

CRIMINAL LAW

ELEMENTS

FOURTH EDITION



PENNY CROFTS

100
 LexisNexis®
Butterworths 1911 to 2011 

Criminal Law Elements

Fourth Edition

Penny Crofts

BEC, LLB (Hons), LLM (Syd), MPhil (Cambridge)

Senior Lecturer, Faculty of Law

University of Technology, Sydney

LexisNexis Butterworths

Australia

2011

	LexisNexis
AUSTRALIA	LexisNexis Butterworths 475–495 Victoria Avenue, Chatswood NSW 2067 On the internet at: www.lexisnexus.com.au
ARGENTINA	LexisNexis Argentina, BUENOS AIRES
AUSTRIA	LexisNexis Verlag ARD Orac GmbH & Co KG, VIENNA
BRAZIL	LexisNexis Latin America, SAO PAULO
CANADA	LexisNexis Canada, Markham, ONTARIO
CHILE	LexisNexis Chile, SANTIAGO
CHINA	LexisNexis China, BEIJING, SHANGHAI
CZECH REPUBLIC	Nakladatelství Orac sro, PRAGUE
FRANCE	LexisNexis SA, PARIS
GERMANY	LexisNexis Germany, FRANKFURT
HONG KONG	LexisNexis Hong Kong, HONG KONG
HUNGARY	HVG-Orac, BUDAPEST
INDIA	LexisNexis, NEW DELHI
ITALY	Dott A Giuffrè Editore SpA, MILAN
JAPAN	LexisNexis Japan KK, TOKYO
KOREA	LexisNexis, SEOUL
MALAYSIA	LexisNexis Malaysia Sdn Bhd, PETALING JAYA, SELANGOR
NEW ZEALAND	LexisNexis, WELLINGTON
POLAND	Wydawnictwo Prawnicze LexisNexis, WARSAW
SINGAPORE	LexisNexis, SINGAPORE
SOUTH AFRICA	LexisNexis Butterworths, DURBAN
SWITZERLAND	Staempfli Verlag AG, BERNE
TAIWAN	LexisNexis, TAIWAN
UNITED KINGDOM	LexisNexis UK, LONDON, EDINBURGH
USA	LexisNexis Group, New York, NEW YORK LexisNexis, Miamisburg, OHIO

National Library of Australia Cataloguing-in-Publication entry

Author:	Crofts, Penny.
Title:	Criminal law elements
Edition:	4th ed.
ISBN:	9780409325881 (pbk.)
Notes:	Includes index.
Subjects:	Criminal law – Australia.
Dewey Number:	345.94

© 2011 Reed International Books Australia Pty Limited trading as LexisNexis.

Essential Criminal Laws 1st ed 1997; 2nd ed 2001; 3rd ed 2005.

This book is copyright. Except as permitted under the Copyright Act 1968 (Cth), no part of this publication may be reproduced by any process, electronic or otherwise, without the specific written permission of the copyright owner. Neither may information be stored electronically in any form whatsoever without such permission.

Inquiries should be addressed to the publishers.

Typeset in Goudy and AvantGarde.

Printed in Australia by Ligare Pty Ltd (NSW)

Visit LexisNexis Butterworths at www.lexisnexus.com.au

FOREWORD

Criminal Law Elements provides up-to-date information about basic elements of criminal law in an accessible format. An important feature of the book is the provision of examples which will assist students to develop the essential skill of legal problem solving.

Penny Crofts has been teaching Criminal Law for many years and her experience has been crucial in shaping this book. Penny has insight into what students need to know and the issues which initially puzzle them in this subject. *Criminal Law Elements* will prove to be a very useful teaching and learning resource for academics and students.

Bronwyn Olliffe
Associate Dean (Teaching and Learning)
Faculty of Law, University of Technology, Sydney

October 2010

PREFACE

This is the fourth edition of this book. The first edition was published in 1997, entitled *Essential Criminal Laws*. It was written to provide accessible and up-to-date information about Criminal Law in the common law States, detailing and explaining the basic elements of Criminal Law that students need to know and understand. The book provides a basic structure of the law that students can then supplement with further study.

In this edition, I have included examples of solutions to problem questions, as this is a basic skill required in law degrees. The summaries of legal elements are easy to find visually as they are now laid out in table form. Tips are provided in areas where students have demonstrated confusion in the past. I am pleased that the book continues to be used by teachers of law and by their students.

