Criminal Law Case Notes

A

***Abbott* [1977] AC 755**

- This case considered the issue of murder and whether or not duress is a defence to the charge of murder in the first degree where a man was pressured into killing another person.
- Abbott had taken part in a brutal killing following death threats against himself and his mother. He had held the victim whilst she was being attacked with a cutlass and then buried her alive. He was convicted of murder and sentenced to death. He appealed his conviction contending the defence of duress should have been available.
- Held: Appeal dismissed and conviction upheld (Lord Wilberforce and Lord Edmund Davies dissenting)
- Decision: Court held by majority that although the defence of duress was available to a person who aids & abets murder (principal in the second degree), it is not available to the perpetrator of the murder (principal in the first degree).

***Abusafiah* (1991) 24 NSWLR 531**

- This case considered the issue of duress and the necessary direction to the jury by a judge in relation to the necessary requirements of the defence of duress.
- The defendant threaten a man with a knife and demanded money. The defendant said he only did this because someone else told him and threaten him with a gun. The victim had wronged the person threatening.
- It was held that “to convict there must be no reasonable possibility that the gravity of threats to a person of ordinary firmness and will and of the same sex and maturity of the person would yield to the threats.”
- His appeal was dismissed.
- Decision: Per Hunt J: The objective tests in provocation & duress are different.
- In replying to duress, the Crown must establish that there is no reasonable possibility that the person of ordinary firmness of mind & will would have yielded to the threat in the way the accused did.
- The ordinary person possesses only the age & sex of the defendant.

***Aiken* (2005) 63 NSWLR 719**

- This case considered the issue of consent in relation to sexual assault and whether or not consent to perform a sexual act was vitiated where the threats to a woman were non-physical.
- In R v Aiken (2005) 63 NSWLR 719 the court held that s 65A was inserted in 1987 for the purpose of criminalising non-violent threats. The elements of intimidation, coercion and non-violent threats are now incorporated in s 61HA(6)(b) as grounds for establishing that a person does not consent to sexual intercourse.

***AJS* (2005) 12 VR 563**

- Charge – The appellant was convicted of incest and indecent assault after at his home his granddaughter was feeling ill, the appellant rubbed her abdomen in an attempt to ease the pain. At this time the appellant placed a finger inside the victim’s vagina.
- Defence – The appeal is on the if he did in fact place his finger in the vagina of the victim is was purely by mistake.
- **Ratio – In order for the prosecution to secure a conviction on criminal matters it must prove beyond reasonable doubt all elements of the crime, the actus reus and the mens rea. The mental element being the most important element to prove for the administration of criminal justice.**
- Appeal allowed, conviction quashed, new trial ordered

- This case considered the issue of sexual assault and whether or not it was necessary for the judge to direct the jury that it was essential for the accused person to possess the intent to commit the offence.
- We should add that the courts have generally been reluctant to make a presumption of intention and that if intent is an issue, "it is of paramount importance that the jury be directed as to the obligation of the prosecution to establish intent beyond reasonable doubt", as was noted in the joint judgment in *R v AJS* (2005) 12 VR 563; 159 A Crim R 327 (CA).

***Alister* (1984) 154 CLR 404**

- Attempted murder requires an intention to kill, not reckless indifference.
- Charged with attempted murder of police officer who stopped the car, Alister knew it was probable that the police officer would be killed if the bomb detonated.
- Judge found that recklessness is not sufficient. There must be intent to commit the completed offence - not just intend to cause GBH or injure but rather intend to complete the offence i.e. kill etc.
- Accordingly, a person who attacks another in tending to do him GBH will be guilty of murder if the victim dies, but not of attempted murder if he does not à 'law's requirements on a charge of attempting to commit a crime are stricter than on a charge of actually committing it; for the concept of attempt necessarily involves the notion of an intended consequence' - Smith and Hogan (1978), p247.
- Attempt and conspiracy are not one in the same.

