

Describe the nature of crime

In Australia a feature of the law is that it is discoverable. This means that the law can be known because it is written and accessible. The statute law is always published and is available in both hard copy and electronic form. Common law decisions, or decisions made by judges, are also available in both forms. In this way anyone can access and know the law and how it is to be applied.

The nature of crime is such that it can be described in a number of different ways:

- **Petty or serious crimes.** Most crimes are minor (petty) in nature. Most assaults, theft and property crimes, drug and traffic offences are minor matters and can be dealt with in the Magistrates Court. Ninety-five percent of all crimes fall into the minor or petty category. However, a small proportion of crimes (about five percent) are serious. Such crimes include murder, manslaughter, kidnap, robbery, serious drug offences and terrorism offences. These are heard in the intermediate (District) and superior (Supreme) courts.
- **Ad hoc/opportunistic crime or organised crimes.** Most crimes are not planned and tend to occur because they can occur. That is, a person takes an opportunity that arises because security is weak a person believes they will get away with the act. 'Spur of the moment' assaults fall into this category. However some crimes are well planned and are conducted with a high level of sophistication and organisation. Organised criminal gangs are very powerful and governments in all nations struggle to control such groups.
- **Domestic or transnational.** Each nation and each jurisdiction has its own criminal laws. This means that there are wide variations between the criminal laws in different nations and there are also widely differing approaches to enforcement and punishment. Laws broken within a nation should be tried within the nation. Transnational crimes are offences that breach the law of two or more nations simultaneously. Such crimes extend into other jurisdictions. These types of crimes require that nations work together and co-operate in the laws they pass, the sharing of police resources and in the penalties they impose.

The definition of crime

A crime may be defined as:

*An act or omission harmful to the State prosecuted
by the State in (proceedings brought in) the name of the State*

Figure 1 below explains each aspect of this definition.

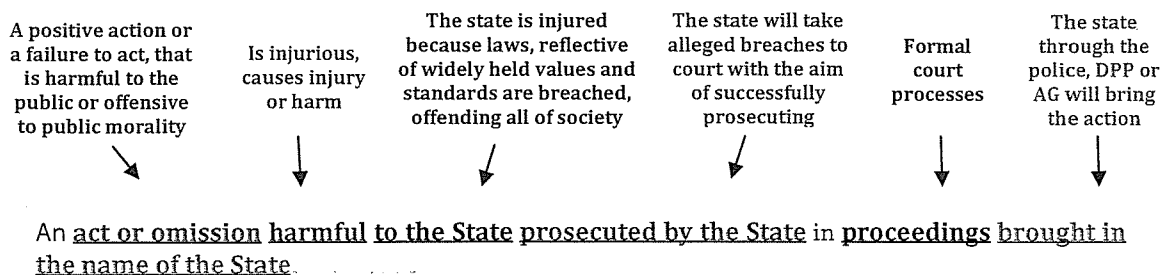


Figure 1 – The definition of a crime explained

Crimes are sometimes described in terms of the elements that must be proven in a court case arising from an alleged breach to the law. The elements of a crime are detailed below.

Allegations until proven in a court

The term 'allegation' and 'alleged offence' are often used prior to a person having a matter heard and proven against them in a court. These terms are important as they indicate that the person is being presumed innocent until proven guilty by the state. The media must be careful in its reporting of crimes to use these terms. To do otherwise would be to prejudice a future trial.

Another common term heard is 'the person is assisting the police with their inquiries'. This term means that a person has usually indicated they committed a criminal act, is in the process of confessing and have admitted their guilt.

The elements of crime

There are three elements to a crime all of which must be proven beyond reasonable doubt by the prosecution. The elements are:

actus reus, mens rea and causation

Each of these elements shall now be explored in more detail.

Actus reus: the conduct element.

This is the 'act' or failure to act (omission). Something must have been done or something that should have been done, not done (omitted) in order for this element to be proven.

Examples of *actus reus* include each of the following:

- The taking of another's money – this is an act (the taking)
- The striking of a person – this is an act – the hitting
- The failure to apply brakes to avoid a collision (this is an omission – the thing NOT done was applying the brakes)
- The failure for a parent to seek medical care for their infant child dying from avoidable and treatable illness

What if an act is unavoidable...?

Sometimes people cannot control their actions. For example, a person sneezing cannot keep their eyes open. Similarly, a person having a seizure may not be able to control their limbs and a person sleep-walking may never even know their actions. When people have no control over their actions then their conduct cannot be classified as 'guilty'. The defence of automatism recognises the effect of unavoidable acts.

Mens rea: 'guilty mind' – refers to the intention or the mental state of the offender

There are *THREE* aspects to *mens rea* each with a different level of culpability. This means that the level of legal liability and the seriousness of a crime differs depending on which of the following types of *mens rea* applies:

- When a person knowingly and intentionally carries out the act. This means that the person is fully aware and conscious and they are wilful and purposeful in their actions. An example of this aspect of *mens rea* would be in a pre-meditated crime where there is planning and a high level of purpose and intent. This is the most serious level of *mens rea*.
- Reckless indifference: here the person knows there are risks but carries on regardless. The degree of recklessness is unacceptable. There are some recent examples such as a person throwing a brick off a building (and being indifferent to the effect on people walking below) and road racing (see below). Recklessness is the intermediate level of *mens rea*.
- Negligence: here the person failed to see or consider what a reasonable person in their position should have considered or foreseen. That is, the person failed to see that their actions would result in crime but a reasonable person in the same situation would have foreseen that the crime would occur. Negligence requires the existence of a duty of care and a breach of that duty of care to cause injury or harm. Negligence can occur if a person deliberately acts or deliberately fails to act. Negligence demonstrates the least level of culpability.

Reckless indifference – Cases

Police believe drag racers are responsible for the deaths of an elderly man and woman in a car crash in outer-west Sydney. A 70-year-old woman and a 71-year-old man were driving east on the Great Western Highway at St Marys when the accident happened about 6:40pm (AEST). Senior Sergeant Peter Jenkins says two cars crashed into their sedan as it was turning right. "We had two vehicles, both Commodores and possibly a third vehicle appear to be engaged in some sort of race on the Great Western Highway. It appears they've taken up all three lanes," he said. The couple died at the scene. The drivers of the other two cars are in hospital.

Source: "Elderly couple killed during street drag race" from <http://www.abc.net.au/news/2007-07-30/elderly-couple-killed-during-street-drag-race/2517014>

R v Dean

Roger Dean was convicted of lighting a fire in a nursing home that killed eleven of the elderly residents. In sentencing Dean to life in prison, Justice Latham said that he had shown a 'reckless indifference to human life'. Dean was characterised by Latham as 'self-serving' and his elderly victims were extremely vulnerable.

Source: Janelle Wells, "Roger Dean jailed for life for deliberately lighting deadly fires Quakers Hill nursing home", 01.08.13 from www.abc.net.au/news/2013-08-01/roger-dean-jailed-for-life-over-quakers-hill-fire/4857926

The relationship between actus reus and mens rea

The thinking or intention of a person can be deduced from their actions. For example, if a person is suspiciously handling items in a store and secreting them in pockets then it could be evidence of a plan to shoplift. Often the only insight into a person's thinking is through observing what they did or do. Thinking about committing a crime is not evidence of *mens rea*. *Mens rea* can be deduced only when the thinking is acted upon. Sometimes the thinking aspect of offensive behaviour is not relevant. This is the case with strict liability offences.

Strict liability offences

These are often called 'regulatory offences'. Strict liability offences are a class of offences where only the commission of the act (the *actus reus*) is required for the offence to be proven. That is, there is no need to prove the *mens rea* element. Thus, the question 'why did you do it?' does not arise. There are defences that can be brought to such offences (necessity or 'honest and reasonable mistake of fact').

Causation

For a crime to have occurred there must be a link between the act (or failure to act) and the harm resulting or damage done. The link must be proven. Causation may be divided into two kinds: factual causation and legal causation.

Factual causation and the 'but for' test

Here the legal question is as follows: 'but for' the actions of the accused would the harm have occurred? If the answer to this question is yes then that means the result or harm would have occurred anyway – so there is no legal liability (see *R v White* below). But if the answer is no then it means that the action(s) of the accused was the factual cause of the harm, injury or result.

Case it Out R v White [1910] 2 KB 124

The defendant, White intended to kill his mother. He put some poison into his mother's milk in order to kill her. The mother drank a little of the milk and went to sleep. She never woke up. Medical reports done on the deceased revealed that she died from a heart attack - not the poison. White was charged with attempted murder but was not liable for his mother's murder. This is because the poison was not the cause of his mother's death.

This case established the 'but for' test. This test is applied as follows:

Would the result (mother's death) have occurred *but for* the actions of the defendant (the poisoning of the milk)? If the answer is yes (she would have died anyway) then the defendant (White) is not liable.