Staff at LexisNexis Butterworths have been of great assistance in developing the latest edition and its new features. I also thank my partner and family for helping me complete the book and letting me use their names in the problem questions.

The law stated in this book takes account of materials available to me on 30 November 2010.

Penny Crofts
Faculty of Law
University of Technology, Sydney

November 2010

TABLE OF CASES

A

- AG for Northern Ireland v Gallagher [1963], 11.20, 12.4, 12.10
 AG for South Australia v Brown [1960], 11.18
 AG v Gallagher [1943], 11.20
 AG v Whelan [1934], 12.27
 AG's Reference (No 1 of 1975) [1975], 10.13, 10.17
 AG's Reference (No 1 of 1983) [1984], 9.14
 AG's Reference (No 3 of 1994) [1998], 5.63, 5.65
 AG's Reference (No 3 of 1998) [1998], 11.4
 Akbulut v Grimshaw [1998], 9.4
 Arulthilakan v R (2003), 3.25, 4.25, 10.68
 Astor v Hayes (1988), 8.30

B

- Babic v R (1997), 5.31
 Balcombe v De Simoni (1972), 8.53, 8.57
 Barbouttis (1995 unreported), 10.58
 Barker v R (1983), 9.49, 9.50
 Barton v Armstrong [1969], 6.13, 6.19
 Barton v Armstrong [1976], 2.11
 Boughey v R (1986), 4.13, 4.14, 4.44, 6.5, 6.6, 6.32
 Bratty v AG (Northern Ireland) [1963], 2.13, 2.17, 11.25
 Britten v Alpoget (1987), 10.67
 Britten v Alpoget [1987], 10.62
 Brown (1986), 12.28, 12.32

C

- Callaghan v R (1952), 5.70, 5.72
 Chard v Wallis (1988), 2.46
 Chayna v R (1993), 5.54
 Chhay v R (1994), 5.18, 5.37
 Cockburn [1968], 8.25
 Coleman v R (1990), 6.7
 Collins v Wilcock [1984], 6.30, 6.32
 Condon v R (1995), 8.32
 CTM v R (2008), 2.45, 2.47, 12.16
 CTM v R [2008], 7.16

D

- Davis v R (1998), 5.18, 5.47
 Director of Public Prosecutions v Gomez [1993], 9.12, 9.17
 Director of Public Prosecutions v Majewski [1977], 12.3
 Donoghue v Coombe (1987), 8.4, 8.37
 DPP v Brooks [1974], 8.6
 DPP v Camplin [1978], 5.24
 DPP v JWH (1997), 6.30
 DPP v Morgan (1976), 7.26
 DPP v Morgan [1976], 7.24, 12.13
 DPP v Ray [1974], 9.36
 DPP v Richardson [1998], 6.34
 DPP v Stonehouse [1978], 10.64
 Duvivier (1981), 5.41
 Duyo John Anic v R [1993], 8.5

E

- Edwards v Baugh (1843), 8.61
 Edwards v R [1973], 5.19
 Elliot and Hitchens v R (1983), 4.36
 Ellis v Lawson (1987), 8.8, 8.11
 Evans (No 2) (1976), 3.25

F

- Fagan v Metropolitan Police Commissioner (1969), 6.28
 Fagan v Metropolitan Police Commissioner [1969], 2.50, 6.3, 6.40, 12.36
 Fowler v Padget (1798), 2.6
 Fry v R (1992), 5.4

G

- Gardner v R (1989), 5.13, 5.18
 Giorgi & Romeo v R [1982], 10.16
 Giorgianni v R (1985), 2.33, 10.10, 10.11, 10.12, 10.20, 10.21, 10.22, 10.23, 10.25, 10.63
 Gollins v Gollins [1964], 4.6
 Green v R (1997), 5.21, 5.25, 5.26
 Greene (1949), 8.52

