

COMPULSORY ASSIGNMENT

Daisy is a 45-year-old medical Doctor, who has been unlucky in love. She lives in the beautiful city of Newcastle, NSW. Due to her busy lifestyle, Daisy has been unable to meet a partner, other than very brief relationships after using the phone app 'Tinder'. Daisy decides to use the services of an introductory agency to meet the person of her dreams.

Daisy sees an advertisement for 'Matilda's Introductory Agency'. This business is owned and operated by Matilda. The advertisement relevantly states: "It's never too late for love. We aren't cheap, but we guarantee the best chance of finding love. Our members are successful professionals, and we will help you find that special person".

Criminal Law Assignment

Daisy contacts Matilda's Introductory Agency, and makes an appointment to see Matilda. Matilda tells Daisy at the meeting:

"Daisy, you are just the type of person we are looking for. Our membership costs \$10,000.00 per year paid in advance. This may seem a lot, but what is the price of love? We have dozens of men who are around the same age as you and are highly successful professionals. If you join, we will arrange for you to meet them and true love will be just around the corner".

Daisy agrees to join the introductory agency, and pays Matilda \$10,000.00. Daisy informs Matilda that she wishes to meet men between 35 to 50 years of age, who don't smoke and don't have children.

Matilda does not arrange any introductions for 3 months, replying to Daisy's emails by stating "You need to be patient. We are making sure you are completely compatible, and it is worth waiting for 'Mr Right'. Matilda does not inform Daisy that Matilda is suffering from severe financial problems, and many of her clients have left the introductory agency. Matilda does not tell Daisy that the business is also under investigation by NSW Fair Trading.

Eventually, Matilda arranges for Daisy to meet Fred. However, when they meet at a restaurant, Fred tells Daisy he is a truck driver with 5 children, and is involved in Family Court proceedings with his ex-wife. Daisy terminates the date early. The next day, Daisy telephones Matilda and states:

"Your business is an absolute joke. So much for 'Mr Right', the guy you arranged for me to meet was 'Mr Wrong'. Give me my money back immediately, or I will see a lawyer".

Matilda replies: "You signed a contract and paid in advance. Do what you like, but I am not giving you a refund. As well, I think I might be able to introduce you to a new member called Paul, who is a brain surgeon, and perfect for you. However, if you make unreasonable demands, that can't happen".

Daisy decides she wants nothing further to do with Matilda, and considers engaging a lawyer. She speaks to her brother Sam, and tells him what has happened. Sam is a member of an outlaw bikie gang. Sam tells Daisy: "Don't bother with lawyers, they are parasites. I'll get the money back. Just trust me on this."

Sam attends Matilda's office one day when Matilda is working alone. After buzzing the building intercom, Sam tells Matilda: "I'm Daisy's brother. She's upset, but I want to speak to you on her behalf. She's interested in extending the agreement, on the right terms". Matilda opens the door for Sam.

Sam enters Matilda's office. He tells Matilda: "Enough of this bullshit. You have ripped off my sister for \$10 grand. We could do this the slow way with lawyers, or you could fix this right now. If you know what's good for you, you will refund the money right now. I've got mates in the Comanchero bikies who can make your life very difficult. It's pretty hard to operate a business without any kneecaps".

Matilda replies: "I haven't got the money right now, but I will transfer it tomorrow. Just please leave me alone".

Sam replies: "You seriously think I would trust you to pay the money tomorrow? I've got a better idea. That diamond ring on your finger looks expensive. Give that to me right now, and we can call it quits."

Matilda takes the ring off her finger, and hands it to Sam. The ring was given to Matilda by her ex-boyfriend 3 years ago, and is insured for a value of \$8,000.00.

Sam takes the ring and leaves the building. However, before he leaves, Sam tells Matilda: "Thanks for doing business. However, don't even think about calling the cops. I know where you work. If you call the cops, my boys will come back here, and you will be going for a swim off Stockton beach with piece of cement on your back".

After Sam leaves, Matilda decides not to call the police. However, upset by what happened, Matilda develops post-traumatic stress disorder, receiving treatment from a psychiatrist.

