

Criminal law – classification of crimes and proof notes essay

[Law](#), [Common Law](#)



The major distinction between State criminal laws is based on common law and codified law.

; Common law states - NEWS, South Australia (AS) and Victoria (Vic) are recognized as common law jurisdiction, which rely extensively on the common law for criminal law, despite the existence of State criminal legislation. The common law is based on cases decided and administered in courts and was received upon establishment of the colonies in Australia -? Mambo v Queensland (No 2) (1992) 1 75 CLC 1. Thus, the prevailing law in these states is that originally introduced from England, and later modified by the statutes of the State legislatures. While these states are not pure common law states, they are referred to as such because:

- o They still use the common law as the source of some of their criminal law
- o Many of the criminal laws legislated reflect the common law many defenses are still established by the common law
- o Fundamental elements of criminal responsibility are drawn from the common law. Crimes Act 1900 (NEWS); Criminal Law Consolidation Act 1935 (AS); Crimes Act 1958 (Vic) ;

Code states - Code states have enacted criminal codes, which operate to replace the common law. In these states, for an offence or defense to be established it must be in the code. These codes can also alter basic common law principles -egg the concept of men's rear.

All criminal offences for the Australian Capital Territory, the Northern Territory, Queensland, Tasmania and Western Australia are collected under their respective codes. ; The relationship between the common law and the criminal code is not one of complete replacement. For both historical and

practical reasons, the codes reflect parts of the common law inherited from England. While it may not be correct to assume that the criminal codes were meant merely to codify the common law, it would be difficult to interpret fully many codified provisions without looking at the common law, as acknowledged in *Stuart v R* (1974) 134 CLC 426. ; Decisions in code States will not always be Of great value as a source Of criminal law to common law states, due to their different source of law. Caution must be exercised when referring to code States decisions to ensure that the relevant law is memorable. 1. 13 Jurisdiction: Jurisdiction to try criminal cases is generally territorially limited.

This refers to how the power of the court to deal with such matters will be limited to where an offence takes place within, or is sufficiently connected with the territory of the sovereign power. Thus, the State of South Australia exercises control over criminal matters occurring in South Australia.

Therefore, a South Australian court could not try a murder committed in Victoria. Under common law, various tests can be relied upon to establish territorial jurisdiction: ; The “ essential element” test -? I. . If the essential element of the offence took place within the territory. *R v Ellis* [1899] 1 CB 230 ; The “ terminators’ test - I.

E. The effect of result of an offence took place within territorial limits ; The “ initiatory” test - the physical conduct constituting the offence charged was performed by the accused within territorial limits ; The constitutional principle of “ peace, welfare and good government”, where the conduct affects the prosecutorial state. In *NEWS*, a geographical connection is

established where: a) The offence is committed wholly or partly within the state; or b) The offence is committed wholly outside the state but has an effect in the state. Statute has also expanded the jurisdiction of Victorian criminal courts for murder and manslaughter cases. Victorian courts will have jurisdiction where V dies in Victoria, or where V has been injured in Victoria and dies outside of Victoria. The importance of jurisdiction was demonstrated in the English case *R v Weaker* [2003] CB 1207. 1.

Classification of offences: There is a wide range of offence classifications existing in each State, often reflecting perceived criminal justice needs at the time. Distinctions such as that between felonies and misdemeanors are of no importance now. The most important distinction (particularly for the accused) is between summary and indictable offences. 12. 1 Summary and indictable offences: The distinction between summary and indictable offences is the most significant classification of offences, and relates primarily to the mode of trial. A PERSON CHARGED WITH AN INDICTABLE OFFENCE: ; Generally has a preliminary hearing or committal proceeding in a local court ; Is tried by a judge and jury. The judge rules on questions of law and the jury rules on question of fact.

A PERSON CHARGED WITH A SUMMARY OFFENCE: Less serious offence ; Determined finally before a lower court ; Tried by a judicial officer who is also a Trier of fact ; Only created by parliament, and cannot exist at common law There is a presumption that an offence is an indictable offence, unless otherwise explicitly made a summary offence in the statute. Generally, summary offences have a short limitation period. In most jurisdictions there

will be a time limit ranging from six months to one year for the commencement of proceedings for summary offences. The theory underlying the distinction between summary and indictable trials is that the more serious the accusation and the greater the potential punishment and deprivation of liberty, the greater the protection offered to the accused. Theoretically at least, one of the themes structuring criminal law is the need to protect citizens from the arbitrary exercise of power by the State. 1. 2.

2 Indictable offences tried summarily: Some offences may be tried either summarily or on indictment. Indictable offences which may be tried summarily are those which are less serious or where the damage or property involved is below a specified value. In NSW and Victoria, summary jurisdiction is vested if: The lower court is satisfied that it is appropriate to do so.

Example; summary trial should not be granted where there is a real possibility that the magistrate's powers of punishment will be insufficient to match the offences or where the matters in question are serious ; The accused consents to a summary proceeding. In addition, NSW has expanded summary jurisdiction under s 5 of the Criminal Procedure Amendment Act 1986. Under the legislation indictable offences fall into three categories: 1 .

Indictable offences not triable summarily 2. Table 1 indictable offences to be triable summarily unless the Director of Public Prosecutions or accused elects to have the offences dealt with on indictment 3. Table 2 offences (less serious

than table 1) to be dealt with summarily unless the prosecuting authority elects to have them dealt with on indictment.