- H**
Haines and Harrison (1821), 8.71
Harris v Harrison [1963], 8.27
Haughton v Smith [1975], 10.64, 10.68
Hawes (1994), 12.17
He Kaw Teh v R (1985), 2.23, 2.24, 2.27, 2.40, 2.41, 2.42, 2.43, 2.44, 2.45, 2.48, 12.16
Heatley [2006], 5.54
Helmhout v R (1980), 5.42
Hibbert v McKiernan [1948], 8.7, 8.9, 8.37, 9.7
Hickling v Laneyrie (1991), 2.48
Holman v R [1970], 7.15
Holmes v DPP [1946], 5.9
Homicide (1991), 2.38
Hyde v R [1990], 10.34
- I**
Ilich v R (1987), 8.17, 8.18, 8.19, 8.35, 8.47, 8.73, 10.68
Ireland and Burstow (1997), 6.20, 6.47
- J**
Jayasena v R [1970], 1.23
Jiminez v R (1992), 2.43, 11.22
Johns v R (1980), 10.30, 10.31, 10.68
Johnson v R (1976), 5.5
- K**
Kearon v Grant [1991], 2.48
Kennedy v R [1981], 2.43
Kennison v Daire (1986), 8.12, 8.41, 9.32
Knight v R (1992), 6.17, 6.19, 10.63
- L**
La Fontaine v R (1976), 4.11, 4.13
Lawrence v Metropolitan Police Commissioner [1972], 9.38
Lee Allen v United Carpet Mills Pty Ltd [1989], 2.48
Lee Chuen v R [1963], 5.39
Lim Chin Aik v R [1963], 2.44
Lipohar v R (1999), 1.8
Low v Blease (1975), 8.4
Low v Blease [1975], 8.4
Luc Thiet Thuan, 5.34, 5.35
- M**
M'Naghten case [1843-60], 11.2, 11.13, 11.27
Mabo v Queensland (No 2) (1992), 1.4
Macklin & Murphy's Case (1838), 10.26
MacLeod v R (2003), 8.32, 8.34
MacPherson v Brown (1975), 6.4, 6.7, 6.8, 6.13, 6.21, 6.58
Majewski [1977], 12.3, 12.6, 12.11
Mamote-Kulang v R (1964), 3.34
Mancini v DPP [1942], 5.24
Martin v Puttick [1968], 8.12
Martin v R (No 2) (1996), 3.6
Masciantonio v R (1995), 5.25, 5.26, 5.29, 5.30, 5.36, 5.48
Matusevich v R (1977), 10.36
McAuliffe and McAuliffe v R (1995), 3.39, 10.30, 10.68
McCarthy and Ryan (1993), 10.68
McGhee v R (1995), 5.4
Meyers v R (1997), 4.9
Miller [1951], 4.3
Minigall v McCammon [1970], 8.39
Moffa v R (1977), 5.9
Moors v Burke (1919), 8.7, 8.9
Mraz v R (1955), 4.28
Mulcahy (1868), 10.53
Mumford v R [1989], 9.10
Munro v R (1981), 4.24, 4.33
Murray v R (2002), 3.14, 3.15, 3.18
- N**
Nielsen v R [1990], 5.54
Nundah (1916), 8.29
Nuri v R [1990], 6.56
Nydam v R (1977), 5.68, 5.69, 5.70, 5.73, 5.76
Nydam v R [1977], 2.37, 5.67
- O**
O'Connor (1980), 12.3, 12.5, 12.11
O'Connor v Killian (1984), 10.65
Osborne v Goddard (1978), 12.29
Osland v R (1998), 10.14, 10.26, 10.27, 10.29, 10.68
Ostrowski v Palmer (2004), 2.47, 12.14
Oxford v Moss (1978), 9.4
- P**
Pallante v Stadiums Pty Ltd (No 1) [1976], 6.34, 6.37
Papadimitropoulos (1957), 7.12, 7.15
Parker v R (1963), 5.18, 5.37
Parsons v R (1999), 5.6, 5.9, 5.21, 8.23
Pemble v R (1971), 5.62, 6.13
Pereira v DPP (1988), 2.33

TABLE OF CASES

Peters v R (1998), 8.32, 8.34, 9.28
 Police v Greaves [1964], 6.24
 Powell v R (1988), 8.49
 Proudman v Dayman (1941), 2.40,
 2.45, 2.46, 2.47, 12.15

Q

Question of Law (No 1 of 1993)
 (1993), 7.8
 Question of Law Reserved (No 1 of
 1997) (1997), 11.19
 Question of Law Reserved No 2 of
 1996 (1996), 10.2
 Questions of Law (No 1 of 1993)
 (1993), 7.15

