issue).
Facts	Parker, deeply provoked after his wife left with another man, pursued and killed the other man; the issue concerned how the jury should approach his intent.
Issue	Is a person presumed in law to intend the natural and probable consequences of their acts?
Rule	There is no rule of law that a person is presumed to intend the natural consequences of their acts; intent must be proved as a fact, and the natural consequences are merely evidence from which intent may be inferred, not a binding presumption.
Application	The HCA refused to follow <i>DPP v Smith</i> [1961] AC 290, which had treated such consequences as conclusive; Dixon CJ famously declared the High Court would no longer regard <i>Smith</i> as binding, restoring a fully subjective approach to intent in Australia.
Conclusion	Conviction issues resolved on this and provocation grounds; the case marks Australia's rejection of the objective <i>Smith</i> test and confirms intent is a subjective question of fact.
Pemble v The Queen (1971) 124 CLR 107	
Procedure	HCA, appeal against conviction for murder.
Facts	Pemble, while intoxicated, pointed a loaded rifle at a young woman from behind to frighten her; the gun discharged and killed her, and he claimed he did not intend to fire.
Issue	How is the accused's state of mind to be determined, and what was the trial judge's duty to direct on alternative bases of liability?
Rule	A state of mind such as intent is inferred from the whole of the conduct and circumstances (Barwick CJ); a trial judge must put to the jury any alternative case (eg manslaughter) reasonably open on the evidence, even if not run by the defence.
Application	Whether Pemble intended to kill or do GBH was to be inferred from his handling of the loaded weapon; the judge erred by not adequately leaving manslaughter (eg by criminal negligence or unlawful dangerous act) for the jury.
Conclusion	Appeal allowed, conviction quashed. Authority for inferring state of mind from conduct and for the judge's duty to direct on all viable alternative verdicts.
<i>Pollard v DPP (Cth)</i> (1992) 28 NSWLR 659	
Procedure	NSW Court of Criminal Appeal / Supreme Court, appeal in a Commonwealth prosecution.
Facts	The accused acted on incorrect legal advice as to the lawfulness of his conduct; he knew all the relevant facts but was wrong about their legal effect.
Issue	Where a person knows the facts but acts on erroneous legal advice, is the resulting error a mistake of fact or a mistake of law?
Rule	Acting on wrong legal advice about known facts is a mistake of law, not a mistake of fact, and therefore does not attract the honest and reasonable mistake of fact excuse.