***Allen v United Carpet Mills Pty Ltd* [1989] VR 323**

- This case considered the issue of absolute liability and whether or not an offence of pollution was a strict liability offence and required the element of mens rea or whether it was an absolute offence and thus did not require any element of mens rea.
- In Allen v. United Carpet Mills Pty Ltd [1989] VR 323, Nathan J held that the offence of "causing pollution" to waters under s. 39(1) of the Environment Protection Act 1970 (Vic.) was one of absolute liability. Thus, the defence of "honest and reasonable mistake" does not apply.

***AM v R* [2011] NSWCCA 237**

***R* v *Andrews* [1937] AC 576**

- **Courts (Aitken)** – has to be **unintentional omission to take care + high degree of negligent** .
- To establish manslaughter by dangerous driving, the jury must believe that the driver was **so negligent that** the case goes beyond mere civil compensation. The defendant must have **demonstrated such disregard for life that it is properly a crime.**
- This is the same standard applied to the offence of gross negligence manslaughter. Lord Atkin held that the same standard applies to all negligence-based homicide offences.

***Anic* (1993) 61 SASR 223**

- This case considered the issue of larceny and whether or not drugs which were unlawfully in the possession of a person were capable of being property in the offence of stealing, and furthermore if the drugs were not actually present at a particular location whether or not the people who intended to steal the drugs had the necessary intention.
- Unlawful possession is still possession: *Anic*
- Illegal property
- *Anic* (1993) - Illegal drugs in law are tangible property which gives the possessor rights
- **Facts:** Mrs Hollis was in shower when men broke into her home and ransacked the place. One of them men asked her, "where the dope was?" Another man asked if they were at No 38, she then notified them they were at No 13. They apologised and left.
- **Issue:** Can the accused be charged with intention to steal if what they were after was an

illegal substance? – Incapable of being anyone's property…

- **Held:** Drugs in law are tangible property, this gives the owner rights. Larceny is an offence against possession; if she had possession, then appropriation would have resulted in larceny.

***Annakin* (1988) 17 NSWLR 202**

- In Annakin, the court affirmed that an unlawful affray was an indictable common law misdemeanor; likewise, riot was a common law misdemeanor.

***Arulthiilakan* (2004) 203 ALR 259; (2003) 78 ALJR 257**

***Attorney-General's Reference* (No 6 of 1980) [1981] 1 QB 715**

- This case considered the issue of assault and whether or not the consent of a person who agreed to have a fight on a street amounted to the defence of consent for the other person.
- Two men quarrelled with bare fists.
- The court held that most fights will be unlawful regardless of consent.
- "...it is not in the public interest that people should try to cause or should cause each other bodily harm for no reason. Minor struggles are another matter, So, in our judgement, it is immaterial whether the act occurs in public or private; it is an assault if actual bodily harm is intended and/or caused. This means most fights will be unlawful regardless of consent."

B

***Bainbridge* [1959] 3 All ER 200**

- This case considered the issue of mens rea and what level of knowledge is required of someone who assists the people who eventually carry out the crime to also be held guilty of the offence.
- Obiter: Its not enough to establish that the accused was aware that something illegal was happening, there must be actual evidence of the knowledge that the accused was well aware that a venture of the type committed was planned.
- Facts: D bought equipment for X, which X used in a crime. The judge said that it was sufficient for prosecution to show that **D knew of X's intention to commit a crime of the type which was committed, and that he did something, with that knowledge, to help the commission of the crime.** D convicted. CA said this was the correct direction. CA say that **mere "suspicion"** of the crime is NOT enough.
- The defendant brought some oxy-acetylene equipment (oxygen cutting equipment) on behalf of another. Using this equipment, the Midland Bank was broken into. The defendant claimed that he did not know the equipment was going to be used for such a crime, instead suspected that it was going to be used to dispose of stolen property.
- He was convicted of being an accessory as he knew a felony of the kind committed was going to be committed. His appeal only on a point of law was quashed.
- It was held that the prosecution must prove:
    - 1. That the felony itself was committed
    - 2. The defendant knew that a felony of the kind was intended and was going to be committed3. And with that knowledge (being not merely a suspicion), he did something to help the felons commit the crime.