R

R v Abdul-Rasool (2008), 6.58
 R v Abebe [2000], 5.13, 5.20, 5.26
 R v Abraham (1998), 7.6
 R v Abusafiah (1991), 12.29
 R v Appleby (1940), 10.24
 R v Arden [1975], 5.17
 R v Ashman (1858), 4.8
 R v Ashwell (1885), 8.16, 8.17, 8.18
 R v Ayoub (1984), 11.3
 R v Bailey [1924], 8.23
 R v Bainbridge [1960], 10.21
 R v Banditt [2005], 7.25
 R v Barbouttis (CCA(NSW) 1995,
 10.58
 R v Barker [1924], 10.64
 R v Barlow (1962), 10.46
 R v Baruday [1984], 9.15, 9.16
 R v Beck [1990], 10.16, 10.18
 R v Bedder [1954], 5.24
 R v Bellamy (CCA(NSW) (1993),
 8.64
 R v Bingapore (1975), 3.33
 R v Blaue [1975], 3.35, 3.38, 6.13
 R v Bonner [1970], 9.6
 R v Bonollo [1981], 9.28
 R v Bowhay (2000), 5.6
 R v Boyle [1954], 8.71
 R v Briggs (1987), 10.7
 R v Britten and Eger (1988), 10.34
 R v Brow [1981], 9.28
 R v Brown [1985], 9.47
 R v Brown [1994], 6.34, 6.35, 6.36
 R v Brown and Morley [1968], 12.28
 R v Burgess [1991], 11.11
 R v Burston [1997], 6.12
 R v Butcher [1986], 4.22, 4.25
 R v Buttle (1960), 8.35
 R v Byrne [1960], 5.54
 R v Cahill (No 2) [1999], 9.48
 R v Calhaem [1985], 10.17

R v Campbell (1997), 6.56, 6.58
 R v Campbell [1981], 3.23
 R v Chai (2002), 10.24
 R v Chan Fook [1994], 6.47
 R v Chisser (1678), 8.8
 R v Clarence (1888), 6.32
 R v Clarke [1998], 7.15
 R v Clarkson & Carroll [1971], 10.25
 R v Cogan and Leak [1976], 10.8
 R v Collingridge (1976), 10.64, 10.68
 R v Conde (1867), 4.41
 R v Coney (1882), 2.9
 R v Conlon (1993), 12.22
 R v Cottle [1958], 2.18, 11.21
 R v Crabbe (1985), 2.31, 2.32, 2.33,
 4.10, 4.11, 4.12, 4.14, 4.15, 4.16,
 4.44, 5.76
 R v Croft [1981], 5.15, 5.33
 R v Croton (1967), 8.11
 R v D [1984], 6.10
 R v Dalby [1982], 4.33
 R v Daly [1968], 7.24
 R v Dardovska (2003), 9.20
 R v Davidson [1969], 3.9
 R v Davies [1970], 8.7, 8.11, 8.35,
 8.47
 R v Dawson and James (1976), 9.1,
 9.41
 R v Dean (1995), 10.50
 R v Deane (1996), 10.5
 R v Dobinson [1977], 2.38
 R v Donovan [1934], 6.47, 6.58
 R v Doorey [1970], 10.14
 R v Douglas (1991), 10.54
 R v Dudley and Stephens (1884),
 12.34
 R v Duru (1973), 8.23
 R v Duru [1973], 9.21
 R v Dyson [1908], 3.11
 R v Eagleton (1843-60), 10.64
 R v Egan (1985), 7.24
 R v El Azizi [2001], 10.58
 R v Elliott and Hitchins (1983), 5.52
 R v Ellis (1899), 1.7
 R v Emery (1975), 8.68
 R v Evans and Gardiner (No 2)
 [1976], 3.31
 R v Everingham (1949), 6.15
 R v F (1996), 3.6
 R v Falconer (1990), 2.13, 2.20, 3.13,
 4.44, 5.76, 11.3, 11.21, 11.22,
 11.24, 11.26
 R v Falla [1964], 5.42
 R v Faure [1999], 4.14
 R v Feely [1973], 8.34, 9.27, 9.28
 R v Flood (1869), 8.10

