

CRIMINAL LAW FINAL EXAM SUMMARY

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each element must be proven by the prosecution to the standard of beyond reasonable doubt as per s 141(1) *Evidence Act 1995* (NSW)

AR = external or physical element/s of an offence

MR= required mental state/s or the fault element/s of an offence

Inference = a jury will have to infer whether or not the accused actually did commit the prohibited conduct

What is a serious indictable offence → imprisonment for life or of a term of 5 years or more

CASES

Woolmington v DPP [1935]

Resulting principle: “the duty of the prosecution to prove the prisoner’s guilt... if at the end of the whole of the case, there is reasonable doubt... the prosecution has not made out its case and the prisoner is entitled to an acquittal” “the prosecution bears the burden of proving EACH and EVERY element of an offence beyond a reasonable doubt”

NB that golden thread is presumption of innocence → prosecution must discharge that burden

Green v The Queen (1971)

Resulting principle: beyond a reasonable doubt → a doubt which tribunal of fact entertains in the circumstances NOTE its not ‘rational doubt’ i.e. you don’t give instructions to a jury on what it actually is.

Youseff (1990)

Resulting principle: WHEN DOES THE DEFENCE HAVE AN EVIDENTIARY BURDEN?
evidentiary burden on accused to ‘point to or produce evidence.. from which it could be inferred that there is at least a reasonably possibility that e.g. conduct was in self defence’

Zecevic v DPP (1987)

Resulting principle: what happens if the evidence discloses the reasonable possibility?

Self-defence example --> 'once the evidence discloses the possibility that the fatal act was done in self-defence, **a burden falls upon the prosecution to disprove the fact**, that is to say, to prove beyond reasonable doubt that the fatal act was not done in self defence'

Common law resulting principle: WHEN DOES DEFENCE HAVE A LEGAL BURDEN?

Defined circumstances and only to the standard of balance of probabilities.

NB. NSW is not codified and thus, not everything is precisely in legislation and is embedded in both case law and legislation → against the backdrop of common law.

WEEK 2 CONTENT

IMPORTANT ISSUES RE ACTUS REUS

- Concurrence (of conduct and circumstances) → many offences have an AR where conduct and circumstances must coincide. “act and intent must coincide” *Meyers v R*; To be convicted of an offence, it must be proved that the fault element coincided with, or existed at the same time as, the physical element *Ryan v The Queen*
- Courts have shown a willingness to construct concurrence by either imposing fault element over a series of acts OR upon a continuing act