

Table of Contents

Drug Offences.....	2
Public Order Offences	12
Offensive Conduct and Language (12)	
Riot, Affray, Violent Disorder (16)	
Unlawful Assembly (18)	
Graffiti	21
Criminalising Association	23
Police Powers	27
Move-Along Power (27)	
Power to Stop and Search (29)	
Power to Arrest (31)	
Power to Detain and Interview (34)	
Bail	37
Components of Criminal Offences	40
Criminalisation	45
The Criminal Process	54
The Ubiquity of Discretion (54)	
Two Tiers of Justice (59)	
Technocratic Justice (62)	
The Process as Punishment (63)	
Bail (64)	
Miscarriages of Justice (66)	
Police Powers (Theory)	70
Public Order Offences (Theory)	78
Criminalising Association (Theory)	83
Drugs Criminalisation (Theory)	87
Racial Vilification.....	91

Drug Offences

Drug Misuse and Trafficking Act 1985 (NSW) – DMTA

Pt 2, div 1 summary offences

S 10(1) A person who has a prohibited drug in his or her possession is guilty

Actus reus

1. Action: a degree of physical control
2. Circumstance: the substance is a prohibited drug

Filippetti

Catchwords: possession, actus reus, physical control, exclusive control, lounge room

Material Facts: There were a large number of people occupying the premises and all used the lounge room where the drugs were found.

Legal Issue: Whether the drugs were in the exclusive control of Filippetti?

Ratio: It could not be concluded beyond reasonable doubt that the drugs were in exclusive physical control of the accused. To prove exclusive physical control, the prosecution needs to eliminate the possibility that the drugs were in the possession of another.

Dib

Catchwords: possession, actus reus, physical control, exclusive control, fridge

Material Facts: Mr and Mrs Dib had possession of heroin sitting in a vase on top of a refrigerator in a house that they occupied. Their daughter had a licence to enter the house and three others were present when the drugs were found.

Legal Issue: Whether the drugs were in the exclusive control of Mr and Mrs Dib?

Ratio: HUNT CJ: It must be proved that the accused had the right to exclude any person from interference with the property (not acting in concert with him). He must have it in his manual possession or in a place to which he may go without physical bar in order to obtain this manual possession.

Delon

Catchwords: possession, actus reus, physical control, exclusive control, laneway

Material Facts: The accused hid drugs in a leaf covered hole in a laneway.

Legal Issue: Whether he had exclusive possession? (it was in a public place – could be taken by anyone)

Ratio: Applied **William v Douglas**, possession is wide enough to include hiding the object effectively so that he can take it into his physical custody when he wishes and where others are unlikely to discover it except by accident.

Mens rea

1. Action: Intent to control the item
2. Circumstance: Knowledge or recklessness of the nature of the substance

Bush

An intention inherent in possession of goods is required, the intention to have exclusive physical control of some article.

He Kaw Teh

Catchwords: possession, mens rea, knowledge, recklessness

Ratio: Possession offences require knowledge of the existence and nature, or of the likely existence and likely nature of the narcotic goods.

Saad

Catchwords: imports, mens rea, knowledge, recklessness

Material Facts: Case involved direction as to possession of prohibited imports.

Ratio: An awareness of a significant or real chance that the thing possessed was a narcotic substance. You do not need actual knowledge or awareness. The accused needs to be aware of the likelihood, in the sense that there was a significant or real chance, that it was a narcotic.

Minute Quantities

Williams

Catchwords: minute quantities

Material Facts: Fragments of green leaf material were found in the pockets of two coats belonging to the accused. The quantity was too small to be able to extract any useable quantity.

Legal Issue: Whether a person could be convicted of a possession offence with a minute quantity?

Ratio: GIBBS and MASON JJ: Reject the notion that it is sufficient of having possession of a drug when it is a microscopic quantity. Parliament did not intend this because many innocent people could be convicted.

Paul v Collins Jnr

Catchwords: minute quantities

Material Facts: Accused had 2 white tablets and powder which contained MDMA, a prohibited drug and caffeine to a total weight of 0.47 grams.

Legal Issue: Whether it was not a precise enough measurement to satisfy the requirement of *Williams*?

Ratio: JOHNSON J: the solution of the problem of minute quantities involves the proper application of 'possession'. There is a necessary mental element of intention and knowledge of the presence of the drug.

S 12(1) use: A person who administers or attempts to administer a prohibited drug

S 13 (1) A person who administers or attempts to administer a prohibited drug to another person

S 14 (1) A person who permits another person to administer or attempt to administer to him or her a prohibited drug

S 21 Summary offence penalties – 2 years imprisonment, fine of 20 penalty units, or both

Pt 2, div 2 indictable offences

S 24 manufacture, produces

- (1) A person who manufactures or produces, or who knowingly takes part in the manufacture or production of a prohibited drug
- (2) A person who manufactures or produces, or who knowingly takes part in the manufacture or production of, an amount of a prohibited drug which is not less than the commercial quantity applicable to the prohibited drug
- (3) If, on trial under sub-s(2), the jury are not satisfied that the amount of prohibited drug is equal to or more than the commercial quantity, the jury may acquit the person of the offence charged and find the person guilty of an offence under sub-s(1)

S 25(1) supply

- (1) A person who supplies, or who knowingly takes part in the supply of a prohibited drug
- (2) A person who supplies, or who knowingly takes part in the supply of an amount of a prohibited drug which is not less than the commercial quantity applicable to the prohibited drug
- (3) If on trial for sub-s (2) and the amount of prohibited drug involves is not equal or more than the commercial quantity, they may be acquitted and tried under sub-s(1)

S 3 ‘supply’ includes sell and distribute, agreeing to supply, offering to supply, or keeping or having in possession for supply, or sending, forwarding, delivering or receiving for supply or authorising, directing, causing, suffering, permitting or attempting any of those acts

Carey

Catchwords: supply, give back to owner, ordinary definition of supply

Material Facts: Accused was found with amounts of hashish and cocaine beside her bed. Because of the quantity it was ‘deemed supply’. She told police that she did not smoke or use drugs and the drugs belonged to her sister who had given her the drugs to keep overnight.

