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Mens rea and actus reus australia

Law can be divided up in a number of ways. It can be divided into 'statute law' and 'common law', and can also be divided into 'public law' and 'private law'. Under this system, public law deals with relations between individuals and the state, and private law deals with relations between individuals (meaning individual people or organisations). Another way to think about the law and what it does is to look at what sort of behaviour or relationships it deals with. So, we can divide law up into: criminal law; civil law; and administrative law. Whether a situation involves criminal, civil or administrative law will affect who is involved in dealing with the situation and what the result is of that law being broken. It also affects how and where cases are dealt with in the legal system. For the differences in court process, see this table. Criminal law The term 'crime' is usually used to refer to acts that involve violence against a person; theft or property damage, but also includes actions such as parking where you are not allowed to park, and 'white-collar' crimes such as embezzling, insider trading, etc. Offences are usually divided into summary offences (less serious offences), which can be decided by a magistrate at a local court, and indictable offences (more serious crimes), which are decided by a judge, or judge and jury in the District or Supreme Courts. Usually, in order to decide that a crime has been committed the court has to decide that the person committed an act ('actus reus') and intended to commit the act knowing it was wrong ('mens rea'). However, for some crimes (such as naming a child involved in criminal proceedings) that are 'strict liability' crimes, there is no requirement that the person intended to do the act. Criminal law deals with the regulation of conduct that the government, on behalf of society, considers is against the interests of the community. Because of this, criminal cases always involve the Crown (government) bringing the case to a court to be decided. This is called 'prosecuting' the case. Criminal cases are dealt with in courts, rather than in tribunals. The importance to society of people and organisations obeying criminal laws is also reflected in the fact that government takes responsibility for policing those laws through setting up a permanent police force as part of government (at both the state and federal levels). The outcome of a criminal case is a decision that the person or organisation that is accused of breaking the law is either 'guilty' or 'not guilty'. If the decision is that they are guilty, this means they have been 'convicted' of the criminal offence and the court can (and almost always will) order that the person or organisation be punished by having a 'penalty' imposed. The most common penalties ordered by courts when a person or organisation is found guilty of a criminal offence are orders to: pay an amount of money to the government (a 'fine'); or spend a period of time in gaol ('imprisonment') usually full-time but sometimes on a part-time basis, such as weekends only ('periodic detention'); or do unpaid work that is needed in the community ('community service'). A person cannot be found guilty of a crime unless the decision maker is satisfied that the prosecutor has proved 'beyond reasonable doubt' that the person committed the crime. This means that the prosecutor bears the 'burden of proof' or responsibility for proving their case to the required standard. The standard of proof in criminal cases, 'beyond reasonable doubt', is a higher standard of proof than in civil cases. The term 'illegal' is generally used for behaviour that is contrary to criminal law. An action is described as 'unlawful' if it is a breach of civil law. Civil law Civil law deals with the regulation of private conduct between individuals, organisations and government agencies. Unlike criminal law, most civil laws are found in common law rather than statute law. Because civil law deals with relationships, it often involves contracts, which are agreements between participants in society that set out what the legal relationship will be between those participants.[1] This can be in everyday dealings, such as entering into an agreement by taking a ticket in a car park, or clicking on 'I agree' to internet terms and conditions. Civil law is about the relationship between participants in society, so civil law cases are disputes between participants about something to do with their dealings with each other. A person or organisation who believes that another person or organisation has acted in breach of civil law in their dealings can bring a civil claim to court, this is often referred to as 'suing for damages', for example, for a personal injury. A person or organisation that makes a civil law claim is called the 'plaintiff'. The person or organisation against whom they make the claim is called the 'respondent'. Civil disputes can be dealt with in courts, or in specialist tribunals set up to deal with specific civil law matters. An example of a tribunal that deals with civil disputes is the NSW Civil and Administrative Tribunal. The outcome of a civil case is a decision on whether or not the plaintiff has proved 'on the balance of probabilities' that the other party failed to fulfil (or 'breached') their civil law obligations to the plaintiff. If this has been proved, then the court or tribunal can make an order for damages. This usually means ordering that the respondent pay an amount of money to the plaintiff that reflects the loss suffered by the plaintiff because of the respondent's breach of the plaintiff's rights. A significant area of civil law is family law. As marriage and divorce are areas covered by section 51 of the Constitution, family law is dealt with by federal courts: the Family Court of Australia and the Federal Circuit Court of Australia. If a criminal law has been broken, the court can make the person who broke the law 'pay a penalty'. This is paid (or served if it is a sentence of time in prison) to the state, rather than any person who was affected by the criminal act. If a civil law or right is broken, the court or tribunal can make the person 'remedy' the loss to a person affected by the law being