

1. The Nature of Crime

The meaning of crime

A crime: an act or omission against the community at large that is punishable by the state. (public law).

- When a person commits a crime, it is deemed to be committed against all of society

The **Crimes Act 1900 (NSW)** - states the types of crimes

The elements of crime: actus reus, mens rea

Before a criminal act can be brought to trial, the police and prosecutors need to prove that the elements of the particular offence are present: There are two fundamental elements applicable to most offences:

Actus Reus: a latin term meaning ‘guilty act’ that refers to the physical act of carrying out a crime. Actus reus means that the prosecution must prove that the accused did in fact carry out the relevant act required for the crime, this is often the easiest element for the prosecution to prove. The crime committed may be an act but may also include an omission (failure to act) eg criminal negligence.

Mens Rea: a latin term meaning ‘guilty mind’ meaning that the accused intended (to some degree) to commit the crime, knowing their actions were wrong. Mens Rea refers to the mental state of the accused, the prosecution must prove to the necessary degree that the accused intended to commit the crime. It is understood that it is the state of mind of the defendant and their knowledge of the facts that make the conduct criminal.

- **Intention:** A clear, malicious or wilful intent to commit the crime

R v Rogerson; R v McNamara (No 57) [2016]

Intentional as there were months of planning involved to steal 2.78kgs of ICE from Gao. Intention was to seriously harm or kill.

- **Recklessness:** Aware that action could lead to a crime but chose to take that risk anyway
- **Criminal negligence:** where the accused fails to foresee the risk when they should have and so allows the avoidable danger to occur

Case Study: R v Dean [2013] NSWSC 1027

In November 2011, Roger Dean was a registered nurse at the Quakers Hill Nursing Home. He had an addiction to prescription drugs and began to use his position in the nursing home to steal drugs. When it was reported that a quantity of drugs were missing. Dean became anxious and lit a fire at the nursing home to divert attention from the investigation. The fire led to the deaths of eleven elderly residents.

The judge commented on Dean’s “recklessness indifference” towards the residents of the nursing home.

Strict liability offences

A strict liability offence or ‘regulatory offences’ is one where the prosecution only needs to prove that the accused carried out the act (actus reus) and is not required to show that the accused intended to commit the crime (mens rea). These are generally restricted to minor offences.

- Driving under the influence of drugs or alcohol
- Speeding
- Not wearing a seatbelt

Purpose of strict liability offences:

- They strictly regulate social behaviours
- They are an effective deterrent to criminal conduct as people know that they can and will be easily convicted of the offence.
- They allow resource efficiency because without, it would cause delay and use up court resources

Causation

Causation: the link between the behaviour of the accused and the result (that is, that the behaviour of the accused usually actually caused the criminal act alleged). The legal question is: 'but for' the actions of the accused would the harm have occurred? If the answer is yes then that means the result or harm would have occurred anyway - so there's no legal liability. But if the answer is no, then it means that the actions of the accused was the factual cause of the harm, injury or result.

- Causation is sometimes referred to as the third element of crime. This is because it concerns the link between actus reus and mens rea.

For this element for a crime to be satisfied, the prosecution must prove that the:

- Accused was sufficiently aware of their behaviour, and its consequences (mens rea);
- Accused performed, or failed to perform, some physical act (actus reus); and
- Accused's actions caused the relevant crime (causation)

Cause Study: Causation R v Hallett (1969) SASC

The accused assaulted a man, V, and then left him unconscious on a beach. The tide came up and the unconscious V drowned. The court was satisfied that the accused intended to harm V (mens rea) and there was sufficient evidence to establish that the accused had in fact performed a criminal action by punching V (actus reus) and had also engaged in an omission, by failing to move V out of harm's way after he had fallen unconscious (actus reus). Though mens rea and actus reus were established, the court then had to consider whether the accused's criminal behaviour had caused V's death. The court applied the 'but for' test, and found that but for the accused actions, V would not have been unconscious on the beach and would not have drowned. Hallett was convicted of murder.