- R v Foster (1967), 8.21, 8.22, 8.25, 8.73
 R v Foster (1995), 4.26, 4.32, 9.43
 R v Freeman [1981], 8.52
 R v Fuge [2001], 8.27
 R v Galas [2007], 4.25
 R v Gallienne [1964], 7.12
 R v Georgatsoulis (1994), 5.25
 R v George (2004), 5.70, 5.73
 R v Gerakiteys (1984), 10.60
 R v Ghosh (1982), 8.34
 R v Ghosh [1982], 9.27, 9.28
 R v Gilks [1972], 9.14
 R v Glenister [1980], 8.32, 8.34, 8.48
 R v Gnosil (1824), 8.68, 8.69
 R v Greenberg [1972], 9.6
 R v Hale (1978), 9.43
 R v Hall [1972], 9.10, 9.11
 R v Hallett [1969], 3.25, 3.27
 R v Hancock (1986), 4.40
 R v Hantias (1976), 8.68
 R v Hansill (1849), 10.44
 R v Harding [1976], 12.28
 R v Hayward (1833), 5.4
 R v Henderson (1870), 8.47
 R v Hennessy [1989], 11.10, 11.27
 R v Hewitt [1997], 10.6, 10.9
 R v Holzer [1968], 5.62
 R v Howe [1987], 10.41, 12.27
 R v Hudson [1971], 12.30
 R v Hurley and Murray [1967], 12.27, 12.29
 R v Hutty [1953], 3.5
 R v Ilich (1987), 8.2, 8.17
 R v Ireland [1998], 6.12
 R v Lapier (1784) [1998], 8.3, 8.58, 8.63, 8.73
 R v John Bryan [1857], 8.52
 R v Jones (1986), 5.56
 R v Justelius [1973], 8.41
 R v K (1993), 6.44
 R v Kalajzich and Orrock (1989), 10.60
 R v Kastratovic (1985), 8.55, 12.14
 R v Katarzynski (2002), 12.36
 R v Katarzynski [2002], 12.24, 12.25, 12.36
 R v Kawicki (1995), 10.43
 R v Kay (1857), 8.41
 R v Keane (1997), 10.19
 R v Kemp [1957], 11.6, 11.9, 11.13
 R v Kennedy [1923], 12.14
 R v Kenney [1983], 5.14
 R v King (1978), 8.71
 R v King (2003), 3.8
 R v King [2003], 2.34, 4.38
 R v Kingston [1994], 12.5
 R v Kitchener (1993), 7.25
 R v Knight (1988), 6.12
 R v Kumar [2002], 5.9, 5.20, 5.21
 R v L (1991), 7.3
 R v Langham (1984), 8.31, 8.67
 R v Lardner (CCA(NSW) (1998), 6.47
 R v Lavender (2005), 5.67, 5.70, 5.75
 R v Laverty [1970], 9.33
 R v Lawrence [1980], 12.29, 12.31
 R v Laz [1998], 7.18
 R v Lees [1999], 5.46
 R v Lenard (1992), 9.52
 R v Leonboyer [2001], 5.6, 5.9, 5.20
 R v Levy [1912], 10.43
 R v Lipman [1970], 12.9
 R v Lloyd [1967], 5.57
 R v Lopatta (1983), 8.28, 8.29, 12.14
 R v Loughnan [1981], 12.36
 R v Love (1989), 8.31, 8.32, 8.73, 12.14
 R v Lovell (1881), 8.13
 R v Lowe (1850), 5.72
 R v Lowe [1973], 5.62
 R v Lowery and King (No 2) [1972], 10.27, 10.36
 R v Lun and Welsh (1932), 10.5
 R v M (1977), 2.3
 R v MacDonald [1983], 8.4, 8.37, 8.38
 R v Mai (1991), 10.67
 R v Malcherek [1981], 3.29
 R v Maloney [1985], 4.40
 R v Martin (1881), 4.5
 R v Matthews (1873), 8.38
 R v Maurangi (2000), 4.20
 R v McCarthy and Ryan (1993), 10.16
 R v McConnell [1977], 10.41, 12.28
 R v McNamara [1954], 6.2
 R v McNamara [1963], 5.59
 R v Medland (1851), 8.22
 R v Meech [1974], 9.10, 9.11
 R v Meyrick (1929), 10.54, 10.60
 R v Middleton (1873), 8.16, 8.17, 8.18
 R v Mikhael (2007), 4.25
 R v Mitchell [1983], 4.38, 5.63
 R v Mobilio [1991], 7.13
 R v Moffatt (2000), 3.25
 R v Moloney [1985], 2.26, 4.4
 R v Morhall [1996], 5.33, 5.34
 R v Morris [1984], 9.12, 9.18
 R v Newman [1948], 5.42
 R v NJA [2002], 4.20
 R v O'Brien (1955), 10.57
 R v O'Connor (1980), 11.22, 11.29, 12.1, 12.3