broken. This is usually done by the court deciding on a dollar amount that reflects the loss ('damages') and ordering that amount be paid by the person who broke the law to the person affected. Administrative law Administrative law deals with the conduct of the executive branch of government in relation to non-government participants in society. Administrative law imposes obligations on the executive branch of government in its dealings with members of the society and in its exercise of executive power. Administrative law provides for specific ways in which people affected by government action can get information about and challenge that action. So, for example, individuals can make an application under freedom of information law to get access to government records. This may be records that the government holds about the applicant, or records about government actions or decisions that affect the applicant, or it can be records that there is a public interest in the government making available. There are laws dealing with freedom of information in all states and in the ACT as well as federally. These Acts are generally called the Freedom of Information Act. The Federal Act is the Freedom of Information Act 1982 (Cth) and it was substantially amended by the Freedom of Information Amendment (Reform) Act 2010, to make it easier and cheaper for people to access government information. The Australian Information Commissioner Act 2010 established the new Office of the Australian Information Commissioner which has freedom of information functions, privacy functions and government information policy functions. The NSW Act is the Government Information (Public Access) Act 2009 (NSW). The NSW Act applies not only to information held by government departments, but also to information held by government agencies and by local government. All government departments, agencies and local government have a process for making an application under freedom of information law. While there is often an application fee, this fee can be waived in certain circumstances, such as if the person making the application can't afford to pay the fee. Administrative law cases are often dealt with by specialist tribunals, but the decisions can be reviewed by courts. The executive is the branch of government that has responsibility for putting the law into effect - for more detail see The Executive. 1. Not all contracts are written down. A contract can be made simply by one person speaking to another person and offering to pay that person to do some work and the other person saying 'yes' to that offer. 08.12.2014 12.1 There is a common law presumption that 'mens rea, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence'[1] The general requirement of mens rea is said to be 'one of the most fundamental protections in criminal law'[2] and it reflects the idea that it is generally neither fair, nor useful, to subject people to criminal punishment for unintended actions or unforeseen consequences unless these resulted from an unjustified risk (ie recklessness).[3]12.2 Ashworth and Horder write:The essence of the principle of mens rea is that criminal liability should be imposed only on persons who are sufficiently aware of what they are doing, and of the consequences it may have, that they can fairly be said to have chosen the behaviour and consequences.[4]12.3 Some criminal offences, however, do not require proof of fault—these are described as strict liability and absolute liability offences. The Terms of Reference for this Inquiry ask the ALRC to consider laws that apply strict or absolute liability to all physical elements of a criminal offence. However, at this stage of its inquiry, the ALRC is interested in submissions on any strict or absolute liability element which people consider to be unjustified.12.4 This chapter discusses the source and rationale of the mens rea principle; how the principle is protected from statutory encroachment; and when it may be justified to create a criminal offence that does not require proof of fault. The ALRC calls for submissions on two questions.Question 12-1 What general principles or criteria should be applied to help determine whether a law that imposes strict or absolute liability for a criminal offence is justified?Question 12-2 Which Commonwealth laws unjustifiably impose strict or absolute liability for a criminal offence, and why are these laws unjustified?12.5 In Australia, criminal offences are generally characterised in one of three ways:mens rea offences—the prosecution must prove a physical element (actus reus) and a mental element (mens rea);strict liability offences—the prosecution is not required to prove fault, but there is a defence of reasonable mistake available;[5] andabsolute liability offences—'proof of fault is not required and no defences are available.[6] 12.6 In He Kaw Teh v R (1985), Brennan J explained the operation of mens rea as an element in criminal offences:it is implied as an element of the offence that, at the time when the person who commits the actus reus does the physical act involved, he either—(a) knows the circumstances which make the doing of that act an offence; or(b) does not believe honestly and on reasonable grounds that the circumstances which are attendant on the doing of that act are such as to make the doing of that act innocent.[7]12.7 Historically, criminal liability at common law necessarily involved proof of mens rea.[8] In Williamson v Norris (1899), Lord Russell CJ said:The general rule of the English law is that no crime can be committed unless there is mens rea.[9]12.8 In his Commentaries on the Laws of England (1765), William Blackstone wrote that, to 'constitute a crime against human laws, there must be first a vicious will, and secondly, an unlawful act consequent upon such vicious will'.[10]12.9 However, as discussed further below, strict liability offences were increasingly developed in the mid to late 19th century, particularly so-called 'regulatory offences'.