Legal causation and a culpable act

The defence will often try and argue that there is no causation because there is a *novus actus interveniens*: there was a 'new intervening act' that broke the chain of causation. The prosecution will argue that the actions of the accused were the 'substantial and operating

cause' that led to the result regardless of another intervening act.

Case it Out R v Blaue [1975] 1 WLR 1411 Court of Appeal

In this case Blaue, the defendant stabbed an 18-year-old woman four times after she refused to have sexual intercourse with him. The woman was a practising Jehovah's Witness. A requirement of the faith is that blood transfusions are not accepted. Even though she was bleeding to death, the woman refused to have a blood transfusion. The transfusion would have saved her life.

Blaue argued that he was not responsible for the woman's death because her refusal to get a blood transfusion constituted an intervening act that broke the chain of causation. That is, he argued that the refusal to accept the blood transfusion was a *novus actus interveniens* breaking the chain of causation. In effect he was saying that she killed herself.

The court found Blaue guilty of manslaughter. It held that the 'substantial and operating cause' of death was the stabbing – not the later refusal. Thus, the woman's refusal to seek medical care that could have saved her life was not a *novus actus interveniens* and the chain of causation was not broken by the woman's actions.

Case it Out R v Smith [1959] 2 QB 35

In this case the defendant, a soldier, got in a fight at an army barracks and stabbed another soldier. The injured soldier was taken to the medical centre but he was dropped twice on the way – probably worsening the victim's injuries. Once at the medical centre the treatment given was described as wrong to the point of even being negligent. Not only was the seriousness of the injuries not immediately recognised and assistance was delayed, the doctor also failed to diagnose that the victim's lung had been punctured. The soldier died.

Smith was convicted of murder and appealed saying that if the victim had received the correct medical treatment he would not have died. Thus he argued the negligent actions of the doctor were a *novus actus interveniens*. The court agreed that the medical care was well below standard however did not accept an argument that there was a break in the chain of causation. The court held that the stab wound was an *operating cause* of death and therefore the conviction was upheld.

There are also cases where the victim whilst fleeing from the accused ends up dying. The question here is whether the actions of the victim in running away or trying to save themselves were a break to the chain of causation – a *novus actus interveniens*. That is, did the victim act in an unreasonable or irrational manner? Imagine for example, a person fleeing an attack by running into heavy traffic. Who is responsible for the injuries the victim could receive?

The leading case here is: *Royall v R* (1991) HCA – where the victim died after falling from a small 6th floor bathroom window of a flat. The accused argued that he did not force her, push or throw her, she jumped voluntarily. The evidence was that the victim had previously been assaulted by the accused and that in this case she was either forced out of the window, retreated from an attack or jumped to escape the violent attack. The evidence at the crime scene indicated that, had she stayed within the apartment she would have been murdered. In this case the High Court held on appeal that it did not matter how she fell – she would have died if she stayed in the flat and thus the accused's attack was an "operating and substantial" cause of death.

Review Activities – The Nature of Crime

1. What is a crime?
2. Distinguish between petty crime and serious crime.
3. Describe how opportunistic crime is different to organised crime.
4. Why do domestic criminal laws differ from international criminal laws?
5. How can a crime occur from an 'omission'?
6. Identify THREE (3) elements of a crime.
7. Outline the *actus reus* element of a crime.
8. Define the term *mens rea*.
9. Distinguish between THREE (3) aspects of *mens rea*.
10. How are *actus reus* and *mens rea* related?
11. Describe offences that are strict liability in nature.
12. Define the term causation.
13. What does *novus actus interveniens* mean?
14. Explain the 'but for' test.
15. Detail the importance of *R v Royall* (1991).

Recognise the different categories of crime

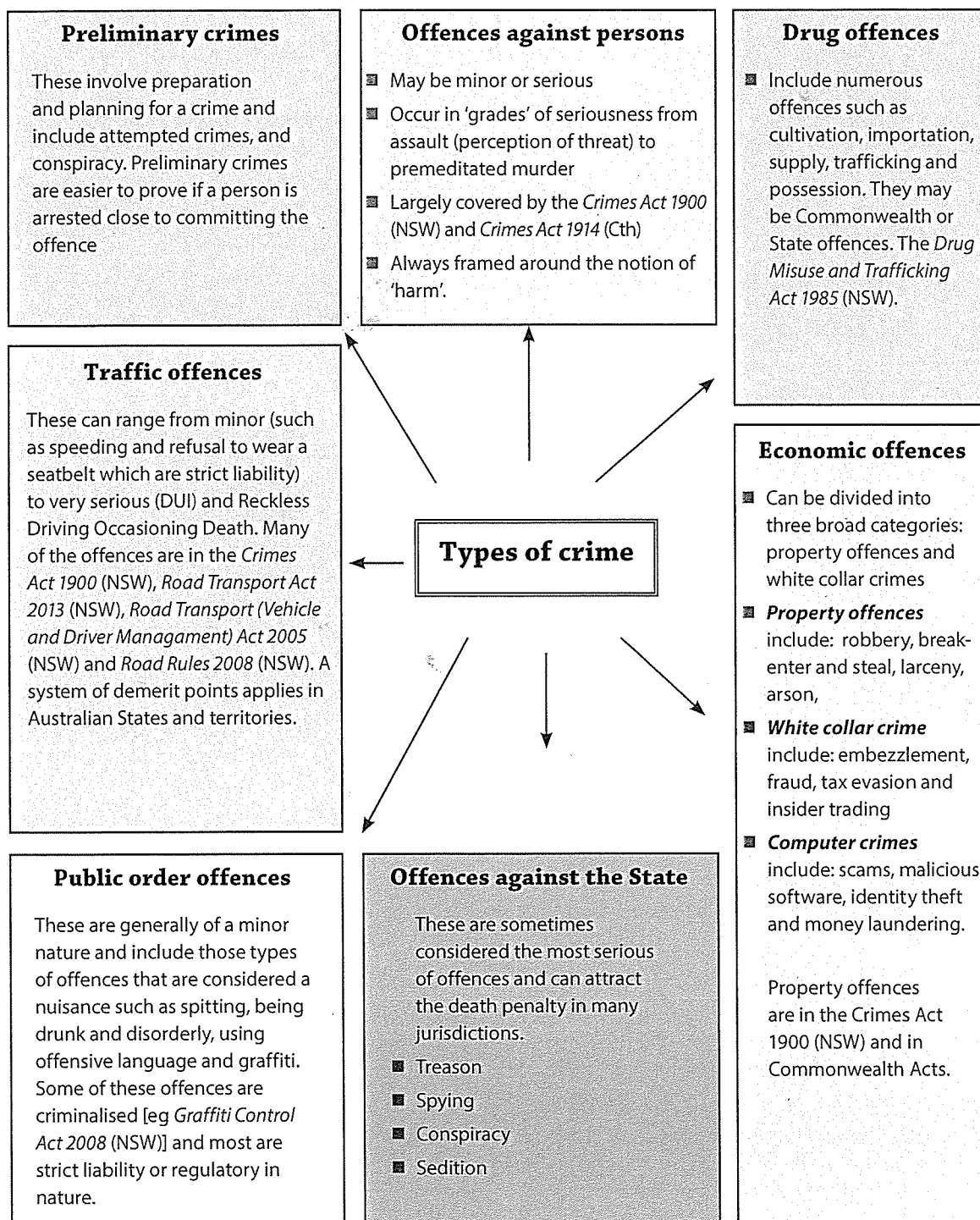


Figure 2 – A summary of the main categories of crime

It can be seen from Figure 2 that there are seven main categories of crime including: offences against the person, offences against the sovereign, economic offences (property/white collar/computer), drug offences, driving offences, public order offences, preliminary crimes (attempts and conspiracy). "Victimless crimes" are a classification of crimes that seeks to capture behaviour where the perpetrator and the victim are complicit.

Offences against persons

Offences against persons are defined as acts that intend to cause harm or injury to the victim. These types of crimes are divided into three distinct areas: homicide, assault and sexual assault. Each of these will now be explained.

Homicide

Defined as the unlawful killing of another person – including both deliberate and accidental acts of killing. In a homicide case, the judge must determine a causal relationship between the actions of the accused and the death of the victim.

Murder (deliberate homicide)

Murder is one of the most serious crimes listed in the *Crimes Act 1900* and it carries with it a maximum penalty of life imprisonment. In order to prove murder, one of the following must be proven:

- the accused intended to deliberately kill the victim
- the accused set out to inflict bodily harm, which caused the death of the victim.
- the act was done with reckless indifference to another human life; the accused did not care it would end a human being's life.

