

MLL214 Notes – Criminal Law

THE FUNDAMENTALS OF CRIMINAL LAW (CHAPTER 1 – PAGE 3)
WEEK 1 – INTRODUCTION & OVERVIEW & OFFENCES OF STRICT & ABSOLUTE LIABILITY

Criminal law is made up of both a substantive and procedural component.

Substantive component: consists of defining and understanding the constituent elements of the various common law and statutory crimes and the defences that are available thereto.

Procedural component: denotes the enforcement mechanism, or the process through which criminal defendants are brought to court and prosecuted for their alleged discretions.

Reading cases - preamble

Note:

- The jurisdiction – State/Territory? (→common law or code?). Important because some defences exist only in some jurisdictions. For example, both NSW and Victoria are common law jurisdictions, but only NSW has the partial defence of diminished responsibility
- The position of the court in the hierarchy of courts: trial/appellate/High Court
- The *ratio decidendi* or reasoning (ground for deciding) of the court

When do we criminalise conduct?

An endless debate – for current purposes, we will note that criminalisation usually involves:

Public conduct:

- ie the conduct is an offence against one or more individuals

Moral wrongdoing:

- public condemnation of the behaviour
- includes the controversial crimes without victims

Issue – why do we not criminalise some conduct that is public and generally considered to be morally wrong eg racial vilification?

Definition of a crime:

- There is no universally accepted definition of what constitutes a crime as distinguished from other types of wrong such as torts, breaches of contract etc
- In reality, a crime is any conduct which the courts or legislatures choose to describe as such (as each of the jurisdictions in Australia retains the power to designate which legal wrongs are to be prosecuted through the criminal medium)

Defining crime....

Glanville Williams: 'a legal wrong that can be followed by criminal proceedings and which may result in punishment'

Definition by Louis Waller and CR Williams:

- Conduct is injurious to the public at large AND
- Conduct involves moral blameworthiness

Fundamentals Of Criminal Law

Sebastian Brünink



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