Discuss the criminal liability, if any, of Matilda and Sam

Footnotes and Bibliography

(1) please use Heading & SubHeading
party to party For Example Daisy v Matilda
Daisy v Sam
using (IRAC) (All the elements)

{ issue
rule
Application
conclusion

(2) only use the materials I supplied you.
please Don't use outside materials. please
only Discuss the Liability. No Defend

PRESCRIBED TOPICS AND COURSE OUTLINE

Teaching will proceed on the assumption that you are making a detailed study of the prescribed reading. At a very minimum, you must read all of the references in the course outline which are preceded by an asterisk (*). Most of these references are in Rush and Yeo, *Criminal Law Sourcebook*. Below each topic heading, there is usually a reference to relevant pages in the prescribed text by Hayes & Eburn, *Criminal Law and Procedure in NSW*, 5th edition.

1. General Principles of Criminal Responsibility

Synopsis:

- Explanation of the physical and mental elements of a crime.
- To evaluate the relationship between the fault (mental) element of a crime and voluntariness.
- To consider the classes of criminal activity by reference to mental state of an accused.

Reading:

*Hayes & Eburn, pp 1-72

(1) What is a Crime?

Proprietary Articles Trade Association v AG (Canada) [1931] AC 310
Chief Executive Officer of Customs v Labrador Liquor Wholesale Pty Ltd (2003) 216 CLR 161
Commonwealth v Director Fair Work Building Industry Inspectorate (2015) 326 ALR 476

(2) Actus reus: the physical or external element

(i) Voluntary Conduct

Ryan (1967) 121 CLR 205
Falconer (1990) 171 CLR 30

(ii) Omission to Act

Taktak (1988) 14 NSWLR 226
Burns (2012) 290 ALR 713

(iii) Causation

Hallett [1969] SASR 141

(3) Mens rea: the fault or mental element

Crimes Act s4A

(i) Intention

Nedrick [1986] 3 All ER 1
Stanley [2013] NSWCCA 124
Zaburoni [2016] HCA 12
 "Some Simple Thoughts on Intention" by Richard Buxton QC [1988] Crim LR 484 at 495

(ii) Recklessness

Assault

Williams (1990) 50 A Crim R 213

Sexual Assault

Tolmie (1995) 37 NSWLR 660

Murder

Crabbe (1985) 156 CLR 464

Royall (1991) 172 CLR 378

Solomon [1979] 1 NSWLR 321

(iii) Negligence

Nydam [1977] VR 430

Lavender (2005) 218 ALR 521

Statutory Offences

(4) Strict and absolute liability

He Kaw Teh (1985) 157 CLR 523; (1985) 60 ALR 449

CTM v R (2008) 247 ALR 1

2. Property Offences

Synopsis:

- Historical development of the law of larceny.
- Importance of possession over ownership.
- Examination of the physical and mental elements of common law larceny.
- To consider the relationship of temporal coincidence to the elements of larceny.
- Exceptions to the general principles of larceny.
- To examine the law of larceny in regard to mistake, finding and tricks.
- To consider the concept of a false pretence.
- To analyse the law of breaking and entering.
- To understand the transition from the crime of stealing to the crime of robbery by use of force.

Reading:

(1) Basic Larceny

Crimes Act, ss 4B, 94AA, 116-140; 150-154; 154A, 154F

*Hayes & Eburn, pp 311-350

(a) Actus reus

(aa) Property capable of being stolen

Crimes Act s4

R v Daley (1879) 12 SCR (NSW) 151

(ab) Property belonging to another

**Anic* (1993) 61 SASR 223

**Croton* (1967) 117 CLR 326

Kelly (1999) QB 621; [1998] 3 All ER 741

(ac) Asportation / Appropriation Without Consent

**Kolosque v Miyazaki* (1995) NSWSC (unreported, 17 February 1995, per Dowd J)

**Wallis v Lane* [1964] VR 293

**Kennison v Daire* (1986) 160 CLR 129

Ellis v Lawson (1987) 33 A Crim R 69 *Morris* [1984] AC 320; [1983] 3 All ER 288

(b) Mens rea

(ba) Intent to deprive owner permanently

**Foster* (1967) 118 CLR 117; [1967] ALR 458

**Minigall v McCammon* [1970] SASR 82 *Cockburn* [1968] 1 All ER 466

(bb) Dishonesty or fraudulence; including honest belief of claim of right

Crimes Act s4B

**Lopatta* (1983) 35 SASR 101

**R v Fuge* (2001) 123 A Crim R 310

Peters (1998) 192 CLR 493; (1998) 151 ALR 51

McLeod v R (2003) 214 CLR 230

(bc) Contemporaneity of mens rea and actus reus

**Minigall v McCammon* (1970) SASR 82

Buttle (1959) 60 SR (NSW) 320

Riley (1853) 169 ER 674

(2) Larceny by mistake

**Potisk* (1973) 6 SASR 389

**Ilich* (1987) 162 CLR 110

Shields v New South Wales Crime Commission [2007] NSWCA 309

(3) Larceny by finding

**Minigall v McCammon* [1970] SASR 82

**MacDonald* [1983] 1 NSWLR 729

Thurborn (1849) 169 ER 293

(4) Larceny by a trick

**Justelius* [1973] 1 NSWLR 471

Pear (1779) 168 ER 208

Ward (1938) 38 SR (NSW) 308

(5) Fraud; Obtaining Property Belonging to Another, and related offences

Crimes Act, ss 192B-192H

**Hayes & Eburn*, pp 350-361

A Steel; 'New fraud and identity related crimes in New South Wales'; Judicial Officer's Bulletin; Judicial Commission of NSW; Vol 22 No 3; April 2010.

**DPP v Ray* [1974] AC 370

**Moore* [2016] NSWCCA 260

**Elias v DPP* (NSW) [2012] NSWCA 302

Parsons (1999) 160 ALR 531

Vasic (2005) 11 VR 380 *Balcombe v De Simoni* (1972) 126 CLR 576; [1972] ALR 513

(6) Breaking and Entering

Crimes Act, ss 109-115; 148-149

**Stanford* (2007) 70 NSWLR 474; [2007] NSWCCA 370
Barker (1983) 153 CLR 338; 1983] 47 ALR 1
Galea (1989) 46 A Crim R 158
Walker (1978) 19 SASR 532

(7) Robbery

Crimes Act, ss 94-98

**Smith and Desmond* [1965] AC 960
 **Langham* (1984) 36 SASR 48
Gnosil (1824) 171 ER 1206

(a) Steal From Person

**Delk* (1999) 46 NSWLR 340
Bieu Vinh Hua [2002] NSWCCA 384
Edwards [2009] NSWCCA 199

3. Assault

Synopsis:

- To evaluate the physical and mental elements of the crime of assault.
- To analyse a conditional threat.
- To consider the relevance of the victim's state of mind by comparing psychic assault and physical assault.
- Application of the concept of recklessness to law of assault.
- To resolve the issue of consent by reference to sports and other consensual activities.
- The relevance of intention and/or fear/apprehension to law of assault.
- Consideration of recognised defences.

Reading:

Crimes Act, ss 4A, 32-49A, 51A-61
Crimes (Domestic and Personal Violence) Act 2007, s 13
 *Hayes & Eburn, pp 202-246
 Hon PW Young "Is there any law of consent with respect to assault?" (2011) 85 ALJ 23

(1) Actus reus

(a) Application of force or threatened application of force

**Fagan* [1969] 1 QB 439
 **Knight* (1988) 35 A Crim R 314
 **Zanker v Vartzokas* (1988) 34 A Crim R 11
 **Ireland* [1997] 4 All ER 225
 **Collins v Wilcock* [1984] 3 All ER 374
 **Mostyn* (2004) 145 A Crim R 304
Barton v Armstrong [1969] 2 NSWLR 451