Crimes Act 1900 - s18 - Murder and manslaughter defined

(1)

- a. Murder shall be taken to have been committed where the act of the accused, or thing by him or her omitted to be done, causing the death charged, was done or omitted with reckless indifference to human life, or with intent to kill or inflict grievous bodily harm upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused or some accomplice with him or her, of a crime punishable by imprisonment for life or for 25 years.
- b. Every other punishable homicide shall be taken to be manslaughter.

Source: http://www.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s18.html

Can killing another be legal...?

Homicide is defined as the 'unlawful' killing of another person. This distinguishes it from the lawful killing of another. Lawful killing can occur in several different situations:

- Where it is actually encouraged by the government in times of war where soldiers are authorised to kill others
- Where a person is acting in self-defence
- When a person is taken off a life-supporting medical device
- When to not do so could result in greater harm

The maximum penalty if life imprisonment [s19A(1)] will be levied when the murder involves is in the most serious category or it involves the killing of a police officer while on duty [s19B].

Manslaughter

The difference between the two types of homicide, murder and manslaughter, lies in the intent of the accused. A person is charged with manslaughter when it can be proven that they did not intend to kill someone. Whilst the maximum penalty for murder is life imprisonment, the maximum penalty for manslaughter is 25-years (*s24 Crimes Act 1900*). The three main types of crime that fall under the classification of manslaughter are:

1. Voluntary manslaughter: where a person intends to kill another but mitigating factors reduce the seriousness of the crime. The mitigating factors will normally be the defences allowed under s23 and s23A of the *Crimes Act*: provocation and substantial impairment by abnormality of mind. It can also involve excessive self-defence.
2. Involuntary manslaughter: where a person kills another, but has no intention of killing – there is no malice and no intent to kill. The death can be the result of recklessness (where there is an unlawful and dangerous act, such as reckless driving) or negligence (where there is a lawful act but criminal negligence).
3. Constructive manslaughter the killing of a person while the accused was carrying out another indictable crime.

Infanticide is a particular type of manslaughter that occurs when a mother kills her infant within the first twelve months of its life (*s22 Crimes Act*). Infanticide shall be explored further when defences are discussed later.

Assault

This is defined as the threatened or direct actual application of force, violence or injury upon a person. The penalties for assault range from two to twenty five year's imprisonment. There are different types of assault each with differing levels of seriousness:

- Assault not occasioning actual bodily harm: 2 years imprisonment. If the victim is a police officer the penalty rises to 5 years.
- Assault occasioning actual bodily harm (bruising, scratching and so on), stalking and psychiatric injury arising from serious and repeated threats. Penalties are up to 5 years imprisonment. If the assault is in company the penalty rises to 7 years.

- Grievous bodily harm (serious but not fatal wounding): penalty can be up to 25 years imprisonment.

In terms of statistics, for the period 2009-2010 there were:

- 8,380 serious assaults causing injury (30.8% of all assaults). 40.8% of the offenders received a bond as the penalty and 18.6% were imprisoned
- 2,024 serious assaults not causing injury (7.4% of all assaults). 40.5% of the offenders received a bond, 21% a fine and 12.2% were imprisoned
- 14,014 common assaults (50.1% of all assaults). 40.5% received a bond, 26.4% a bond without conviction/no conviction recorded and 19.5% a fine
- 2,821 stalking offences (10.4% of all assaults). 50.4% a received a bond, 13.2% a fine and 12.7% a bond without conviction/no conviction recorded

80.8% of all of the offences were conducted by males and 19.2% by females.

Source: Isabel Taussig, "Sentencing snapshot: Assault", BOCSAR, Issue Paper No 66, Sept 2011

Sexual offences

This is another category of offences against persons and is commonly understood to involve the unlawful sexual contact by a person on another without their consent, but actually encompasses a wide range of offences (see below). This area of law has been subject to much law reform over time and reflects a huge shift in social standards and the changing status of women. Sexual offences vary in severity and carry penalties of imprisonment of up to 20 years for the most serious offence of aggravated sexual assault. The range of offences includes:

- Obscene exposure (s5 *Summary Offences Act*): 10 penalty units or 6 months imprisonment
- Act of indecency (s61N of *Crimes Act*) up to 2 years imprisonment
- Indecent assault (s61L of *Crimes Act*) up to 5 years imprisonment
- Sexual assault (formerly called 'rape') (s61I of *Crimes Act*): 14 years imprisonment. This is an indictable offence heard in the District Court.
- Aggravated sexual assault (s61J *Crimes Act*): 20 years imprisonment. This is also an indictable offence and will be heard in the District Court.

Other sexual offence relate to prostitution and child pornography.

Aggravated sexual assault in company (s61JA *Crimes Act*)

The most serious sexual offence in NSW is aggravated sexual assault. It occurs when there is a high degree of violence or where a victim is under age or particularly vulnerable on account of a disability (physical or intellectual).

An amendment was made to NSW law in 2001 with the passing of an amendment to the *Crimes Act* and the insertion of s61JA. This amendment aimed to recognise the need to pass harsh laws against gang rapists and it increased the maximum penalty to life imprisonment and mandate a standard non-parole period of 15 years.

Other aspects to assault

Assaulting a police officer, correctional services officer or judge is considered amongst the worst types of offences against the person. This is because these officials enforce the law and thus an assault on such people is an assault against lawful authority. The assault of public officials in commission of their duties is an aggravating factor.

Aggravation

There are some things that increase the culpability and make an offence more serious. Such things are aggravating factors and include violence, planning, if the victim has a vulnerability on account of their age and if the perpetrator was with others (in company, in a joint enterprise).

Review Activities – Offences against persons

1. List SEVEN (7) categories of offences.
2. Identify THREE (3) different classifications of offences against persons.
3. Define the term homicide.
4. Explain the importance of s18 of the *Crimes Act 1900* (NSW).
5. Distinguish between murder and manslaughter.
6. How do voluntary manslaughter, involuntary manslaughter and constructive manslaughter differ?
7. What is assault?
8. Distinguish between different types of assault.
9. Define the term sexual assault.
10. Distinguish between FIVE (5) different types of sexual assault.
11. What does the term 'aggravated' mean?
12. Why is assault against public officials in the conduct of their duties an aggravating factor?

Offences against the sovereign

Offences against the sovereign are amongst the most serious of offences. This is because the safety of the public can be compromised if the authority of the government is undermined. Offences against the sovereign therefore attract the highest penalties. Indeed, in many nations the only offences attracting the death penalty are crimes against the sovereign.

Offences against the sovereign are offences against the lawful authority of the state and include the following:

- Treason (including spying and espionage)
- Sedition
- Terrorism (including offshore cyber terrorism)

Treason

Treason is defined as acts taken against the sovereign or the government. It can be seen when a person is involved in actively undermining lawful authority and thus challenging the state. It can also be seen if a person engages in war against the state or supports the enemies of the state. Treason therefore includes acts of spying and espionage.

Sedition

This refers to actions that are often quite public and in defiance of authority, often aimed at inciting others to rebel against the government and its laws. Sometimes seditious acts are done by people seeking to draw attention to laws that they believe are immoral. This is detailed below.

When there may be a duty to challenge the government

Sometimes a law is passed that is considered unjust or immoral. Under such circumstances there is a question about what the duty of citizens is in relation to the law. Consider for example a road rule that bans a 'P-Plater' from driving with more than two passengers in the car at night. It is possible that a young woman may want to drive home some female friends after a party at night. This might particularly be the case if there are no taxis or public transport available. In this case, in order to protect her friends the woman might decide that, on balance, the rule banning her from carrying passengers, if upheld, could place her friends at risk. Under such circumstances the moral decision may be to breach the rule.

Civil disobedience

An actual historical case of a challenge to a government can be seen in Gandhi's Salt March in India in 1930. At the time of the long march to the sea it was illegal under the *Salt Acts* for citizens to make their own salt. This law was used by the British to oppress the Indians over whom they ruled. The government had a monopoly over salt supply and taxed the mineral heavily. This had an oppressive effect on the poorest of citizens. Moreover, making sea salt was a tradition amongst Indians. Gandhi saw it as his duty to not only break the law but to encourage the whole nation to break the law. When he arrived at the beach Gandhi picked a small piece of salt and he was later arrested and jailed for 8 months.

Terrorism

This is the unlawful use of force with a political aim. Terrorism is particularly sinister because terrorists often target civilians and 'soft targets' rather than government forces. Due to the indiscriminate nature of the violent acts perpetrated by terrorists, governments around the world have passed very strict anti-terrorism laws. Such laws often allow enforcement authorities to detain people for extended periods on the basis of reasonable suspicion.

The following laws have been passed by the Commonwealth in response to terrorism and a need to protect the government and citizens in Australia:

- *Anti Terrorism Act 2004 (Cth)*
- *Anti Terrorism Act (No. 2) 2005 (Cth)*
- *Part 5.3 of the Criminal Code Act 1995 (Cth)*

In addition there are also state and territory specific laws. In NSW the *Terrorism (Police Powers) Act 2002* details the powers of the police in relation to terrorism related offences.