Categories of crime

Offences against the person there are three broad categories of crime or offences against persons, including: **Homicide** (the unlawful killing of a person). Homicide is committed when a person has unlawfully been killed. This allows for certain exemptions such as war, or self defence:

There are four situations where homicide is said to have been committed:

- **Murder:** in order to gain a successful conviction, it must be proved that one of the following acts took place:
 - There was a deliberate act to kill
 - There was a deliberate act to cause serious harm, during which death occurs
 - There was a reckless indifference to human life resulting in death
 - A death occurred during the commission of a serious crime
- **Manslaughter:** unlawful killing, but the accused is not charged with murder because they have a defence for their actions. There are two types of manslaughter:
 - Involuntary manslaughter: occurs where death occurs but the accused did not have the mental intent to cause death
 - Voluntary manslaughter: occurs when the accused did not intend to cause death, but special circumstances exist, eg being provoked

R v Young (2006)

Mr Young killed another person while driving his car. Charged with murder, failing to stop and assist after a vehicle impact causing death and drink driving

- **Infanticide:** this crime involves a mother causing the death of a child within its first 12 months of life
- **Death by reckless driving:** the fact that the driver did not intend for their actions to kill another person is not as important as speed, or driving under the influence of alcohol or drugs. A judge must determine that there is a causal relationship between the actions of the accused and the death resulting from them

Assault: involves causing physical harm or threatening to cause physical harm to another person

Sexual assault: involves sexual contact with another person without their consent. This includes people who make unwanted sexual contact with their spouse

- The age of consent is 16
- Consent is irrelevant when the consent is given mistakenly
- Sexual assault attracts a maximum of 14 years, or 20 when it is considered aggravated sexual assault: use of excessive violence, serious or intellectual or physical disability of the victim
- There is no such thing as consent if the victim is under the age of 16

Offences against the sovereign

Treason: involves a breach of allegiance to your country in the form of causing harm to the monarch or working with your country's enemies to bring down the monarch or government

Sedition: the act of encouraging hatred or contempt of the monarch, the government or the constitution

Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015

- Amends the Telecommunications (Interception and Access) Act 1979
- Requires telecommunications service providers to retain and to secure for two years telecommunications data (not content)

Anti-terrorism Act 2004 (Cth), Anti-terrorism Act 2005 (Cth)

Outlines the unlawful acts of treason and sedition

Economic Offences: the broad category of economic offences is used to categorise a wide range of offences involving crimes that damage or result in the loss of another person's property

Crimes against property

- Larceny or theft: Larceny can be defined as the taking away of another person's property without consent. Borrowing the property is not considered larceny
- Breaking and entering: Breaking and entering occurs when a person forces entry into a building, or part of a building in order to commit an offence
- Robbery: Robbery involves the accused taking a person's property directly from their person or from within the vicinity of their person. It involves the threat of violence. When the threat of violence involves a weapon, the charge is escalated to armed robbery

White-collar crime: White-collar crimes tend to be committed by professional people in the area of business

- Tax evasion: Can range from small tax return lies, to elaborate tax avoidance schemes involving millions of dollars

Computer crimes: a category that includes an increasing number of computer based property offences. It is an example of the way the law needs to change in order to keep up with technology

The Copyright Act 1968 (Cth)

Offence to steal intellectual property without consent, illegal to download music to pirate DVD's which need permission to occur

Drug Offences: are offences that involve the use, supply and possession of prohibited substances

- Possession of illicit substances, Distribution of illicit substances, Supply/ sale of illicit substances,

Manufacture of illicit substances

Drug Misuse and Trafficking Act 1985 (NSW)

- Defines use, possession, sale, supply and display, cultivation, manufacture as well as administration of prohibited drugs
- Legislates for penalties for drug offences

Driving Offences: involve breaches of traffic laws which are the most commonly committed crimes in society

- Speeding, Driving in a manner dangerous to public, Driving under the influence of alcohol
- Most traffic offences are dealt with administratively, through the issuing of a fine and demerit points to a licence
- More serious traffic offences such as drink driving result in court cases

Road Transport (Safety and Traffic Management) Act 1999 (NSW)

Outlines a range of offences relating to the use of vehicles, Determines road rules, licensing, demerit point system, vehicle registration, defective vehicles, written-off vehicles, alcohol and drug use, speeding etc

Public Order Offences: are offences that involve acts that a reasonable person would deem unacceptable behaviour, such as:

