The Nature of Crime

**Meaning of Crime**

A crime can be defined as any act or omission of duty that results in harm to society & which is punishable by the state

Voluntary Act

E.g. You hit someone, you shoot someone, you rob a bank

Not voluntary act = automatism

E.g. Sleepwalking, suffering concussion, under anaesthetic, suffering from some forms of epilepsy, an uncontrolled act - does NOT include self-induced intoxication

Or an omission or failure to act

E.g. R v BW & SW (2009) - murder by omission (parents left their child Ebony who was in their care to starve to death - actions caused Ebony's death)

Kieran Loveridge - what caused Thomas Kelly's death?

**Elements of a Crime** - No crime without these

* Causation = must be shown that the accused actions caused the end result as highlighted in R v Loveridge
* Actus Reus = Guilty Act
* Mens Rea = Guilty Mind
  + Full intention --> person deliberately intended to commit a crime - highest and most difficult to prove
  + Recklessness --> person was aware of the danger of their action & acted anyway
  + Criminal neglect --> person fails to see the rest of their action, a risk that an ordinary person would have seen under the same circumstances
    - E.g. R v Thomas Sam (2009) - death of couples baby due to eczema - they rejected conventional medical treatment, therefore guilty of manslaughter by criminal negligence

* Elements of a crime are important & the standard of proof the prosecution must prove them beyond reasonable doubt for serious indictable offences

* The accused deliberately intended to kill the victim
* The accused set out to inflict serious bodily harm which then resulted in death
* The act was done with reckless indifference to human life

**Strict Liability Offences**

* Less serious crimes - restricted to minor offences - no court attendance
* Prosecution do not have to prove mens rea only actus reus e.g. traffic offences, speeding, not wearing a seatbelt, littering, selling alcohol or tobacco to a minor

* Advantage of strict liability offences:
  + Easy to enforce
  + Treat all people equally

**Categories of Crime**

* Types of offences under the Crimes Act 1900 (NSW)
* Crimes Act 1900 (NSW) main act that codifies criminal law in NSW

1. OFFENCES AGAINST THE PERSON

Homicide - the unlawful killing of another person, maximum life, supreme court e.g. Murder - R v Dean (2013), Katherine Knight

* Mandatory life sentence for killing a police officer - R v Jacobs (2013)

Manslaughter - Intent of accused differs, punishable up to 25 years (voluntary or involuntary)

Voluntary manslaughter - kills with intent, however mitigating circumstances reduce culpability such as provocation, remore, pleading guilty

* Parents guilty of manslaughter over daughters eczema death: R v Thomas Sam (2009)
* R v Loveridge 2013 - manslaughter by unlawful & dangerous act

Involuntary manslaughter - accused acted in a reckless or negligent way BUT without intent

E.g. DPP v Newbury and Jones (1977) - concrete dropped from bridge deliberately & accidentally killed train guard

Assault - Types - Differences -

* Battery: Assault: causing physical harm to another person (e.g. punch --> up to 5 years imprisonment) or threatening to cause physical harm (e.g. threatened emails)
* Aggravated assault: more serious: use of a weapon or object: accused assaults a person using an object rather than just their body or an accused attacks a police officer when they are performing their duties

Sexual offences:

Sexual assault - person forced in sexual intercourse without consent - another body, object or oral

CONSENT is not given when a person is under the influence, intimated or coerced into act, abuse of trust

Consent is a defence used by the defendant

* Indecent Assault --> touching private parts --> district court
* Aggravated sexual assault --> violence is used or victim under 16 or severely intellectually disabled --> district
* Aggravated sexual assault in company --> punishable by the highest criminal sanction = life imprisonment --> supreme

1. OFFENCES AGAINST SOVEREIGN

Include political offences based on political interest such as…

Treason: An attempt to manifest war against the state, attempting to take over the gov by force, fighting a war against your own country, selling gov secrets to an enemy country = 25 years in prison

Sedition: (promoting hatred & discontent against the gov)

The fed gov's anti-terrorism laws contain sedition provisions. These provisions have attracted quite a deal of debate about the need to balance protection of society against freedom of speech in this post 9/11 world

1. ECONOMIC OFFENCES - 3 main categories

Involves people losing property or sums of money

Largest area of criminal law

*Crimes against property:*

*=* Take another persons property without consent such as…

Larceny known as theft = stealing someone's property e.g. car theft, includes shop lifting

Robbery = (stealing from someone who is there) more serious offence than larceny e.g. mugging, bank robbery - use of force

Armed robbery = use of force is present when stealing goods, with weapon (gun, knife, syringe)

Break & enter = unlawfully enters room or building with intention of committing an offence

*White collar crime:*

*=* Non violent crimes associated with business people or professionals such as…

Embezzlement = stealing from your own company, usually small amounts at a time

Tax evasion = Fraudulent tax returns/hide income or assets

Inside trading = buying and selling company shares - using confidential information for personal benefit

*Computer offences:*

*=* includes cyberstalking, identity theft, virus, hacking, unauthorised access, modification of data, downloading music (HSC multiple choice Q)

1. DRUG OFFENCES

Acts involving the use, possession, cultivating, selling or importing (trafficking) of banned drugs

Transnational crime = drug trafficking

* Drug court (3 in NSW), for dependant drug users (no violence), diversionary, guilty plea, if not complete program - resume sentence & decrease reoffending

1. DRIVING OR TRAFFIC OFFENCES

Speeding, reckless driving, driving under the influence

* Strict liability/mens rea not required, if under 18 & a driver related offence = local not children's court