(b) Conditional threats

**Rosa v Samuels* [1969] SASR 205
Tuberville v Savage (1669) 86 ER 684
Police v Greaves [1964] NZLR 295

(c) State of mind of victim

Brady v Schatzel [1911] St R Qd 206
Ryan v Kuhl [1979] VR 315
McPherson v Brown (1975) 12 SASR 174

(d) Absence of consent

**Brown* [1994] 1 AC 212; (1993) 2 WLR 556
Wilson [1996] 2 Cr App R 241
Emmet [1999] EWCA Crim 170
Stein [2007] VSCA 300
Attorney-General's Reference (No 6 of 1980) [1981] 1 QB 715
Pallante v Stadiums (No 1) [1976] VR 331

(2) Mens rea

**Blackwell* [2011] NSWCCA 93; (2011) 208 A Crim R 392; (2011) 81 NSWLR 119
 **Chen* [2013] NSWCCA 116
 **Percali* [1986] 42 SASR 46
 **Williams* (1990) 50 A Crim R 213
 **Smith* [1961] AC 290
 **D* [1984] 3 NSWLR 29
Venna [1976] QB 421

(3) Assault Causing Death

Crimes Act ss 25A, 25B

(4) Infliction of Grievous Bodily Disease

**Zaburoni* [2016] HCA 12
 * *Aubrey v The Queen* [2017] HCA 18

4. Sexual Offences**Synopsis:**

- Consideration of the physical and mental elements of sexual offences.
- Definition of sexual intercourse.
- Importance of consent as part of the actus reus.
- Developments in the law on consent.
- Interplay between consent and recklessness; consent and mistaken belief.
- Physical and mental elements of sexual offences not involving sexual intercourse.

Reading:

(1) Sexual assault

Crimes Act, ss 61H-61Q, 61S-61U, 66A-66F, 73, 77, 80A
 *Hayes & Eburn, pp 247-299(a) Actus reus

**Clark* [1998] NSWSC 126
 **Mueller* (2005) 62 NSWLR 476
 **Dean* (2006) 66 A Crim R 341
 **Chant and Madden* (1998) Unreported, 12 June 1998, NSWCCA
 **Aiken* (2005) 63 NSWLR 719
CTM v R (2008) 247 ALR 1
Williams [1923] 1 KB 340
Gallienne (1963) 81 WN (Pt 1) (NSW) 94

Papadimitropoulos (1957) 98 CLR 249
Mobilio (1990) 50 A Crim R 170
Wilkes and Briant [1965] VR 475
Question of Law (No 1 of 1993) (1993) 59 SASR 214

(b) Mens rea

**AJS* (2005) 12 VR 563
 **Morgan* [1976] AC 182
 **Tolmie* (1995) 37 NSWLR 660
 **Banditt* (2005) 224 CLR 262; 223 ALR 633
 **Bochkov* [2009] NSWCCA 166
 **Getachew* [2012] HCA 10
 **WO v DPP (NSW)* [2009] NSWCCA 275

McEwan [1979] 2 NSWLR 926
AM v R [2011] NSWCCA 237

(2) Indecent assault and act of indecency

Crimes Act, ss 61L-61O, 77
Hayes & Eburn pp 299-310

**Fitzgerald v Kennard* (1995) 38 NSWLR 184; 84 A Crim R 333
 **Harkin* [1989] 38 A Crim R 296
 **Gillard* (1999) 105 A Crim R 479
 **Barrass* [2005] NSWCCA 131
 **Bonora* (1994) 35 NSWLR 74

5. Conduct of Homicide

Synopsis:

- Definition of homicide.
- Meaning of 'human being' with reference to death.
- The old 'year and a day' rule.
- Analysis of conducts amounting to voluntary conduct.
- Understand and apply the tests derived for causation.
- Appreciate the place of omission in the structure of criminal responsibility for homicide.

