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Topic 1: Introduction to Criminal Law and Sentencing

1.1 Definitions of a crime?

Actus Reus

- **Commission:** the accused is liable for a positive act (this is the focus)
- **Omission:** the accused is liable for failing to act

Mens Rea

- Refers to the mental or **fault** elements of an offence

Principal fault elements

1. **Subject elements**
 - a. Intention (c.f. motive)
 - b. Recklessness (i.e., foresight)
 - c. Knowledge (c.f. 'wilful blindness') – important for drug offences
2. **Objective elements**
 - a. Negligence i.e., inadvertence and a gross departure from the standard of care of a reasonable person
 - b. Recklessness/wilful blindness

Physical Elements

1. Conduct
 - a. Act
 - b. Omission
 - c. State of affairs
2. Conduct in specified circumstances (e.g., rape and theft)
3. Results of conduct (e.g., murder and assault)

Elements of a Crime

- **Subjective test:** what was the actual mental state of the accused?
- **Objective test:** what would the mental state of a 'reasonable' or 'ordinary' person in the accused's position have been?
 - The accused's actual mental state is not important
 - Most offences require a 'subjective' fault element
 - What did D intend/know/foresee?
 - NOT what should/could D have thought

ELEMENTS OF A CRIME: SUMMARY

Elements of a criminal offence can be therefore broken into three parts:

- a. Physical ('external') elements (*actus reus*)
- b. Mental ('fault') elements (*mens rea*)
- c. Absence of a defence

AND

1. The conduct must always have been committed voluntarily; and
2. There must be contemporaneity between the physical and mental elements

1.2 Proving crimes

Standard of Proof:

- **Prosecution:** beyond reasonable doubt both to prove elements of an offence or to disprove relevant defences
- **Accused:** where legal burden is placed on the accused to prove a matter, it will usually only need to be proven on balance of probabilities (**BOP**) e.g., mental impairment defence

Burden of Proof

- Who has the onus of proving a particular issue? Typically, **on prosecution**
- Reflects the presumption of innocence – for the prosecution to prove D's guilt
- If the jury is unsure whether the prosecution have met their burden, they must acquit

Evidential Burden

- Who must provide enough evidence for a matter to be left to the jury

Offence	Prosecution bears the evidential burden
Defence	Accused bears the evidential burden
Voluntariness	Accused bears the evidential burden

1.5.2 Contemporaneity

- The external and fault elements of an offence **must occur at the same time**
- Where the external element is a continuing act, the fault element may be 'superimposed' at any stage so long as the external element is still continuing *Fagan v Metropolitan Police Commissioner; Thabo Meli v R*

Case	Facts and outcome
<i>R v Darrington</i> [2016]	• Held: where an offence requires mens rea and actus rea, they must correspond; that is, they must overlap (contemporaneity) • If an act is constituted before a formation of a guilty mind, the act will not satisfy the definition of a criminal offence unless the act is considered a continuing act
<i>Fagan v Metropolitan Police Commissioner</i>	• Once the police officer brought the knowledge to Fagan, that is when the intention arises • Held: where the external element is a continuing act, the fault element may be 'superimposed' at any stage so long as the external element is still continuing • Initially, the act may have been accidental • Irrespective of the intention at inception, the 'act' of maintaining the wheel on the foot was considered contemporaneous by looking at the assault as a continuing act
<i>Thabo Meli v R</i>	• Where the AR is part of a lengthy series of transactions, it is sufficient if it coincides with the MR at some point in time
<i>R v Hallett</i>	• Even if D's conduct is not the sole cause of V's death, causation must not be interrupted by some other intervening cause • No break in the chain of causation

1.5.3 Voluntariness

- A person cannot be criminally responsible for an act which was not willed
- The prosecution is entitled to rely on a **presumption of voluntariness**
- The accused bears the evidentiary burden to determine that voluntariness is not applicable OTF
- Voluntariness is an aspect of the external elements of an offence
- **Examples of involuntary conduct:** spasms, reflect, sleepwalking, gross intoxication

Topic 2: Criminal Procedure

2.1 Fundamental Principles

- Criminal procedure is concerned with the law that governs the prosecution of criminal offences (arrest, investigation, committal etc.,)

The Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)

- Section 21 – ‘right to liberty and security of person’
- Section 22 – ‘humane treatment when deprived of liberty’
 - E.g., during detainment, when being questioned etc.,
- Section 24 – ‘fair hearing’
- Section 25 – ‘rights in criminal proceedings’
 - (1) a person charged with a criminal offence **has the right to be presumed innocent until proved guilty according to law**
 - (2) a person charged with a criminal offence is entitled without discrimination to minimum guarantees
 - (a) To be informed promptly
 - (b) To prepare their defence and to communicate with a lawyer
 - (c) To be tried without unreasonable delay
 - (d) To be tried in person
 - (e) To be told about legal aid
 - (f) To have legal aid provided if the interests of justice require it
 - (g) Presence of witnesses
 - (h) Obtaining witnesses
 - (i) Interpreters
 - (j) To have free assistance of assistants and technology
 - (k) Not to be compelled to testify against themselves
 - (3) considerations of a children’s age and the desirability of rehabilitation
 - Right to have the conviction and any sentence imposed appealed
- Section 26 – ‘right not to be tried or punished more than once’
 - E.g., double jeopardy
- Section 27 – ‘retrospective criminal laws’

2.3.5 Search and Seizure

EXAM STRUCTURE: *There is no general power to enter or search private premises to effect a warrantless arrest. However, arrest warrants include the authority to break, enter and search any place in which the person named or described is suspected to be found per s 64(1)(a) Magistrates Court Act (MCA)*

- Where not adhered to, it is the discretion of a court to **exclude unfairly obtained evidence**; or to exclude illegally or improperly obtained evidence **s 464J CA**

With a warrant

EXAM STRUCTURE: *A search and seizure warrant may be issued under CA s 465(1) or s 75 MCA. An application for a search warrant must be supported by evidence on oath or by affirmation or by an affidavit MCA s 75(2).*

- Arrest warrants include the authority to break, enter and search any place in which the person named or described is suspected to be found **MCA s 64(1)(a)**
- Police may use reasonable force to enter premises to execute an arrest warrant **CA s 249A(2)**

Issuing a warrant

- Magistrate issuing a warrant under **s 465(1)** must be satisfied that there are **reasonable grounds for suspecting that there is something relevant to an offence** that has been (or is about to be) **committed on the property**
- A search warrant directed to a named police office may be executed by **any** police officer **MCA s 76(2)**
- The warrant may direct that D be released on certain bail conditions **MCA s 77**

Executing a warrant

- To execute a warrant, you must:
 - Disclose the suspected offence