[11]12.10 In Australia, the common law presumption of fault-based liability is also reflected in statute. Section 5.6 of the Criminal Code (Cth) creates a rebuttable presumption that, to establish guilt, fault must be proven for each physical element of a Commonwealth offence. Actus reus is the Latin term used to describe a criminal act. Every crime must be considered in two parts—the physical act of the crime (actus reus) and the mental intent to do the crime (mens rea). To establish actus reus, a lawyer must prove that the accused party was responsible for a deed prohibited by criminal law. Actus reus is commonly defined as a criminal act that was the result of voluntary bodily movement. This describes a physical activity that harms another person or damages property. Anything from a physical assault or murder to the destruction of public property would qualify as an actus reus. Omission, as an act of criminal negligence, is another form of actus reus. It lies on the opposite side of the spectrum from assault or murder and involves not taking an action that would have prevented injury to another person. An omission could be failing to warn others that you've created a dangerous situation, not feeding an infant who has been left in your care, or not completing a work related task properly which resulted in an accident. In all of these cases, the perpetrator's failure to complete a necessary activity caused harm to others. The exception to actus reus is when the criminal actions are involuntary. This includes acts that occur as a result of a spasm or convulsion, any movement made while a person is asleep or unconscious, or activities participated in while an individual is under a hypnotic trance. In these scenarios a criminal deed may be done, but it is not intentional and the responsible person will not even know about it until after the fact. Back to Crime Library Preview Preview CONTRIBUTOR To print this article, all you need is to be registered or login on Mondag.com. A 21-year-old Coffs Harbour man was recently found not guilty of breaking into a nearby home while naked and assaulting a woman in her bedroom - because he was deemed to be sleepwalking. The defence successfully argued that he was suffering from a state of "automatism, namely somnambulism" - sleepwalking in plain language. The defence argued that the accused therefore did not have the "requisite mens rea" to commit the offence. The legal term "mens rea" means a person has to have the awareness or knowledge that they are committing wrong in order to be convicted of a crime. Accused claims to have no knowledge of his actions In this NSW case, R v Jacob Bradley Holland [2017] NSWDC 47, police officers said the man slurred his words, appeared drunk and smelt of alcohol. He said he had drunk six cans of beer and gone to bed. He claimed the next thing he knew he was being held down in a strange house. The judge said there was no dispute that the accused had entered the house illegally and assaulted the woman in her bedroom. The woman's partner subdued the accused until police arrived. Police said at the time of his arrest he was mumbling and yelling incomprehensibly. The accused told police that in retrospect he thought he was in a dream where he was acting out a character from the roleplaying computer game "Skyrim". History of bizarre behaviour while sleepwalking The defence medical expert said the accused had been a sleepwalker from an early age and his symptoms in the case were consistent with sleepwalking. His violent acts were said to be caused by "sleep drunkenness", a condition whereby behaviour during sleepwalking can be aggressive. The defence said he was diagnosed with ADHD when he was four and it was then he started sleepwalking. He had been on Ritalin for many years and was diagnosed with Asperger's syndrome when he was fourteen. His brother told the court the accused had long done "weird and crazy" things when he was asleep, including once waking their mother to say: "I was inside a sandwich bag in the wardrobe". Aspects of behaviour inconsistent with somnambulism The Crown's medical expert said that the accused managed to enter the home silently and at one stage turned his head to make eye contact with the victim before the assault. This, the expert said, indicated that the accused's conduct was goal directed, not that of a sleepwalker. The Crown's expert told the court that the accused had managed to travel a complicated path undetected to the woman's bedroom door, which was inconsistent with automatism. Prosecution fails to prove that accused was not sleepwalking The case was heard by a judge alone who found there was no motive. The accused had never seen the woman before, or been in the house. The judge found that the prosecution had not satisfied him beyond reasonable doubt that the accused was not sleepwalking at the time. Therefore his conduct was not voluntary. "Unless the Crown proves beyond reasonable doubt that the act of the accused was subject to the control and direction of his will, then he must be acquitted because no offence has been committed." Judge Phillip Mahoney said in his judgment. An important legal factor for the judge was the 1990 High Court decision in R v Falconer [1990] HCA 49 concerning the proper construction of sections 23 and 27 of the Criminal Code (WA), which refer to a defence of automatism for criminal acts. Sleepwalking law has history of violent acts This is not the first time a person has been found not guilty of a crime due to sleepwalking. In 1950 a Melbourne mother axed her daughter to death believing she was fighting off enemy soldiers. She was acquitted as she was found to be sleepwalking. In 1987 in Canada, Kenneth Parks drove 23 kilometres to his mother-in-law's house, stabbed her to death and strangled his father-in-law almost to death. He got back in his car, drove to a police station and told them he'd found blood on his hands and feared he'd just killed someone, insisting he had no memory of the event. He was charged with murder. (See R v Parks, [1992] 2 S.C.R. 871.) He had good relations with his in-laws, but his whole family had a history of sleepwalking. Experts said he had been sleepwalking during the murder, and he was acquitted. But don't think sleepwalking is a ready defence. In all of these cases there was a long history of sleepwalking. Plenty of sleepwalking claims have been thrown out of court, and the question of "mens rea" remains a vexed area of law. Nathan Luke Criminal Law Stacks Law Firm The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances. 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