TABLE OF CASES

- R v O'Neill [1982], 5.33
 R v Page [1933], 10.65
 R v Pagett (1983), 3.28
 R v Papadimitropoulos [1958], 7.4, 7.12
 R v Parsons [2000], 5.6, 5.9
 R v Patton (1998), 6.1, 6.58
 R v Patton [1998], 12.36
 R v Pear (1779), 8.40, 8.41
 R v Perks (1986), 4.8, 4.44, 5.43, 5.76, 6.48
 R v Perry (1845), 8.4
 R v Phan (2001), 10.35
 R v Phetheon (1840), 8.22
 R v Pollock [1967], 9.42
 R v Porter (1933), 1.19, 11.2, 11.7, 11.13, 11.15
 R v Potisk (1973), 8.4, 8.17, 8.18, 8.19, 8.73, 9.14
 R v Quartly (1986), 5.17, 5.47
 R v Quick [1973], 11.10, 11.22, 11.27
 R v R (1981), 5.11, 5.12, 5.13, 5.17, 5.18, 5.37, 5.38
 R v R (1995), 10.33, 10.68
 R v Radford (1985), 11.28
 R v Reane (1794), 8.62
 R v Reeves (1992), 1.16
 R v Reynhoudt (1962), 6.44
 R v Rich [1998], 6.58
 R v Riley [1853], 8.19, 8.35, 8.39, 8.73
 R v Robinson [1968], 10.34
 R v Rodley [1913], 8.73
 R v Roffel [1985], 9.1, 9.16, 9.17
 R v Rogerson (1992), 10.53, 10.54
 R v Rook [1993], 10.38
 R v Runjanjic and Kontinnen (1991), 12.32
 R v Russell [1933], 3.22, 5.72, 10.12, 10.16, 10.17, 10.18
 R v Ryan and Walker [1966], 4.2
 R v Salvo [1980], 9.26, 9.28, 9.37, 9.44
 R v Sancar [1999], 4.4
 R v Sanders (1991), 8.55
 R v Saragozza [1984], 7.24, 7.26
 R v Schonewille 1997, 4.7
 R v Scriva [1951], 5.16
 R v Segal (1926), 10.57
 R v Shankland [1986], 4.40
 R v Sharpe (1856), 8.4
 R v Shields [1981], 6.10
 R v Siracusa (1990), 10.56
 R v Smith (1827), 8.71
 R v Smith (1982), 9.35
 R v Smith [1959], 3.30, 4.44
 R v Smith [1999], 5.35
 R v Smith [2001], 5.4, 5.20, 5.35
 R v Spartels [1953], 5.42
 R v Stanley (SC(NSW) 1995, 6.38
 R v Steel [1981], 3.29
 R v Stein (2007), 6.36
 R v Stewart (1845), 8.41
 R v Stokes and Difford (1990), 10.23
 R v Stone [1981], 10.47, 10.50
 R v Stone and Dobinson (1977), 5.73, 5.76
 R v Stone and Dobinson [1977], 5.72
 R v Styman [2007], 5.72
 R v Sullivan [1984], 11.12
 R v Taber (2002), 3.12, 4.42, 5.76
 R v Taber [2004], 5.72
 R v Taktak (1988), 3.12, 4.42, 5.70, 5.75, 5.76
 R v Taktak [1988], 5.72
 R v Tangye (1997), 10.28, 10.68
 R v Taplin (1780), 8.62
 R v Tevendale [1955], 10.43, 10.47
 R v Thomas (1953), 8.3
 R v Thompson (1988), 5.50
 R v Thorpe (No 2) [1999], 5.5, 5.19, 5.25, 5.31
 R v Thurbon (1849), 8.35, 8.38
 R v Tolson (1889), 12.14, 12.15
 R v Trotter (1993), 5.58
 R v Tsigos [1964-65], 5.20
 R v Tuncay [1998], 5.20
 R v Turner [1962], 5.62
 R v Turvey [1946], 8.12
 R v TY (2006), 4.44
 R v Tyrell [1894], 10.19
 R v Venna (1976), 2.26, 6.58
 R v Venna [1976], 6.2, 6.3, 6.7
 R v Voukelatos [1990], 5.15
 R v Wacker [2003], 1.9
 R v Waite [1892], 7.3
 R v Wakeman (1912), 8.47
 R v Walker (1994), 2.48, 4.26
 R v Ward (1938), 8.46, 8.50
 R v Warner (1970), 9.22
 R v Waterfall [1970], 9.31
 R v Wells (1981), 5.41
 R v White (1904), 8.4
 R v White (1987), 12.34
 R v Wills (1983), 5.65, 5.69
 R v Wills [1983], 5.64
 R v Wilson [1997], 6.36
 R v Windsor [1982], 4.11
 R v Wogandt (1983), 11.22
 R v Wood (1911), 8.73
 R v Woollin [1998], 4.40
 R v Woollin [1999], 4.40
 R v Woolmington [1935], 10.68
 R v Yasso [2004], 5.19, 5.21
 R v Young (1947), 8.4