Reading:

Crimes Act, s 18
 **Hayes & Eburn*, pp 73-110

(1) Human being

Human Tissue Act 1983 (NSW), s 33
Crimes Act 1900, s 20

R v Iby [2005] NSWCCA 178
Hutty [1953] VLR 338
Malcherek [1981] 2 All ER 422

(2) Year and a day rule

Crimes Act, s 17A

Dyson [1908] 2 KB 454
Evans & Gardiner (No2) [1976] VR 523

(3) Voluntary Conduct

- *Ryan (1967) 121 CLR 205
- *Falconer (1990) 171 CLR 30
- *Katarzynski [2005] NSWCCA 72
- Murray (2002) 211 CLR 193
- Jiminez (1992) 173 CLR 572

(4) Causation

- *Hallett [1969] SASR 141
- *Royall (1991) 172 CLR 378
- *Burns (2012) 290 ALR 713
- *Moffat (2000) 112 A Crim R 201
- Blaue [1975] 3 All ER 446
- Smith [1961] AC 290
- Jordan (1956) 40 Crim App R 152
- Malcherek [1981] 2 All ER 422

(5) Omission to perform a legal duty to preserve life

- *Taktak (1988) 14 NSWLR 226
- Taber and Styman [2002] NSWSC 1329
- Russell [1933] VLR 59
- Stone and Dobinson [1977] QB 354
- Miller [1983] 2 AC 161

6. The Minds of Murder**Synopsis:**

- To comprehend and evaluate the four mental states required for the crime of murder.
- Brief outline of recognised 'defences' and their relationship to the onus and standard of proof.
- Examination of the felony-murder rule and its application.
- Relationship between contemporaneity and the actus reus and the mens rea of the offence of murder.

Reading:

(1) The fault (or mental) element

- Crimes Act*, s 18(1)A
- *Hayes & Eburn, pp 110-129

(a) Intent to kill

- Hyam [1975] AC 55; [1974] 2 All ER 41
- Nedrick 8 Cr App R 179; [1986] 3 All ER 1
- Demirian [1989] VR 97

(b) Intent to inflict grievous bodily harm

- Perks (1986) 41 SASR 335
- Smith [1961] AC 290
- Rhodes (1984) 14 A Crim R 124

(c) Reckless indifference to human life

- *Pemble (1971) 124 CLR 107; [1971] ALR 762
- *Crabbe (1985) 156 CLR 464

**Royall* (1991) 172 CLR 378
 **Solomon* [1979] 1 NSWLR 321
Boughey (1986) 161 CLR 10

(e) Self-Inflicted Death

R v II [2016] NSWCCA 51
 **II v The Queen* [2017] HCA 27

(f) Constructive murder

**Ryan* (1967) 121 CLR 205
 **Jacobs and Mehajer* [2004] NSWCCA 462
Hitchins [1983] 3 NSWLR 318

(2) Actus reus and mens rea: time dimension

**Meyers* (1997) 147 ALR 440; 71 ALJR 1488
 **Le Brun* 94 Cr App R 101; [1991] 4 All ER 673
Thabo Meli [1954] 1 WLR 228

7. The Minds of Involuntary Manslaughter

Synopsis:

- Definition of the crime of manslaughter.
- Elements of voluntary and involuntary manslaughter.
- Contrast between civil and criminal negligence.
- Analysis of doctrine of unlawful and dangerous act manslaughter.
- To distinguish between negligent manslaughter and unlawful and dangerous act manslaughter.
- Reasons for the demise of battery manslaughter.

Reading:

*Hayes & Eburn, pp 159-201

(1) Criminal negligence

**Lavender* (2005) 218 ALR 521
 **Nydam* [1977] VR 430
 **Taktak* (1988) 14 NSWLR 226
 **Burns* (2012) 246 CLR 334
R v Moore [2015] NSWCCA 316
Stone and Dobinson [1977] QB 354

(2) Unlawful and dangerous act doctrine

**Wilson* (1992) 174 CLR 313
 **Burns* 290 ALR 713
 **Pullman* (1991) 25 NSWLR 89; 58 A Crim R 222
Cornelissen [2004] NSWCCA 449
Newbury and Jones [1977] AC 500
Church [1966] 1 QB 59
Holzer [1968] VR 481

(3) Intentional infliction of harm less than grievous bodily harm

Mamote-Kulang of Tamagot (1964) 111 CLR 62
Holzer [1968] VR 481