Legal Issue: On a balance of probabilities, whether Carey intended to supply the drugs to her sister?

Ratio: HUNT J: Merely returning to owner is not supply. All the limbs include the ‘for supply’ ending. Supply ordinarily means to furnish or to provide something which is needed or wanted or required by the person to whom it is given, not appropriate to describe returning to its owner. It does not include the deposit in someone’s care for safekeeping. Mere transfer of physical control is not supply. This would not apply to a case where one person has received drugs on behalf of a group and intended to distribute it to them.

Castle v Olen

Catchwords: cause supply

Material Facts: Castle had rung Pearce and asked him whether he could procure any speed for him. An arrangement was made for the men to meet the next day.

Legal Issue: Whether the request was sufficient to have 'caused' the supply of LSD?

Ratio: YELDHAM J: 'Causing' is not about previous events of one man forming the determination of the will of the other man to do the prohibited act. Less specific inquiry; the act is done on the authorisation of the prohibited act (express or implied) of the party who caused it or by exerting some capacity he possesses to control or influence the act of another. He must contemplate or desire that the prohibited act will ensure. More is required to constitute a causing than a mere request to a friend to obtain and sell to the person. The evidence suggests that the plaintiff sought from Peace a supply to him for his own use

Jasper

Catchwords: suffer or permit supply

Material Facts: NSW Police officer arranged with a heroin dealer to allow him to continue his drug-dealing activities in return for payment

Legal Issue: Whether Jasper's actions constitute suffering or permitting supply?

Ratio: MASON P: A person does not suffer or permit conduct over which they have no control or are ignorant. It requires more than awareness of the act in question. It only arises if the person does not exercise a power which they have or a right to stop the occurrence. He suffered the dealer's supply, knowing of its occurrence and he did not initiate any action to arrest him. The critical point is the legal capacity to control a situation and the failure to do so with the requisite accompanying state of mind. He could have stopped the supply in the police power to arrest. Knowledge that supply is to be done in the future suffices if the knowledge rises to the level of 'shutting one's eyes to the obvious'.

Dendic

Catchwords: Offer to supply

Ratio: The only mens rea for offer to supply is the intention inherent in making the offer. It must be genuine. The prosecution, however, only has to prove an intention to make the agreement, not an intention to honour the agreement. They do not have to prove any intention of ultimately supplying the drug.

Pinkstone

Catchwords: Send

Material Facts: Police had intercepted a package containing meth sent from Syd to Perth.

Legal Issue: Whether Pinkstone had sent the drugs even if the person had not received them because they were intercepted?

Ratio: 'Send' does not require proof that the drugs were received by anyone. The decision confirms that any actions by innocent agent in the movements of the prohibited drugs will be seen as acts of the accused

S 29 A person who has in their possession an amount of a prohibited drug which is not less than the traffickable quantity of the prohibited drug shall, be deemed to have the prohibited drug in their possession

for supply, unless (a) The person proves that they had the prohibited drug on their possession otherwise than for supply

Deemed trafficking = prove possession + traffickable quantity

Presumption of supply

TO rebut presumption, defendant must prove on balance of probabilities that the prohibited drug was in their possession other than for supply (personal use)

S 4 a reference to a prohibited drug includes reference to any preparation, admixture, extract or other substance containing any proportion of the prohibited drug. THEREFORE, traffickable quantities can include only small amounts of the actual/pure drug where it is cut with inert substances.

Carey – deemed supply, was not for the purpose of supply to sister

S 40 Deemed drugs

(1) A substance (not being a prohibited drug) for the purpose of its being supplied, is represented (verbally, in writing or by conduct) as being a prohibited drug or specified prohibited drug shall, be deemed to be a prohibited drug.

(2) A growing plant (not being a prohibited plant) for the purpose of its being supplied, is represented (verbally, in writing or by conduct) as being a prohibited plant or specified prohibited plant shall, be deemed to be a prohibited plant or the specified prohibited plant.

Haggard v Mason

Prevents an accused who wrongly believes they are supplying prohibited drugs from escaping liability

Dendic

STREET CJ: Fraud offences do not cover the field of fraudulent transactions. Also means that a person who knowingly supplies a victim with a legal substance but dupes them into thinking it is a prohibited drug is to be labelled and punished as a drug supplied despite the existence of fraud offences.

Swan

Catchwords: deemed drugs

Material Facts: Accused told undercover police officer who tried to buy cocaine 'I'm about to do a coke run, give me the money now and I'll come back with it'. Officer gave him \$50, Swan never returned to the park.

Legal Issue: Whether this was supply even though no drugs were given?

Ratio: Within organised drug trade, rip offs occur and those who choose to cloak it with the appearance of a genuine drug deal must accept the consequence if their conduct falls in a provision. How could the Crown ever prove the person making the offer or instigating the agreement actually intended to supply a drug unless the offer or agreement was carried through to conclusion or the accused confession to such an intention?