1. PUBLIC ORDER OFFENCES - POOS

Acts that are innapropriate/offensive & disturbs the public's peace/morality/safety

Summary offences (LC): fines, less penalty

E.g. obscene, indecent or threatening language or behaviour in public, obstructing traffic or ignoring a police 'move on', obscene exposure, vandalism, soliciting (offering & accepting prostitution)

Max penalty for not moving on is 2 penalty units (currently $220 - infringement notice (on the-spot fine), sometimes the police will instead arrest & charge the person

Indictable offences (serious - DC):

Affray --> use or threat of violence that would cause a reasonable person to fear for their safety…brawl/public fight --> up to 10 years

Riot > 12 people

1. PRELIMINARY CRIMES

Offences occurring prior to the actual crime being committed

Attempts --> attempting to commit a criminal act even if no actual crime happened --> same penalty except for attempted murder

Conspiracy when 2 or more people plot, plan (conspire) together to commit a crime --> difficult to prove (prosecution would need evidence of plans/phone tapping)

**Summary & Indictable Offences**

Summary offences - are under Summary Offences Act 1998 NSW

* Less serious offence that is tried by a magistrate in the Local Court
* The judgement & punishment are determined by a magistrate
* The charge is usually laid by a police officer or gov officer
* Punishment is usually less severe, like a fine or good behaviour bond

Indictable offences - under the Crimes Act 1900 NSW

* A more serious offence (such as murder, rape or robbery) tried by a judge or jury
* The judgement is determined by a jury and the punishment is determined by the judge
* The charge is brought by a police prosecutor working for the state
* The punishment will usually result in imprisonment or a hefty fine

**Parties to a Crime…People involved**

* Parties = people
* Parties to a contract/treaty/crime

1. *Principal in the first degree*

* Actual perpetrator
* Person actually there
* Directly responsible
* Right up front committing the crime --> Highest sentence

1. *Principal in the second degree*

* Person who was present & assisting/helped the principal in the first degree commit the crime

1. *Accessory before the fact*

* Fact = Crime
* Isn't there at the time
* Person who helped plan the crime BEFORE it happened

1. *Accessory after the fact*

* Person who knowing about the crime & helped the offender AFTER it happened

* Different parties have different sentences depending on level of involvement
* Joint criminal enterprise = group of people who decide to commit a crime = all held liable/responsible

Burn video = if you decide to join in a crime, & someone got killed & even if you didn’t shoot/stab…still the same…common purpose

**Factors Affecting Criminal Behaviour**

Most people COMPLY obey most criminal laws all the time: (reasons)

* Moral obligations
* Regulations
* Education
* Fear of punishment, public shame or condemnation
* People want protection & a legal system that protects them therefore will comply

There are many reasons why people do not comply with the law & find themselves committing a crime

NSW Bureau of Crime Statistics & Research BOSCAR came up with a range of factors that may affect criminal behaviour

* There are a range of factors which affect criminal behaviour such as social, economical, political, self interest & genetic

1. *Social + Economic factors*

* Males 2:1 (trend increase female)
* Young people (12-16)
* People aged b/w 15 & 19 committed 4 times more offences than anyone else = THEFTS
* 18-19 year olds = public disorder

Aboriginal youths are 25 times more likely to be imprisoned than their non-indigenous counterparts, a figure Aboriginal legal activists have called "shameful"

Represent 3% of pop.

Source:

* Indigenous youths 25 times more likely to be in detention, Amnesty International report finds
* Jun 2015 ABC

* People who grew up with inadequate parents = neglect --> Not supervised, too much discipline, parent committing crimes… CROSS OVER KIDS
* Children's Court - 2 jurisdictions
* Young people who truant school: 2010 report 1 in 3 prisoners have not completed year 10

* Low socioeconomic status
* Unemployed people - (youth = 14%)
* People addicted to drug + commit drug crimes & property crimes
* 50% of young offenders = drug/alcohol dependancy

1. *Psychological + Pathological Factors*

Mental illness, accused state of mind could be raised by prosecution or defence --> relevant during sentencing

R v Waterlow (2011)

Report: 1 in 3 prison entrants have a mental health disorder

1. *Political Factors*

E.g. Riots - protests mainly POOs

Recent death of a police employee by a 15 year old --> Political

1. *Self Interest*

Individual profit (economic) - revenge, greed-money & power - RICHARD BUTTROSE

**Crime Prevention**

1. *Situational Crime Prevention*

AIM: To make the situation where the crime occurs more risky & difficult to commit or less rewarding to the offender = preventing crime from happening

* Lock on car, windows, grills, shutters
* Engraving property
* CCTV cameras, police body cams
* Lockout in the CBD, Kings Cross
* Police patrols, lights, sirens
* However, it just moves people to a different place or a different person/crime THEREFORE social crime prevention fixes the problem

1. *Social Crime Prevention*

AIM: To target potential offenders & identify socio-economic factors that could lead to criminal behaviour e.g. poor parenting, low income family, uneducated, truancy, early contact with police, association to criminals & criminal behaviour - key is intervention programs/workshops

* Youth on Track program, parent responsibility contracts
* Involves educational programs/workshops such as parenting & youth drug & alcohol programs, anger management. Traffic course
* Introduce Domestic Violence programs in the curriculum
* *Issue:* Cost of programs

INTERVENTION IS THE KEY

* Rosie Batty has rejected the idea of register of domestic violence offenders, saying the focus should be on intervention
* Family violence prevention needs to be taught in every AUS school as early as Kindergarten, AUS of the year Rosie Batty has told Vic's Royal Commission into family violence
* Using BOTH situational and social crime prevention ensures greater compliance