***Balcombe v De Simoni* (1972) 126 CLR 576; [1972] ALR 513**

- The requirement for proof of an intention to defraud requires only proof of an intention to deprive a person by deceit, even if the person does with the property exactly what he says he will: Balcombe v De Simoni (1972) 126 CLR 576.
- Balcombe v DeSimoni (1972): D, door-to-door salesman represented to householder that he was student selected to represent youth overseas: she paid for cookbook and got it. There was no misrepresentation as to the nature or quality of the thing to be supplied.
- "intention to defraud" required by s179 is merely an intention to deprive another of

property: Crown didn't have to show what D was actually going to do with the money- like beggar who pretends to be blind: still intention to defraud even though $ will be used for purpose he states (food).

***Banditt* (2005) 224 CLR 262; 223 ALR 633**

- Criminal law - Break and enter and commit serious indictable offence - Sexual assault - Recklessness as to consent - Appellant broke and entered complainant's house at night while complainant asleep - Complainant alleged appellant commenced intercourse while complainant asleep - Appellant claimed that complainant was awake and consented to intercourse and that appellant thought complainant was consenting - Complainant had rejected appellant's advances on a previous occasion - Whether trial judge erred in directing jury that appellant could have known complainant was not consenting because he was reckless as to consent - Whether recklessness requires more than advertence to possibility of lack of consent or requires determination to proceed with intercourse regardless of lack of consent - Whether appropriate to direct juries to apply an ordinary understanding of "recklessness".

***Barker* (1983) 153 CLR 338; 1983] 47 ALR 1**

- In Barker, the defendant had been asked to keep an eye on his neighbour's house while the neighbor was away, and or this purpose was told to where the spare key was hidden. He took this opportunity to steal a large number of items, but claimed that he had removed the items to protect them and that he had subsequently returned them. The neighbor gave evidence that although the neighbor had authority to enter his house, he had no authority to remove goods.
- It was, however, conceded that he would have had his authority to do so if it were necessary for the protection of the goods. Barker appealed his conviction for burglary, one of the elements of which was that the defendant must have entered as a trespasser.
- It was argued that Barker had not entered as a trespasser as he had the authority of the owner to enter the property. In dismissing the appeal, the HCA held that whether or not someone enters as a trespasser depends upon their authority to enter the premises.
- "If the right or authority to enter is limited in scope, then an entry which is unrelated to the right or authority will amount to a trespass. It is therefore necessary to determine the express or implied scope of the permission to enter. Where a person has permission to enter for a specific purpose, he or she commits a trespass if the entry is for any other purpose.

***Barrass* [2005] NSWCCA 131**

- For the offence of act of indecency to be proved it does not require that the accused be in the immediate physical presence of the victim: R v Barrass [2005] NSWCCA 131.
- This case considered the issue of acts of indecency and whether or not this offence required the particular act to be carried out in the immediate presence of the victim
- discussion of whether an act of indecency required for s61N and 61O must be committed in the immediate presence of the complainant

***Barton v Armstrong* [1969] 2 NSWLR 451**

- This was a civil case in which the victim pleaded that the defendant, a person of authority of whom he was generally in fear, rang him and threatened him with serious violence. The victim feared this threat and alleged that is was an assault.
- It was held that threats over a telephone could put a reasonable person in fear of later physical violence and that this can constitute an assault although the victim does not know exactly or even approximately when that physical violence may be applied.
- Taylor J also explained that he believed that apprehended harm did not need to be perceived by the victim as imminent.

***Baruday* [1984] VR 685**

- A charged and convicted of a number of counts of theft and false accounting in the