

Criminal Notes

Classical Model of responsibility

- Criminal wrong
- Criminal actor
- Criminal act
- Criminal state of mind

Consider He Kaw Teh analysis for new offences! Settled law does not need HKT.

Elements of criminal offences:

- Physical elements
- Fault elements – subjective/ objective
 - Fault liability
 - **Strict liability – defence of reasonable mistake of fact**
 - must make the conduct innocent
 - must be mistaken, not ignorance (*Proudman v Dayman*)
 - subjective and objective test
 - prosecution to negative the defence BRD once defence raise it under evidential burden
 - Absolute liability – most obvious defence: intervening act/ event (others like involuntariness, duress etc, but seldom applicable)

Prosecution bears both evidential and persuasive (legal) burden, persuasive beyond reasonable doubt.

Defence bear evidential burden. Defence bear persuasive burden in self defence. On balance of probabilities.

First : COMPLETE OFFENCE

STEP1: Separate physical and fault elements

- Any express or implied fault elements

STEP2: Presumption of fault liability

- Gibbs CJ in HKT – basic principles of classic model
 - True crime
 - Grave social evil
 - Health legislation

- Enforceable
- Anything to do to safeguard themselves

STEP3: Presumption of strict liability

- Gibbs CJ's factors to consider in HKT
 - Social policy
 - Would assist in enforcement
 - Words of statute imply intention to create absolute liability
 - Summary offence- likely to be AL
 - Very rarely it is AL.

STEP4: For SL, Evidence of reasonable mistake of fact (raise by defence, prosecution to prove RD)

- Evidence of mistake Of fact
- Reasonable mistake

STEP5: Absolute liability, evidence of unforeseeable, unavoidable intervening event

Dishonesty

STEP 1: 134 THEFT

- Deals [130], property [130], owner's consent [132], intending to deprive permanently, serious encroachment [134(2)]
- dishonestly test [131]
 - standard of ordinary people
 - accused know that their conduct is dishonest to ordinary people std

S139 DECEPTION

- identify benefit or detriment [130]
- to whom [139] – can be 3rd person
- deception [130] – causation
- dishonesty

S141 DISHONEST MANIPULATION (OR TAKING ADVANTAGE OF) MACHINE

- machine [130]
- manipulation [130], benefit/detriment,
- dishonesty

S142 DISHONEST EXPLOITATION OF AN ADVANTAGE

- disability or unfamiliar with local condition [142(1)]
- dishonesty

S143 DISHONEST INTERFERENCE WITH MERCHANDISE

S144 MAKING OFF WITHOUT PAYMENT

s. 131 (1)- Dishonesty test:

Conduct dishonest when the person acts dishonestly according to the standards of ordinary people;

the person knows their conduct is dishonest according to those standards.

Unlawful killing

*Look at facts

STEP1: DEATH – CULPRIT – FIND THE CAUSE

STEP2: POSSIBLE CAUSES

STEP3: WHICH CHARGE DOES EACH CAUSE LEAD TO

- s. 2 of Death Definition Act (1983): irreversible cessation of all function of the brain or; irreversible cessation of circulation of the blood.
- Persistent vegetation state- not death.
- Generally, foetus is not a ‘person’; only those borned are.
- [11] Murder – **subjective fault element** (*Crabbe*: knowing it is probable that death or gbh will result in death. Not enough knowing it is possible but not likely)
 - Intention to kill or cause grievous bodily harm
 - Knew that their actions would or probably cause death or grievous bodily harm (Reckless murder)
- [13] Manslaughter – **objective fault element**
 - Voluntary manslaughter: Intention to kill but provoked to kill

- Involuntary manslaughter:
- ***Unlawful and dangerous act*** (*Wilson; R v Fragomeli*: would reasonable person in appellant's position have realised that in punching the deceased, he was exposing him to risk of serious injury)
 - Only fault needed is the unlawful act itself.
 - Dangerousness of the unlawful act access objectively
 - *Bouhey*: Know risk of causing death to be substantial, real and not remote. Can be something that might well happen.
- ***Criminal negligence*** (gross departure from standards of behaviour or reasonable person: objective test) (*Nydam*: only need intention to do the act (voluntary act) which caused death and great falling short of standard of care)
 - Conscious and voluntary act, w/o the intention to cause death or serious harm
 - Reasonable person (*Lavender*: in the position of accused and being person of normal fortitude and strength of mind would never have done so. Appreciation of risk not necessary)

STEP4: WHAT CAUSE DEATH (intention)

- *Hallett*: ***continuing, operative and substantial*** cause of death?
- *Royall*: reasonably foreseeability (NOT test for causation but accepted in Royall)

INTERVENING ACT

- Whether mistaken treatment was so far outside normal course of events that it could not be said to cause by original wound (*Cheshire*)
- *Royall*: own act intervene? No natural consequence test
- *Jordan*: if original wound is healed, then death is caused by subsequent act
- *Smith*: treatment never comes; nevertheless convicted of murder

STEP5: OUTCOME

- Depends whether there's intention (FE) – decide murder or manslaughter

- *Edwards* [2009]: Security person held people in a headlock for 5mins, causing his death. Guilty of UDA Manslaughter and Negligent manslaughter.

PROVOCATION (*Stingel*) – partial defence only available to only murder

1 – Provocation

- Generally anything can provoke
- Gravity of conduct assessed by reference to relevant characteristics of the accused (ex. culture, characteristics, mental state etc)

2 – Provocation caused D to lose control

- Causation, must be actual loss of control- looking at time frame & existence of extreme conduct

3 – Could ordinary person have lost control? (facts) (*Mascantonio*)

4 – Could ordinary person have acted as D did

- With D's circumstances

* *Hajistassi*: infidelity, homosexual advance no longer supported as provocation

Offences against person

STEP1: VICTIM

- Harm to foetus is harm to pregnant woman (*King*)

STEP1: WHAT OFFENCE TO CHARGE

- Division 7 – **assault** [20]
 - Without consent, intentionally, applies force, intentionally, makes physical contact, knowing victim might reasonably object, threatens to apply force, reasonable grounds for victim to believe, in position to carry out threat, possibility will carry out
 - Unless socially acceptable conduct, or Lawful or Consent [20(2)]
- Division 7A – **causing physical or mental harm**
 - Serious harm [21], harm [21]
 - Unless lawful consent [22], No intention nor reckless