This legislation reverses the former election of the accused, so that a Table 1 matter will be dealt with summarily unless the accused elects otherwise.

Additionally, the legislation imposes mandatory summary proceedings for

Table 2 offences. 1. 2. 3 Felonies and misdemeanors: The distinction

between felonies and misdemeanors arose at common law and has been

abolished in all states. In broad terms, and with exceptions, the distinction

was between more serious crimes (felonies) and less serious crimes

(misdemeanors). 1. The burden and standard Of proof: Mere accusation does not prove a crime.

In order for a person to be convicted of a crime, the facts of a case must be

established and then the appropriate rule of law applied. This separation of

law and fact is enshrined in most textbooks, where the ' facts' of a case are

summaries, with students then discussing the law. This creates the false

impression that facts are easily established, when often the real problem is

based in determining the facts of case. In the majority of cases the outcome

will rest on which view of the facts is accepted. This decision will be made by

the court in less serious cases, and by the jury in more serious cases. There

are rules that enable these decisions to be made. These rules differ

according to whether an offence is criminal or civil, due to the moral stigma

and sanctions attached to a finding of criminality.

Underlying the rules of proof is the ideal of protecting citizens from the arbitrary exercise of the power by the State.

3. 1 Standard of proof: In criminal proceedings the prosecution must prove the guilt of the accused beyond a reasonable doubt. The standard of proof for criminal trials is higher than for civil trials, where the party initiating the hearing must prove their case to the 'balance of probabilities'. The difference in standard reflects the stigma and potential loss of liberty associated with criminal liability.

The courts have made it clear that trial judges should not try to explain 'beyond reasonable doubt' to juries - R v Reeves (1992) 29 ANSWER 109.

3. 2 Legal burden of proof: The legal burden in criminal trials rests on the prosecution. The 'legal burden' refers to the case which must be made by the prosecution in order to persuade the Trier of fact that the defendant is guilty. The prosecution must prove all the ingredients of a particular offence beyond a reasonable doubt. According to the 'golden thread', it can be generally stated that the prosecution bears the burden of proving the guilt of the accused.

The authority for this rule - *Wilmington v Director of Public Prosecutions* [1935] AC 462, held: Throughout the web of the English criminal law one golden thread is always to be seen - that it is the duty of the prosecution to prove the prisoner's guilt... F at the end of, and on the whole of the case, there is a reasonable doubt, created by the evidence.

.. As to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an

acquittal. Thus, the rhetoric of the criminal law is that a person is presumed innocent until guilt is proved beyond a reasonable doubt. In order to establish the guilt of the accused, the prosecution must prove beyond a reasonable doubt all of the components of the offence and disprove any defense raised (subject to limited exceptions). Exceptions to the burden of proof resting on the prosecution: There are exceptions to the rule that the burden of proof to establish criminal responsibility rests on the prosecution under both common law and statute.

; Common law -? under common law, a defendant raising the defense of insanity must prove, on the balance of probabilities, that the defendant was insane at the time of the act charged - R v Porter (1933) 55 CLC 182. ;

Statute law - certain statutory provisions expressly impose the burden of proof on the defendant. Generally, these provisions require the prosecution to prove some facts beyond a reasonable doubt against the defendant, which will result in the conviction of the defendant unless the defendant can prove to the balance of probabilities some further facts. An example of this is SAA in NEWS, which imposes the burden of proof on the defendant wishing to plead substantial impairment of the mind in cases of murder. The jury must consider whether the prosecution had proven murder beyond a reasonable doubt or the defense has proven the facts grounding the defense to the balance of probabilities.

Drug legislation also represents a controversial example of statutory reversal of the burden of proof. 1. Evidential burden: The evidential burden refers to the rules of evidence that a party to a case must satisfy for an issue to have

been legally raised. In other words, there must be a sufficient foundation of evidence for every issue alleged. If the judge determines that insufficient evidence has been presented, the judge will not allow the jury to consider that issue. Example; if the prosecution attempts to establish the offence of theft by solely providing evidence that the defendant was found in possession of goods years after they had been stolen, the judge would determine that this evidence did not satisfy the evidential burden and will direct the jury to return a verdict of 'not guilty'.

If the defense attempts to argue that the accused was grossly intoxicated at the time of committing the crime, some evidence, such as presence at a pub, would be necessary for the judge to determine that the issue of intoxication had been raised satisfactorily. . 4. 1 Evidential burden and the prosecution: The evidential burden of constituent elements of the particular crime charged, excluding statutory exceptions, rest on the prosecution.

For example; the prosecution would bear the evidential burden of laying a foundation for an assault charge, and once these issues were raised, proving beyond a reasonable doubt that the accused caused unlawful bodily contact with the victim with the requisite intent. In practice, it is unnecessary to refer to the evidential burden when discussing the prosecution's burden of proof. This is because the evidential burden IS necessarily subsumed within the prosecution's legal burden of providing criminal responsibility beyond a reasonable doubt. 1. 42 Evidential burden and the defense: The evidential burden for general defenses (self-defense, duress, necessity, revocation etc) is placed on the accused.

The justification for placing the evidential burden upon the accused in relation to general defense is that it would be time consuming for the prosecution to negate all general defenses in every case.