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1. **INTRODUCTION**

**A. HOW TO USE CRAM NOTES**

The Criminal Law Cram Notes are formatted into a step-by-step guide, which you can use as a checklist in your exams to ensure that every element of the exam question is answered. You may find the Table of Contents to be a quick and useful overview of the law to be applied.

You should also answer the exam question using the ILAC method, which will ensure your answer is comprehensive.

<table>
<thead>
<tr>
<th>Issue</th>
<th>State the legal issue relevant to the problem</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law</td>
<td>Identify the relevant case law and legislation</td>
</tr>
<tr>
<td>Analysis</td>
<td>Analyse and apply the law to the legal issue. This is the most important part, so ensure your legal analysis is very thorough.</td>
</tr>
<tr>
<td>Conclusion</td>
<td>Form a conclusion based on your analysis and application of the law, giving some practical advice to the hypothetical client.</td>
</tr>
</tbody>
</table>

It is very important to spend time perfecting your analysis section, as this is the part that examiners are most interested in. Do not worry if you reach the correct conclusion (there often isn't one clear answer) – examiners will give more weight to your legal analysis, and sometimes may even reward answers that propose an innovative and unconventional answer!

2. **BACKGROUND – DO THE COMPONENTS OF THE CRIMINAL OFFENCE EXIST?**

**A. ACTUS REUS**

The actus reus is an essential element in establishing that a criminal offence has been committed. The main question to ask is whether a wrongful act has been committed, by apply the following steps.

**i. IS THERE AN ACT OR AN OMISSION?**

Consider if the relevant act, as identified in the relevant offence, has been committed. In some cases, an omission is also relevant (e.g. manslaughter by omission). The relevant act for each offence is listed in section 3 below.

**ii. WAS THERE VOLUNTARINESS?**

Even if the act (or omission) has been committed, the prosecution must prove that the act is voluntary. Voluntariness is presumed for all offences, and the defendant has an evidentiary burden to bring evidence to show the court that voluntariness is an issue in the case. If the evidentiary burden is satisfied, the burden is shifted on the prosecution to prove beyond reasonable doubt that there was voluntariness.

Involuntary actions include reflex actions, epileptic fits, unconscious acts and startle responses. These categories are narrow, as the must involve entirely involuntary muscle spasms which takes place without processing by the accused’s mental faculties.
Reflex action
Ryan v R [1967] HCA 2
- Facts: Accused participating in armed robbery. As the cashier made a sudden move, the accused pulled the trigger on his gun as a reflex.
- Look at the whole context of act and if the other acts creating the situation were conscious, voluntary and willed, then the whole act would be voluntary
- The pressing of a trigger in response to a sudden threat or apprehension of danger is a probable and foreseeable consequence of presenting a loaded gun
- Held: The act was not independent of the will of the accused.

Act performed whilst the accused was in a state of impaired consciousness
Jiminez v The Queen (1992) 173 CLR 572
- Facts: Accused fell asleep while driving, causing an accident.
- Acts done whilst asleep are involuntary.
- Court considers the preceding period of drowsiness is so contemporaneous with the latter unwilled act of driving whilst asleep that it is part of the same series of acts

### iii. Consider the Circumstances & Consequence

Distinguish between whether the actus reus requires certain circumstances to be made out, or for certain consequences to apply.

For example:
Circumstance – for the offence of Carnal knowledge (sex with persons under 16) – the relevant circumstance is whether the person is under 16.
Consequence – for the offence of Murder – the death of the victim is the forbidden consequence.

In addition, consider whether the accused's acts caused the consequence (i.e. causation). This need only be a one sentence analysis.

### B. Mens Rea

Mens rea is the other required element to establish that a criminal offence has been committed. This refers to the guilty state of mind, which involves considerations of intent, knowledge, recklessness and so on. The require mens rea will vary from offence to offence (refer to section 3 for the mens rea of each offence), but the following analysis is still applicable.

#### i. Subjective vs Objective

Mens rea may be subjective or objective, depending on the offence. Subjective mens rea is the actual mental state of the accused, while the objective mens rea is the mental state of a hypothetical reasonable person.

Objective standard
- Objective standards are used to deter and prevent anti-social behaviour.
- Objective standards easier to prove, as it is often hard to inquire into what the accused was thinking.

Subjective standard
- However to determine the individual and unique cases, subjective factors must be taken into account. This is to take into account people who are unable to reach the standards
required and different people have different mental makeup and come from different backgrounds, values and so on.

_DPP v Morgan (1976)_
- Issue: Whether in a rape offence, a defendant can properly be convicted notwithstanding that he honestly believed the woman consented, if such belief was not based on reasonable grounds?
- If belief was an honest belief, albeit an unreasonable one, sufficient to negate intention on part of defendant
- The defendant may only be found guilty if it can be shown that he had full knowledge of committing the offence. He cannot be convicted if he demonstrates reason for him not believing what he shall or ought to have believed.
- The more unreasonable the honest belief was, the less likely that the jury believes that the accused honestly held that belief.

**ii. ABSOLUTE VS STRICT LIABILITY**

Absolute liability offences are complete once the criminal act is committed. That is, there is no mens rea component. There are thus no defences available based on mental state alone.

Strict liability offences are also complete once the act is committed, but defences are possible. A defence of honest or reasonable mistake of fact is open, with the evidentiary burden placed on the defence.

_Proudman v Dayman_
Defence must comprise a positive belief, which, if correct, would have resulted in their innocence

_Mayer v Marchant_
The belief must go to innocence – if the mistake results from a careless assumption or if the mistake will nevertheless still result in the offence being committed, then the reasonable mistake defence is not open.

_State Rail Authority v Hunter District Water Board_
The excuse is only available to those with a positive believe in a mistaken set of facts. It is not enough where no positive belief exists, even if there is no reason not to entertain that belief.

**iii. PRESUMPTION OF MENS REA IN STATUTE**

The leading case is _He Kaw Teh_, which provides a framework for defining the mens rea when the statute only defines the actus reus.

_He Kaw Teh v R (1985)_
- Where there is nothing in the statute about mens rea, 2 options exist:
  - No mens rea is needed (absolute liability)
  - There is a mens rea requirement, being either:

We hope you have enjoyed this short preview of the Criminal Law Cram Notes. Don't forget to check out the Law Study Tips we have on our website at [www.UniCramNotes.com](http://www.UniCramNotes.com)!