- Riot and affray, Explosives and firearms, Public Drunkenness, Use of offensive language in public
- Public order offences give the best examples of the way society's moral and ethical views influence the law
An issue with public order offences is that they can be over-policed and have a disproportionate effect on:
Young people, Indigenous Australians, Other people from a particular minority group

Graffiti Control Act 2008 (NSW)

Makes the possession of a spray can by a minor a strict liability offence

Preliminary Offences

Attempts: it is an offence to attempt to commit a criminal act

- The crimes act states that attempting to commit a crime is the same as succeeding in committing it (except murder)
- A person can be charged under the notion of attempt, if their behaviour implies that they are going to commit a crime

Conspiracy: found within criminal law, and exists when two or more people agree to commit a criminal act

- Charges can be brought even if the planned act never took place
- In conspiracy:
 - The agreement to act criminally is the actus reus
 - The planning demonstrates the intent, or mens rea

Summary and Indictable offences

All crimes are categorized according to the seriousness of the offence. These are referred to as summary or indictable offences:

Indictable offences: These are concerned with the more serious offences. Here the accused is first charged in the local court where a committal hearing is held. A trial is then held in the District or Supreme Court.

- Indictable offences other than murder, treason, serious drug offences & terrorist offences go in the district court
- The state is represented by the DPP (Department of Public Prosecution)
- A jury or judge alone, determines verdict and a judge determines sentence in a separate hearing

Criminal Code Act 1955 (Cth)

States that any person charged with an indictable offence, under this commonwealth legislation, has a constitutional right to a trial by jury

Summary offences: These are less serious offences. They are tried directly by a magistrate of the local court

and include minor theft and vandalism as well as matters under the Summary Offences Act 1988 (NSW). Some of the offences outlined in the Act include minor theft or drink driving offences.

- The state is represented by a police prosecutor
- The legislature (parliament) determine which crimes can be dealt with summarily

Summary Offences Act 1988 (NSW)

Sets out all of the summary offences in New South Wales

Parties to a crime including principal in the first degree, principal in the second degree, accessory before the fact, accessory after the fact

The law distinguishes between various roles a person may play before, during and after the commission of a crime. These are referred to as:

Principal in the first degree: refers to the person who actually carries out the crime. An example would be a person holding a gun and threatening the attendant in an armed robbery

Principal in the second degree: refers to a person who assists in the commission of a crime. They are present during the actual crime but are not the main participant. Usually referred to as an accessory

Accessory before the fact: refers to a person who helps other people commit a crime by planning or preparing for the criminal act. They are not present at the time the criminal act is committed

Accessory after the fact: refers to a person who helps criminals after they committed a crime, but is not present during the commission of it nor aware of it beforehand.

Case Study: R V Stanford, Marcus [2016] NSWSC 1174

On the 5th of April 2015, Vincent Stanford sexually assaulted and stabbed to death a teacher named Stephanie Scott a week before her wedding. Vincent then contacted his twin brother Marcus and set him an envelope to 'keep safe'. The envelope contained some of Ms Scott's belongings. Marcus sold and burnt the items to cover up for his brother. Vincent was found guilty of sexual assault and murder and Marcus was convicted of being an accessory after the fact to murder.

Factors affecting criminal behaviour

The scientific study of crime and criminal behavior is known as criminology. There are many reasons why people commit crimes. These reasons are referred to as factors that affect criminal behaviour, and include:

Psychological factors: There are many forms of mental illness affecting a person's behaviour. These factors will often be important during all stages of the criminal process, including arrest or charge and during sentencing

- **Impairment of reason:** A person may engage in criminal behaviour because their ability to think and behave rationally is affected, either temporarily or permanently.
- A person who is described as a psychopath may engage in criminal behaviours because they are incapable of regulating their behaviour.

Economic factors: Some people commit crimes to secure an economic gain and people from disadvantaged backgrounds are more likely to commit crimes

- 1/3 of male and 1/2 of female offenders receive welfare or government payment as their main source of income
- Poor education and lack of skills are often closely related to economic factors, with such criminals often habitually unemployed.

Social factors: People, and in particular, their attitude to the law and the authority of the state, are shaped in part by the society they live in. Factors such as upbringing and personal networks can impact, often negatively, upon a person's view of the law and respect (or lack of) for it.

- Family and personal relationships often influence the attitudes and views one has on acceptable