Whistleblowers – defenders of human rights or acts of treason...?

There is much legal discussion and commentary by human rights and national security advocates about the issue of whistleblowers. The actions of Edward Snowden (leaks against the CIA), Bradley Manning (expose of US war crimes in Iraq) and Julian Assange (wikileaks) have raised questions about the power and actions of government and whether citizens have a duty to expose the actions of governments, or whether this has a negative effect on national security. Each of these people has been described as carrying out acts of treason but they have also each been lauded by those who advocate for human rights protections.

The issue facing national governments at a time when there is a threat of terrorism is how to balance the need for citizens to have basic freedoms against the need to have security and control over what people do.

This area of law is an evolving issue in criminal justice in many jurisdictions around the world.

Review Activities – Offences against the sovereign

1. Define the term offences against the sovereign.
2. Why are offences against the sovereign usually punished severely.
3. Distinguish between treason and sedition.
4. What is 'civil disobedience'?
5. Is there ever a duty to act against the state?
6. Define the term terrorism
7. Identify THREE (3) laws that define and criminalise terrorist acts.
8. Define the term whistleblower.
9. Is a whistleblower committing acts against the state or defending human rights? Justify your response.

Economic offences

There is a wide range of economic offences which deprive owners of property of their property. Broadly speaking, there different types of economic offences: crimes against property, white collar crimes and computer crimes as shown in Table 1 below.

Economic offences		
Crimes against property	White collar crimes	Computer crimes
<ul style="list-style-type: none"> ■ Larceny (theft): the taking of personal goods from another without the consent of the owner and with the intention of permanently keeping them. Shoplifting is a type of theft. ■ Break and enter: the unauthorised entry into premises with the intent to commit an offence ■ Obtaining property by false pretences: this involves a deception that induces in the victim a belief that something untrue is true. In so doing the accused obtains financial advantage from their false and misleading claims ■ Robbery: theft accompanied by force. Aggravated robbery is robbery with violence and/or robbery in company ■ Arson: the deliberate lighting of a fire that destroys property ■ Malicious damage: the intentional damage of property including vandalism and graffiti. ■ Receiving stolen goods: possession of stolen goods in an offence where the receiver knew or suspected they were stolen. 	<ul style="list-style-type: none"> ■ Embezzlement: when employees in a business steal by making the accounts appear healthy as they transfer funds to themselves (often through fictitious accounts). This includes fraudulent misappropriation. ■ Insider trading: Where a person with knowledge about decisions made within a company and their likely effect on share price unlawfully uses that knowledge for financial advantage. ■ Insurance fraud: where insurance monies are obtained through dishonesty and deception. ■ Industrial espionage (also called economic espionage): the theft of commercial-in-confidence information (trade secrets) from a competitor. This can be done through employees, intercepting telecommunications devices or through reverse engineering ■ Tax evasion: the unlawful avoidance of taxation through the use of revenue masking and overstating expenses. Tax evasion is also done through the illegal use of offshore companies in tax havens. 	<ul style="list-style-type: none"> ■ Counterfeiting, forgery, unauthorised copying and other intellectual property (IP) offences: These offences include illegal downloads and files sharing offences. ■ Computer hacking: the unauthorised intrusion onto a person's computer with malicious intent. ■ Identity theft: when a person steals another's identity by unauthorised use of personal data such as email, credit cards, driver's licence and other personal identifiers with fraudulent or malicious intent. ■ Denial of service attacks: this occurs when a hacker disrupts communications or the service of the victim's computer. ■ Scams: where fraudulent emails are received by victims. The scammers normally requests personal banking details or asks a person to verify their details. In so doing they are giving the scammer access to their bank accounts. Phishing attacks are a variation that look particularly like they come from a legitimate bank. ■ Malicious software: the sending of hidden viruses to a victim's computer that can cripple their computer ■ Spam: unsolicited advertising or promotion appearing to be making a commercial offer but which can be seeking to get the victim to divulge personal banking information.

Table 1 A summary of the different types of economic offences

Crimes against property

As the title suggests and as shown in Table 1, these are offences that target tangible possessions such as goods and real property. Crimes against property vary from theft to damage. All such crimes have financial implications. Crimes against property are widespread and are sometimes said to occur on account of materialism and the focus on property possession. However, property offences can be motivated by something else – such as addiction. A person with an addiction may need money in order to foster the addiction. In such cases they might turn to property crime.

White collar crime

This class of economic offences relates to administrators, professional people and those who work in offices, companies, institutions and for government. White collar crimes are offences that are non-violent in nature and involve corruption and often also a breach of fiduciary duties.

Fiduciary duties

These are legal duties that arise for those who are in a trusted position with respect to the handling of money within businesses and institutions. A fiduciary must act in the best interests of the organisation and of those who own the money. They cannot act in self-interest. Where there is a possible conflict of interest then this must be disclosed.

White collar crimes have been penalised differently to other economic offences such as property offences. This fact has led to a criticism about what is criminalised and the different thresholds for getting a successful prosecution. Consider the following that exemplifies:

A person who commits a robbery for \$20,000 can be jailed for four years. A person who defrauds investors of \$20 million may get 2 years jail. This leads to analysis that questions whether white collar criminals are treated more favourably under the law than those who commit 'blue collar' economic offences. White collar crimes are harder to prove as the evidence required can be hard to obtain and the threshold for proof of the elements of various offences can be very hard to legally establish

Computer crime (s308 Crimes Act)

These are offences where technology is used. It is a rapidly growing area of criminal activity as the pace of innovation and the increasing power of mobile devices allows criminals to do things not previously possible. A serious issue with respect to these crimes is that the technology changes in advance of the law and this places pressure on the law to reform. However, law reform can be slow and thus many crimes can proliferate while lawmakers try and draft appropriate regulations and penalties.

Review Activities – Economic Offences

1. What are economic offences?
2. List THREE (3) different types of economic offences.
3. Describe crimes against property, with reference to THREE (3) examples.
4. Describe white collar crimes with reference to THREE (3) examples.
5. Define the term 'fiduciary duties' and explain why such duties are important.
6. Describe computer crimes with reference to THREE (3) examples.
7. Which section of the *Crimes Act* penalises computer crimes.
8. Why is technology an issue with respect to crimes and law reform?

Drug Offences

Drugs are psychotropic substances that alter the perception of people. Drug offences are an unusual category of offences because the penalties can be extremely serious at one level and at another level there is on-going discussion about drug law reform and decriminalisation. Thus, an understanding of drug offences requires an understanding of the wide variation in types of drugs. The main legislation in NSW is the *Drug Misuse and Trafficking Act 1985* (NSW). This law recognises that offences can vary in severity and thus it categorises drugs into a table called Schedule 1. Schedule 1 details the how much of various chemical compounds are required to constitute the following:

- Small quantity (summary offence)
- Traffickable quantity (more than for personal use)
- Indictable quantity (indictable offence)
- Commercial quantity
- Large commercial quantity

There are different aspects of drug offences that try and capture the various activities involved: drug supply, possession, use, intent to sell, or making or growing drugs (manufacture and cultivation). Federal offences include importation (a customs offence).

The purpose of Schedule 1 is to assist in guiding the laying of charges. However, it also indicates the strict liability (sometimes called 'absolute liability') nature of some of the drug offences. If for example a person has a quantity of drugs that place it in the 'traffickable' range then it is assumed a person was going to traffick even if the drugs were for personal use.

As some drug offences relate to addiction, in NSW and other Australian jurisdictions there are specialised courts like the Drug Court. The role of the NSW Drug Court is detailed below.

The NSW Drug Court

The Drug Court of NSW is a specialist court that sits in three locations, Parramatta, Toronto and Sydney in New South Wales, Australia. It takes referrals from the Local and District Courts of offenders who are dependent on drugs and who are considered to be eligible for a Drug Court program. The Drug Court of NSW attempts to address underlying drug dependency which has resulted in criminal offending. Drug courts have emerged in a number of countries as a result of growing disenchantment with the ability of traditional criminal justice approaches to provide long term solutions to the cycle of drug use and crime.

Source: http://drugcourt.lawlink.nsw.gov.au/drgcrt/dc_aboutus.html

Is the criminalisation of drug offences patriarchal in nature...?

There are different approaches to the issue of drugs, criminal justice and health care. In Australia there is a mix of regulation and deregulation in the form of decriminalisation for 'soft drugs' such as marijuana. In some jurisdictions the focus is on heavy penalties (Singapore, Malaysia, Vietnam and Indonesia) whereas in others the focus is on investing in information and health care to educate and support on the effects of drug use (the Netherlands, Brazil and Argentina). Globally, however there has been a general shift towards the relaxation of drug laws and a recognition of the health effects needing consideration during sentencing.