R v Young and Phipps [CCA(NSW) 1995 unreported], 10.48
 Re Attorney-General's Reference (No 3, 1994) [1998], 3.7, 3.8, 4.38
 Re Hamilton-Byrne [1995], 10.61
 Re Jewell and Crimes Compensation (SC(Vic)), 1987, 6.37
 Rhodes v R (1984), 4.8, 5.76
 Rogers v Arnott [1960], 8.47
 Rose v Matt [1951], 8.10
 Royall v R (1991), 3.19, 3.21, 3.23, 3.25, 3.36, 3.37, 3.38, 3.39, 4.20, 4.30, 4.39, 4.44, 5.76, 6.25, 10.68
 Rozsa v Samuels [1969], 6.24, 6.58
 Russell v Smith [1957], 8.4, 8.18
 Ryan v Kuhl (1979), 6.13
 Ryan v R (1967), 2.15, 3.13, 3.14, 3.15, 3.16, 3.18, 4.20, 4.25, 4.26, 4.31, 4.34, 4.44, 5.76, 11.24

S

Schloss v Maguire (1987), 6.32
 Sharah v R (1992), 10.32
 Sharp v McCormick (1986), 9.52
 Sharp v McCormick [1986], 9.20, 9.22
 Shaw (1981), 12.1
 Smith v Desmond (1965), 8.65, 10.68
 Smith v Desmond [1965], 8.64, 8.65, 10.68
 Smyth v R (1957), 4.7
 Sodeman v R (1936), 11.18
 Solomon v R [1980], 4.30
 Stapleton v R (1952), 11.15
 State Rail Authority of New South Wales v Hunter Water Board (1992), 2.46
 Stein v Henshall [1976], 9.12, 9.13
 Stiles v R (1990), 11.4
 Stingel v R (1990), 5.5, 5.7, 5.23, 5.24, 5.25, 5.26, 5.27, 5.28, 5.30, 5.34, 5.48
 Stuart v R (1974), 1.5

T

Taikato v R (1996), 12.21
 Terry (1964), 5.16
 Tevendale [1955], 10.47
 Thabo Meli v R (1954), 5.76
 Thabo Meli v R [1954], 2.50, 4.44
 Thambiah v R [1966], 10.15
 The Queen v Quartly (1986), 5.47
 Toonen v Australia Communication (1994 unreported), 1.2
 Tout v R (1987), 6.12
 Tuberville v Savage (1669), 6.23
 Tumanako v R (1992), 5.58

U

Ugle v R (2002), 3.15, 3.17, 3.18

V

Vallance v R (1961), 2.26, 6.49
 Van den Hoek v R (1986), 5.5, 5.36
 Varley v R (1976), 10.33

W

W (a child) v Woodrow [1988], 9.13
 Walden v Hensler (1987), 12.14
 Wallis v Lane [1964], 8.3
 Welker [1962], 8.71
 Westaway v R (1991), 6.56
 White v Ridley (1978), 10.7, 10.37
 Willgoss v R (1960), 11.17
 Williams v Phillips (1957), 9.7
 Wilson v R (1992), 5.61, 5.64, 5.66, 5.76, 6.36
 Woolmington v DPP (1935), 4.44, 5.6, 5.76, 6.58, 12.36
 Woolmington v DPP [1935], 1.17, 5.52, 8.2, 8.73, 9.52, 11.2, 12.36
 Wort [1927], 8.41

Z

Zanker v Vartzokas (1988), 6.17, 6.21, 6.26, 6.50, 6.52, 6.58
 Zecevic v DPP (1987), 5.59, 12.17, 12.19, 12.20, 12.26, 12.36

TABLE OF STATUTES

Commonwealth

Crimes Act 1914, 1.2
Criminal Code Act 1995, 1.2
 11.2(4), 10.39
Customs Act 1901, 1.2
 s 233B(1)(b), 2.40
 s 233B(1)(c), 2.40
Human Rights (Sexual Conduct) Act
1994, 1.2, 6.36
Model Criminal Code
 s 5.1.1, 6.54
 s 5.1.2, 6.54
 s 202.2, 2.14
 s 203.1, 2.27