Review Activities – Drug offences

1. What are drugs?
2. Identify the main law that criminalises drug use and details other drug offences.
3. Identify FIVE (5) different types of drug offences.
4. What is the importance of Schedule 1 of the *Drug Misuse and Trafficking Act* 1985?
5. Explain how some drug offences are strict liability in nature.
6. What is the importance of the NSW Drug Court?
7. What does it mean to say drug laws are patriarchal in nature?

Driving Offences

Driving offences may be classified as traffic offences and crimes. Most traffic offences are dealt with under the following NSW laws:

- *Road Transport Act 2013* – this is the main law and deals with licensing, registration and the demerits points system, defective and damaged vehicles. Chapter 5 deals with safety and traffic management and thus covers drug and alcohol use, speeding, dangerous driving and the use of speed cameras.
- *Road Transport Amendment (Licence Disqualification on Conviction) Act 2013*
- *Road Transport (Vehicle and Driver Management) Act 2005* – applies to trucks and heavy vehicles.

There are also sections of the *Crimes Act* ss51A, 51B, 52A, 52AA and 52AB are also relevant. These sections cover predatory driving, police pursuits and dangerous driving.

Driving offences can be quite minor and regulatory in nature such as the strict liability offences of speeding and failing to wear a seat belt. As such, for these offences only the *actus reus* need be proven. The police deal with these traffic offences on the spot with fines. A further aspect is the use of demerit points as detailed under s32 of the *Road Transport Act*. These are points that are accumulated for offences and once they reach a pre-determined number they result in licence disqualification. A full license carries 12 demerit points.

There are times of the year when traffic on the roads is high and in order to manage the high volume and the dangers associated with speeding and drink driving these times are designated as ‘double demerit’ periods. This means the monetary fines and points will both be doubled for offences taking place within the period.

More serious driving offences include high range drink driving (high range PCA), dangerous driving and negligent, furious or dangerous driving (s117). Penalties for these range from 9 months – 2 years imprisonment and fines of up to 50 penalty units (\$5,500).

Review Activities – Driving offences

1. What are driving offences?
2. Identify THREE (3) laws that regulate driving and traffic offences.
3. What types of driving offences does the *Crimes Act* detail and punish?
4. Explain, with reference to relevant examples, how many driving offences are strict liability in nature.
5. What are demerit points and how does the demerit system operate?
6. Describe how some driving offences can be minor whilst others can be very serious.

Public order offences

Public order offences are acts that society deems to be inappropriate conduct or offensive conduct, for example offensive conduct, nudity ('obscene exposure') and offensive language (such as swearing in public and using profane language). Look at the excerpts from the *Summary Offences Act* and the *Crimes Act* below. It can be seen that many public order offences can be quite minor whilst others are extremely serious.

Summary Offences Act - PART 2 - OFFENCES IN PUBLIC AND OTHER PLACES

Division 1 - Offensive behaviour

4. Offensive conduct
- 4A. Offensive language
5. Obscene exposure
6. Obstructing traffic
- 6A. Unauthorised entry of vehicle or boat
7. Damaging fountains
8. Damaging or desecrating protected places
- 8A. Climbing on or jumping from buildings and other structures
9. Continuation of intoxicated and disorderly behaviour following move on direction

Source: http://www.austlii.edu.au/au/legis/nsw/consol_act/soa1988189/

Crimes Act - PART 3A - OFFENCES RELATING TO PUBLIC ORDER

- Division 1 - Riot and affray
- Division 2 - Explosives and firearms offences
- Division 3 - Contamination of goods
- Division 4 - Bomb and other hoaxes
- Division 5 - Participation in criminal groups
- Division 6 - Unlawful gambling

Source: http://www.austlii.edu.au/au/legis/nsw/consol_act/ca190082/

It can be seen that those offences listed under the *Summary Offences Act* are quite minor in nature. However, the offences listed in the *Crimes Act* can be extremely serious and can overlap with some of the offences against the sovereign which can be very dangerous for society. Such offences include the riot and affray offences that can lead to danger to the police and public. Clearly explosives offences and the participation in criminal groups are amongst the most serious of crimes.

Sydney riots – Cronulla and in the City

There has been a recent history in Sydney of serious breaches of public order. In December 2005 there were riots in Cronulla that were targeted at Middle Eastern Australians and after which there were retaliatory attacks from Lebanese Australians. The riots were widely reported in the media locally and around the world with several countries issuing travel warning to people travelling to Australia. In September 2012 Muslims in Sydney protested against an anti-Islamic film called 'Innocence of Muslims'. The initially peaceful protests turned violent and led to the arrest of nine protesters. The extremist banners carried by some protesters reflected poorly on those people and the issue of freedom of speech (the movie expressed views that were hurtful to Muslim Australians) when used in a racist manner was also at issue.

Review Activities – Public order offences

1. Define the term public order offences.
2. Identify TWO (2) laws that define and penalise public order offences.
3. With reference to relevant examples, distinguish between minor and indictable public order offences.
4. Why are many public order offences summary in nature?
5. Explain why the most serious public order offences are heavily penalised.

Preliminary crimes

Preliminary offences fall into two main categories:

- Attempts
- Conspiracy

Attempts

Attempts occur when the crime has not yet been carried out because the person who intended to do so has been caught in the planning stage or in the attempt to carry out the crime the offender has been stopped. If an attempt has been made to commit a crime it is still classified as a criminal offence. Attempts are most successfully prosecuted when the actual planning has been finished and the actual crime is in the process of being committed. Consider the situation where a person shoots a gun at a person, but the bullet passes wide. This could be construed as 'attempted murder'.

Attempts to commit an indictable offence can carry the same penalties as the actual commission of the crime (s344A *Crimes Act*).

Conspiracy

Conspiracy occurs when two or more people jointly agree to commit a crime or unlawful act(s) together. Here the issue is one of evidence as generally an agreement will be verbal in character rather than in writing. Conspiracy is a common law offence but several aspects of the *Crimes Act* make direct reference to it, such as: Schedule 10 (s475A) and s279.

Other classifications of offences

Regulatory Offences

These are offences that are in statutory form and generally are offences that are minor in nature. Regulatory offences are often strict liability in nature thus only actus reus need be proven. Environmental offences, many driving offences, consumer protection, public health and workplace safety laws are all regulatory in nature.

'Victimless' crimes (also called 'patriarchal' or 'paternalistic' crimes)

Defined as a crime where there is no victim. Sometimes these are called 'paternalistic crimes' and they include offences such as unregulated gambling, drug offences, prostitution and the like. They are termed 'victimless' because both the 'victim' and the perpetrator are complicit and thus neither wants to report the activity. These offences are called 'paternalistic' because the state acts as the moral arbiter on the behaviour and bans it even though people agree between themselves that they want to undertake such acts. Such offences indicate the moral orientation of the state.

Review Activities – Preliminary crimes

1. Identify TWO (2) categories of preliminary offences.
2. Define the term attempts.
3. Explain why an attempted offence is more likely to be successfully prosecuted if it actually fails.
4. Why are attempts sometimes penalised as heavily as the actual crime being attempted?
5. Define the term conspiracy.
6. Why might it be easier to prove conspiracy if there is written evidence of an agreement between the conspirators?

Other classifications of offences

7. Identify TWO (2) classifications of offences not previously defined.
8. Define the term regulatory offences with reference to an example.
9. Define the term 'victimless crimes' with reference to THREE (3) examples.

Summary and indictable offences

Offences can be classified into those that are relatively minor and those that are serious. Minor offences are termed summary offences and serious offences are termed indictable. The main laws that detail the summary and indictable offences are:

- *Crimes Act 1900* (NSW)
- *Summary Offences Act 1998* (NSW)
- *Crimes Act 1914* (Cth)
- *Criminal Code Act 1995* (Cth)
- *Customs Act 1901* (Cth)

Other laws are particular to the actual class of offences such as the *Drug Misuse and Trafficking Act 1985* (NSW) that articulates and penalises drug offences.

The division of offences into those that are summary and those that are indictable has its source in the Australian Constitution. Section 80 (shown below) gives the right to a trial by jury for indictable offences.

Commonwealth of Australia Constitution Act - s80 - Trial by jury

The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed.

Extract from source: http://www.austlii.edu.au/au/legis/cth/consol_act/coaca430/s80.html

Whilst the Constitution makes a reference to indictable offences it does not actually define what they are. Historically, the difference was administrative based on the perceived seriousness: minor offences were brought to court on a summons and serious offences were brought to court on indictment. There are however a series of factors that can help distinguish between the types of offences that are classified as being summary in nature and those that are indictable.

Summary Offences

Summary offences are said to be relatively minor. If however a person is a victim of such an offence it can have serious consequences for their life. Thus, the term 'minor' may not be the experience of victims of such offences.

Many summary offences are detailed in the *Summary Offences Act 1998* (NSW). They include offences such as damaging fountains (s7), obstructing traffic (s6) and jumping from buildings (s8A). Other summary offences are found in the *Crimes Act 1900* (NSW) and include drink spiking (s38A), stealing dogs (s132) and possession of the skin of an animal and being in possession of stolen animals (s502 and s507).

Features of summary offences

There are several features that help define what a summary offence is. These features include each of:

- The offences are usually heard in the Local Court (also called the Magistrates Court) although some indictable offences can be tried summarily in the District Court
- The arbiter is a magistrate only (no jury)
- The offences are tried summarily (immediately)
- The maximum penalties for each offence is 2 years imprisonment and 5 years for multiple offences
- The prosecutor is the police prosecutor

Most criminal cases are heard and finalised in the Local Court. This is because most crimes committed are relatively minor. Only about 3% of cases are heard in higher courts in NSW.

Number of criminal cases finalised in the Magistrates Court

In 2011 there were 115,206 criminal matters finalised in the Local Court. In 2012 this fell by 5.8% to 108,528 cases finalised. However, this does not capture all of the summary offences committed for the year. In the Children's Court an additional 8,633 cases were finalised in 2011. This fell to 7,919 in 2012.

Reference: NSW Criminal Court Statistics 2012, NSW Bureau of Crime Statistics and Research (BOCSAR) from: http://www.bocsar.nsw.gov.au/agdbasev7wr/_assets/bocsar/m71685415/ccs2012.pdf

Indictable offences

Indictable offences are the more serious offences and they are heard in higher courts (District Court and Supreme Court) before a judge and jury. Most of these offences will be found in the following statutes:

- *Crimes Act 1900* (NSW)
- *Drug Misuse and Trafficking Act 1985* (NSW)
- *Crimes Act 1914* (Cth)
- *Criminal Code Act 1995* (Cth)

The specific features of indictable offences are:

- They are heard in intermediate and higher courts. That is, the District Court and the Supreme Court
- They are heard before a judge and jury
- The prosecutor is the Director of Public Prosecutions (DPP) or Attorney General (AG)
- The range of penalties include lengthy terms of imprisonment
- Matters are heard at a trial following a committal hearing in the Local Court.

Committals

A feature of indictable offences is the need for a committal hearing prior to cases coming to court for trial. A committal involves the prosecution making out a *prima facie* case for a magistrate. The magistrate has to establish whether a *prima facie* case is established, and will do so by determining whether a jury is likely to accept the evidence beyond reasonable doubt. If a magistrate does not believe that a *prima facie* case is established then they will dismiss the case.

Ex officio indictment

An alternative means by which indictable offences come to trial is through the Coroner's Court. The Coroner's Court investigates suspicious deaths and fires. The Coroner's Court also examines the cause of death and tries to establish what caused a person's death. This process is called a *post mortem* examination.

Once the cause of death has been established the Coroner may opt to hold an inquest. An inquest involves the Coroner calling witnesses to give evidence or answer questions about the case and their knowledge of the circumstances of the death.

Power to refer to Director of Public Prosecutions

The Coroner cannot find someone guilty of a crime. If, at any time during the course of an inquest or inquiry, the Coroner forms an opinion that a known person has committed an indictable offence in connection with the death the Coroner is required to suspend the inquest or inquiry and refer the matter to the Director of Public Prosecutions (DPP). It is entirely a matter for the Director of Public Prosecutions to determine whether charges should be laid against the person, and a matter for the criminal courts to determine whether the person is guilty.

Reference: http://www.coroners.lawlink.nsw.gov.au/coroners/coroner_role.html,c=y1

If the DPP or the Attorney General (AG) believes that there can be a successful conviction then either can make an *ex officio* decision to take the matter direct to the District Court (DPP) or Supreme Court (AG).

Indictable offences tried summarily

Some indictable matters can be tried summarily. Some drug offences fall into this category. If an indictable matter is tried summarily this will occur in the Local Court. Some indictable offences committed by children can also be tried summarily in the Children's Court.

The purpose of allowing some indictable matters to be tried summarily is to increase the efficiency of the criminal justice system.

Review Activities – Summary and indictable offences

1. Identify FIVE (5) laws that detail summary offences and indictable offences.
2. Identify the law that details summary offences in NSW.
3. What does the term 'summarily tried' mean?
4. Identify TWO (2) different summary offences.
5. Explain FOUR (4) features of summary offences.
6. What proportion of offences are heard in the Local Court?
7. Describe the reason for 'trial by jury' for indictable offences.
8. Detail FOUR (4) features of indictable offences.
9. Outline the role and purpose of a committal hearing:
10. Detail the role of the Coroner's court with respect to indictable matters.
11. Explain the term '*ex officio*' and its relevance to indictable offences.
12. What does 'indictable offences tried summarily' mean?

Parties to a crime

There are four main parties that can be involved in criminal offences. The parties to a crime including:

- Accessory before the fact
- Principal in the first degree (called P1)
- Principal in the second degree (called P2), and
- Accessory after the fact

In this case 'the fact' is the crime or the offence. Recall, the court is the 'fact finder' and seeks to establish the truth. In establishing the truth it is determining the facts.

When a crime is planned, carried out and afterwards, covered over there are several parties each of whom has criminal liability. Look closely at Figure 3. Assume that persons A, B and C helped to plan a crime. Person C does not get involved in the commission of the actual offence. Persons A and B commit the offence with A taking an active role and B taking a supportive role. These two are the principals. They are also called 'accessory at the fact'. Once a crime has been committed then it is possible for other people to assist the perpetrators (principals) to cover it up. Such people can only find out about the crime after the event. If this is the case, and they actively help the principal offenders to cover up the crime then they become accessories after the fact.

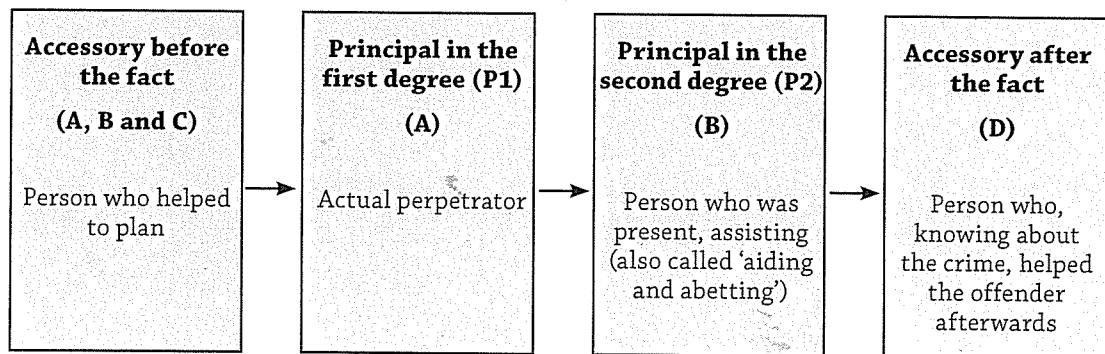


Figure 3 – A summary of the main parties and their roles in a crime

Punishment for accessories

The *Crimes Act 1900* (NSW) deals with the various parties to a crime in Part 9, ss345 – 351B. The *Crimes Act* makes it clear that accessories to an indictable offence, serious or minor, are liable to the same punishment as the principals (actual perpetrators). s351 states that 'anyone who aids, abets, counsels or procures the commissions of any offence punishable on summary conviction' is liable to the same penalty as the principal. For commonwealth offences the relevant law is in the *Criminal Code Act 1995* ss11.2 and 11.2A and in s6 of the *Crimes Act 1914* (Cth)

R v Harding (1976) VR 129 Supreme Court of Victoria

Harding helped Taylor who used a rifle to shoot a man. Harding's role was to identify the victim for Taylor, and also to help him to load and unload the rifle. Harding assisted Taylor by helping him to plan for, and prepare for, the shooting.

At his trial Harding contended that he did not believe that Taylor would shoot and kill the victim. Present at the shooting, Harding was held to be the principal in the second degree (person present and assisting) whilst Taylor was held to be the principal in the first degree. The court held that even though Harding may not have believed that Taylor would shoot the victim, he still participated and helped Taylor to carry out the murder.

Complicity – aiding and abetting

An accomplice is a person who is present during the offence and who is assisting or intending to assist. Any assistance given is called 'aiding and abetting' and makes the person a principal in the second degree (P2) or accessory at the fact.

Roles and culpability

A person's culpability (level of criminality) is determined by the role and participation they take in the commission of an offence. In *GAS v The Queen (2004) CLR*, a manslaughter case, the court could not determine the roles taken by each of the offenders and decided that, under such circumstances, all parties had the same level of culpability and were punished accordingly.

Can a person's spouse be charged as an accessory...?

There had been a longstanding common law rule that allowed spouses immunity for being prosecuted as an accessory. However, in 2012 in NSW laws were passed that no longer allowed spouses to have immunity from prosecution. Effectively this means that a person's husband or wife must inform the police of the crimes of their spouse, at risk of being charged as an accessory. s347A of the *Crimes Act* explicitly gets rid of immunity previously granted to a wife if she knew of, and covered up, her husband's felony.

Joint Criminal Enterprise

The law of joint criminal enterprise is relevant when determining liability. In NSW a group of people agree (verbally or through their actions) to commit an offence then each of them is equally criminally responsible even if any of them is not present when the actual crime is committed. The purpose of this law is to address the issue of organised crime and criminal gangs.

Review Activities – Parties to a Crime

1. Identify FOUR (4) different parties to a crime.
2. What is an accessory before the fact?
3. Distinguish between a principal in the first degree (P1) and the principal in the second degree (P2).
4. What role would a person 'aiding and abetting' a crime play?
5. With reference to a case demonstrate how parties can play different roles with respect to a crime.
6. What is an accessory after the fact?
7. Explain the punishment that can be imposed on accessories to indictable offences.
8. Can a person's spouse be charged with being an accessory? Explain.
9. What is a joint criminal enterprise?
10. Why would the criminal law penalise people engaged in joint criminal enterprise?
11. Read the scenario below carefully and answer the questions that follow:

21-year-old Rob and 17-year-old Carey planned to steal from a supermarket. Laurie provides a car to help them and drives them to the location. Rob uses a gun to hold up the manager of the store, while Carey holds a bag open for the cash. They flee with a large sum of cash in the bag. Heidi is waiting at home to assist Rob and Carey.

- a. Identify the roles played by Rob, Carey, Laurie and Heidi.
- b. Distinguish between the roles played by Rob and Carey.
- c. Explain the category of offence undertaken by the principals.
- d. Describe the courts in which the proceedings against Rob and Carey will be heard.

Factors Affecting Criminal Behaviour

People engage in criminal activity for a number of reasons. There are several factors that affect criminal behaviour. These include each of the following:

- Social factors
- Economic factors
- Political factors
- Self-interest (greed) and other psychological factors
- Genetic factors

Social factors

A person's peers and their social status can have an influence on their behaviour. When people are born into areas of high poverty and high crime, then it is possible that they may become socialised in a way that makes them partial to a life of crime and offending behaviours. Of course, it is also possible that a person may reject such influences and rise above them. Social status, or social 'class' can have a significant effect on a person's life, on how someone defines themselves and also how others perceive them and even indirectly discriminate against them.

Crime in the 'burbs

A criminal postcode...?

"So, I went for the job and they said 'where do you live?' I replied Macquarie Fields and they said 'oh...' I kinda knew then I would miss out. So after thirty three rejections I started saying I was from Cecil Hills – I got the first job I applied for. Makes me want to leave the 'Fields behind forever."

Source: Private interview the Mark, July 2013

Like grandfather....like father...like son...

The emergence of long-term and intergenerational unemployment...has had a crippling social impact. My most depressing experience in public life has been to hear principals of disadvantaged high school report to me on their career counselling sessions. When asked about career aspirations, these principals tell me, some students say, "I'm going to do what my dad and grandad do – go on the dole".

Mark Latham (2003), *From the Suburbs*, p86

Many criminologists and social scientists have considered how social status and social disadvantage can impact on criminality. One very famous sociologist, Edwin Sutherland, suggested that in particular social groups the kudos or self-esteem arising from committing criminal acts can be greater than the self-esteem derived from socially appropriate conduct. He termed this a theory of differential association (discussed below).

Peer pressure and offending behaviour

It is common for people to be influenced by their peer group, particularly between the ages of 15 – 25-years-old. Peer pressure can make a person do things that they would not do alone. It can also make people feel as though they need to prove themselves and thus they might engage in behaviours that are out of character. Peer pressure can be a significant factor affecting delinquent offenders and juvenile crime.

Differential association theory and social outcomes

The principle of differential association asserts that a person becomes delinquent because of an "excess" of definitions favourable to violation of law over definitions unfavourable to violation of law. In other words, criminal behaviour emerges when one is exposed to more social message favouring conduct than prosocial messages (Sutherland, 1947). Sutherland argued that the concept of differential association and differential social organisation could be applied to the individual level and to aggregation (or group) level respectively. While differential association theory explains why any individual gravitates toward criminal behaviour, differential social organisation explains why crime rates of different social entities are different from each other's. His theory has 9 basic postulates.

1. Criminal behaviour is learned. This means that criminal behaviour is not inherited, as such; also the person who is not already trained in crime does not invent criminal behaviour.
2. Criminal behaviour is learned in interaction with other persons in a process of communication. This communication is verbal in many cases but includes gestures.
3. The principal part of the learning of criminal behaviour occurs within intimate personal groups. Negatively, this means the impersonal communication, such as movies or newspaper play a relatively unimportant part in committing criminal behaviour.
4. When criminal behaviour is learned, the learning includes (a) techniques of committing the crime, which are sometimes very simple; (b) the specific direction of motives, drives, rationalisations, and attitudes.
5. The specific direction of the motives and drives is learned from definitions of the legal codes as favourable or unfavourable. This different context of situation usually is found in US where culture conflict in relation to the legal code exists.
6. A person becomes delinquent because of an excess of definitions favourable to violation of law over definitions unfavourable to violation of law.

This is the principle of differential association. When people become criminal, they do so not only because of contacts with criminal patterns but also because of isolation from anticriminal patterns. Negatively, this means that associations which are neutral so far as crime is concerned have little or no effect on the genesis of criminal behaviour.

7. Differential association may vary in frequency, duration, priority, and intensity.
8. The process of learning criminal behaviour by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning.
9. While criminal behaviour is an expression of general needs and values, it is not explained by those general needs and values since non-criminal behaviour is an expression of the same needs and values. Thieves generally steal in order to secure money, but likewise honest labourers work in order to earn money. The attempts to explain criminal behaviour by general drives and values such as the money motive have been, and must completely to be, futile, since they explain lawful behaviour as completely as they explain criminal behaviour. They are similar to respiration, which is necessary for any behaviour, but which does not differentiate criminal from noncriminal behaviour. (Sutherland, 1974: 75-76)

Source: <http://criminology.fsu.edu/crimtheory/sutherland.html>

Economic factors

Whilst most Australians live with a decent quality of life, up to twenty percent can be classified as living in relative poverty. The gap between the wealthy and the poor is widening. Wealth is enabling. This means that wealth provides people with choice and also quality of life.

When there is a large disparity in incomes and when there is an emphasis on materialism and commercialism then there can be a rise in particular types of crime.

People who are socio-economically disadvantaged (poor) or people who feel like they are missing out may be motivated to work very hard in order to overcome their circumstances. However, some people may also turn to a life of property crime in order to increase their wealth.

Greed can also be a factor in criminal activity where economic benefit is sought. White collar criminals are those who steal from businesses, corporations, institutions and government. They can be influenced by economic factors. When a person is greedy or alternatively feels that managers, CEOs and institutions/businesses have inordinate wealth they can be tempted to steal, embezzle, and engage in sabotage and other property crimes.

Addicted to stealing

Sometimes people who have an addiction engage in criminal activity in order to support the addiction. This can be the case with drug or alcohol addiction as well as gambling addiction. Addictive behaviours can lead to criminal behaviours as people try to find the cash to maintain the addiction.

Political factors and crimes of ideology

There are three aspects to political offences. The first relates to crimes against the government or crimes against the sovereign. A second class of political crimes relates to those done by conscientious objectors. The third class of political crimes relates to offences where ideology (or a person's beliefs) is the cause.

Crimes against the government

In Australia there have been very few crimes that directly target the government. Crimes aimed at the government include each of the following types of offences:

- Spying for another government against one's own government (a form of treason)
- Terrorism offences and conspiring to commit a terrorist offence
- Defrauding the Commonwealth
- The leaking of secret or classified government documents
- Violence or threats of violence against publically elected officials or government employees (such as police officers) and also the judiciary
- Sedition or acts that involve an incitement to others to rebel against the government and to act against the law

Crimes against the government are generally considered among the most serious of all types of offences. Thus, in NSW for example, the killing of a police officer is the only crime that carries a mandatory life sentence (*Crimes Act s19B*).

Crimes which have a moral basis

There is sometimes a justification provided for crimes against the government. There are, for example, people who are conscientious objectors. These people will act according to their morals and principles even when those morals are different to the requirements of the law.

When people break the law conscientiously they may opt to undertake acts of 'civil disobedience'. Civil disobedience occurs when people wilfully break the law in order to draw attention to the unjust nature of the law.

Consider the following. Recently politicians have been caught misusing parliamentary allowances. Many have been forced to refund thousands of dollars to the Commonwealth after having been found to have incorrectly claimed travel expenses. It is possible that a taxpayer who works hard and honestly for their money may feel angry about this. They might believe that elected officials have a duty to act in accordance with the law and the parliamentary rules. When politicians dishonestly take money they are not entitled to, then honest taxpayers might wonder why they are paying tax. They might ask why it is, effectively, being stolen by elected officials. Under such circumstances a person might feel justified in not declaring income and thus avoiding the tax. It is certainly the case that when the Australian government has made unpopular decisions with a moral dimension then ordinary people have reacted with acts of civil disobedience.

Examples of famous people who have engaged in deliberate acts of civil disobedience that caused laws to change include:

- Mahatma Gandhi – his non-violent campaign of civil disobedience led to self-rule in India
- Martin Luther King – his civil rights campaign led to greater legal equality for African-Americans
- Nelson Mandela – whose work with the ANC challenged apartheid in South Africa

When breaking the law is a moral duty

I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for the law....

We should never forget that everything Adolf Hitler did in Germany was "legal" and everything the Hungarian freedom fighters did in Hungary was "illegal".

Martin Luther King Jr, 1963, quoted in *Adventures in Law and Justice*, by Brian Horrigan, p86

Crimes which have an ideological basis

Some crimes are politically motivated but do not involve politicians. For example, if a person 'hates the power of the large banks' then they may be tempted to try and hack into a banking website and shut its servers down. Similarly, when an employee in a big business is lowly paid they might feel incensed when the CEO drives into work in a car more expensive than the house the employee is still struggling to pay off. Under such circumstances an employee might feel justified in engaging in acts of sabotage or property offences in order to "get even with the bourgeois". In such cases the actions are ideologically motivated.

Self-interest (greed) and other psychological factors

Arguably, all crimes occur because of self-interest and other psychological factors such as a need to 'fit in' as described earlier. That is, people putting their own personal or self-interest first and not caring about the victims of their actions. This applies to:

- Most crimes involving violence as the perpetrator is interested in exerting power and instilling fear
- Economic offences where the perpetrator is interested in obtaining money or property while reducing the wealth of others
- Drug offences as the perpetrator is generally interested in supporting an addiction
- 'Victimless' crimes where the complicit parties are both interested in satisfying their own desires.

There is an exception to the argument that all crimes have an element of self-interest. This would be when a person breaks an unjust or immoral law. Under such circumstances the victim can be the State, the beneficiary is all people subject to immoral laws.

Genetic factors (Discounted)

Genetic theories are no longer considered valid in determining criminality as they were generally racially motivated, discriminatory and not scientifically proven. The early 'genetic' theories generally included an element of racial profiling.

Current studies are underway in order to determine whether DNA characteristics can be used to determine whether a person has criminal tendencies. That is, whether there exists a 'criminal gene'.

It has been suggested that some people come from families where genetic tendencies are inherited. Thus, the argument goes that if a person comes from a family where previous generations exhibited addictive behaviours then it is more likely that the current generation will also exhibit such tendencies. In this way, it is said that genetic predispositions may be passed from generation to generation.

Review Activities – Factors affecting criminal behaviour

1. State FIVE (5) factors that are said to influence criminal behaviour.
2. Outline the meaning of the term 'social factors'.
3. Describe the relationship between peer pressure and offending behaviour.
4. Explain differential association theory.
5. How can economic factors influence criminal activity?
6. List THREE (3) aspects to crimes that are political or ideological.
7. Identify THREE (3) crimes against the government and state what might justify such crimes.
8. Detail how some crimes can be justified on moral grounds.
9. Define the term 'self-interest'.
10. Provide TWO (2) examples showing how crimes have an element of self-interest.
11. Do genetic factors cause criminal behaviour? Explain your answer.

Crime Prevention (Situational and Social)

There are alternative means by which to reduce opportunities for crime and to reduce the likelihood of criminal and offending behaviours. Broadly, crime prevention strategies can be classified as either situational in nature or social. When attempting to reduce the level of crime it is important that governments look at both situational interventions and also social crime prevention strategies.

Situational crime prevention (also called 'environmental' crime prevention)

Situational crime prevention refers to the act of physically changing a situation or location so that the incidence of crime is reduced. This is because there are often common characteristics to the physical locations where crimes occur. It also refers to actions undertaken that reduce any rewards from criminal activity. Situational interventions include such things as:

- Installing locks and alarms
- Installing lighting
- Having a guard dog
- Using security cameras
- Using passwords and changing them regularly
- High visibility/present policing
- Neighbourhood watch programs
- Attaching electronic codes to goods that will trigger alarms if removed from a store

Each of these interventions clearly aims to reduce the opportunity to engage in crime. Indeed many 'opportunistic' crimes are avoided by having situation crime prevention strategies in place. Examples of how situational crime prevention can affect criminal behaviour include:

- The lighting of dark alleyways reduces the incidence of night time robbery and assault
- The use of fluorescent lighting in public toilets reduces the chance of intravenous drug use
- The use of speed cameras that help to reduce the number of speeding offences

Examples of situational actions that reduce the rewards of crime include the use of dye tags on clothes. The removal of clothing tags can tear clothing and can also damage the cloth through release of a dye. Dye bombs are also used by banks in their in ATMs.

Stopping or moving on...?

Some situational crime prevention efforts are criticised for not actually reducing crime rates. This is because sometimes the criminal activity simply shifts to places where there are fewer situational interventions. For example, when cameras were installed on a main road though Kings' Cross in Sydney some of the offending behaviours simply shifted to areas not covered by the cameras – on side streets.

Take note – how to make a carpark youthless...!

The Mount Annan McDonalds in Sydney's South West has effectively used classical music as a situational intervention. The music has been played over speakers in order to move youths out of the carpark. At night hordes of young people had been loitering in the area. Several other councils in Sydney have also used this tactic effectively, including Waverley, in Sydney's East.

Source: S Thompson, MACARTHUR CHRONICLE CAMDEN, 21.11.13 from <http://www.dailytelegraph.com.au/newslocal/macarthur/mt-annan-mcdonalds-employs-classical-musical-to-deter-loitering-youths-at-night/story-fngr8h70-1226765342468>

Social crime prevention

It has long been recognised that a person's social situation can affect or encourage criminal behaviour. A person's socio-economic status can have a direct bearing on criminality. Thus social means of crime prevention attempt to address the social situation by addressing issues such as:

- Poverty and homelessness
- Poor education, including low levels of literacy and numeracy
- Disturbed, violent and disrupted family life

Social crime prevention refers to social approaches to reducing the incidence and/or possibility of crime. By increasing social access and equality then the theory is that people will be less likely to be attracted to crime. Thus, an investment in education and social inclusion is preferred. So, in areas where there is a high level of social disadvantage then the government would invest in raising social standards in order to reduce crime.

Education is considered a means by which to raise understanding and awareness of the need to boost opportunities and choice for people. An education can assist a person to get a well-paying job and thus reduce the attractiveness of criminal behaviour. Education also gives people insight and a capacity to think about their behaviour and so shape the kind of future they may want.

Current efforts aimed at breaking the nexus between social situation and criminal activities include programs offered by the Police Citizens Youth Clubs (PCYC) and community youth centres. Sporting codes such as the NRL and AFL also work with local communities to offer young people (mainly boys) an alternative to a life of crime or to joining gangs. They offer sporting scholarships and the chance for young men to build self-esteem from engaging in positive activities.

The Australian Institute of Criminology (AIC)

The police alone cannot prevent crime, so government agencies, community groups, businesses and individuals need to combine their resources in an effort to avert a range of crimes before they happen. A combination of crime prevention effort targets crimes such as drug related crime, property crime, violence, robbery, vandalism, underage drinking, truancy and juvenile crime.

How it happens

Crime prevention programs generally work by changing a combination of environmental and social factors relating to the incidence of offences. For example, the social approach is most commonly directed at trying to influence the underlying social and economic causes of crime while the environmental approach seeks to change the specific characteristics of the environment that causes criminal events. Environmental crime prevention interventions include but are not limited to activities such as improved security through strengthening locks, improving surveillance, improving street lighting, installing closed circuit television, putting locks on windows, introducing safer money handling procedures, and limiting the amount of money held on premise.

The social/structural approaches may include action to improve housing, health and educational achievement as well as improved community cohesion through community development measures. The social approach also tends to focus on crime prevention measures that can take some time to produce the intended results.

Source: http://www.aic.gov.au/crime_types/in_focus/crimeprevention.html

Review Activities – Crime prevention – situational and social

1. Identify TWO (2) approaches to crime prevention.
2. Define the term 'situational crime prevention'.
3. Outline FOUR (4) different situational crime prevention strategies.
4. Define the term 'social crime prevention'.
5. Assess whether social crime prevention would be more successful than situational crime prevention.