Australian Capital Territory

Crimes Act 1900
 s 11, 3.11

New South Wales

Children (Criminal Proceedings) Act
1987
 s 5, 2.4
Crimes Act 1900, 1.4
 s 61, 6.1
 s 3, 4.29
 s 4, 8.57
 s 4(1), 6.48, 8.72
 s 4B, 8.34, 8.54
 s 5, 4.28
 s 10, 1.7
 s 17A, 3.11
 s 18, 1.5, 3.3, 4.27, 4.28, 4.30,
 4.31, 4.37
 s 18(1)(a), 4.31, 4.32
 s 18(1)(b), 3.3, 4.51

s 18(2)(a), 4.27, 4.28
s 18(2)(b), 4.27
s 20, 3.5
s 23, 4.53, 5.7, 5.44, 5.45, 5.47
s 23(1), 5.44
s 23(2), 5.7, 5.47
s 23(2)-(3), 5.37
s 23(2)(a), 5.13, 5.16, 5.45
s 23(2)(b), 5.48
s 23(3)(b), 5.49
s 23(3)(c), 5.49
s 23(4), 5.5, 5.44
s 23A, 1.20, 4.53, 5.50, 5.55, 5.56
s 23A(1)(b), 5.53, 5.57
s 23A(3), 5.56
s 23A(4), 5.52
s 26, 10.53
s 27, 6.42
s 33, 3.8, 4.32, 6.53
s 35, 10.2
s 35(b), 6.38
s 35D, 6.53
s 36, 4.32
s 44, 6.43
s 52A, 2.17, 2.43, 5.60
s 54, 2.37, 6.10
s 58, 6.42, 6.43
s 59, 6.50, 6.52
s 60, 6.44
ss 60A-E, 6.18
s 61, 2.8
s 61H, 7.1, 7.4, 7.17
s 61H(1)(a), 7.4, 7.7
s 61H(1)(d), 7.5
s 61HA, 7.18
s 61HA(2), 7.8
s 61HA(3)(a), 7.21
s 61(HA)(3)(a), 7.20
s 61HA(3)(b), 7.23

Criminal Law Elements

- s 61(HA)(3)(b), 7.20
- s 61HA(4), 7.10, 7.19
- s 61HA(4)(c), 7.15
- s 61HA(4)(d), 7.13
- s 61HA(5), 7.19, 7.22
- s 61HA(5)(a), 7.12
- s 61HA(6), 7.19
- s 61HA(6)(a), 7.17
- s 61HA(7), 7.15
- s 61HA(8), 7.10
- s 61I, 7.9
- s 61(I), 7.8
- s 61I, 7.1
- s 61R(2)(a)(ii), 7.12
- s 61R(2)(c), 7.15
- s 66A, 7.16
- s 66C, 7.16
- s 80A, 7.4
- ss 82-83, 3.9
- ss 89-90A, 6.45
- ss 94-98, 6.45, 8.58
- s 94AA, 8.7, 8.11
- s 98, 4.32
- ss 109-113, 8.70
- s 110, 4.32
- s 117, 8.2
- s 118, 8.22, 8.25, 8.33, 8.35, 8.39
- s 124, 8.18
- s 125, 8.44
- ss 126-32, 8.4
- s 134, 8.4
- s 155, 8.8
- s 156, 8.8
- s 161, 8.4
- s 178BA, 8.51
- s 179, 8.51, 8.52
- s 180, 8.51
- s 192B, 8.52, 8.55
- s 192C, 8.56
- s 192C(3), 8.57
- s 192E, 8.51
- s 316, 10.45
- s 344A, 10.62
- s 345, 10.2, 10.3, 10.4
- s 346, 10.2, 10.3, 10.4
- s 347, 10.3
- s 351, 10.3
- s 419, 12.18, 12.24
- s 421, 5.59, 12.26
- s 428A, 12.4, 12.7
- s 428B, 12.9
- s 428C, 12.9
- s 428C(2), 12.10
- s 428D, 12.9
- s 428D(b), 12.9
- s 428E, 12.9
- s 428F, 12.25
- s 428G, 11.29
- s 428G(1), 12.8
- s 428G(2), 12.8
- s 505, 8.4
- s 506, 8.4
- s 512, 8.4
- s 527C, 8.39
- Crimes Legislation Amendment Act 2002, 12.6
- Criminal Procedure Amendment Act 1986
 - Ch 5, 1.13
- Drug Misuse and Trafficking Act 1985, 4.33
- Electricity Supply Act 1995
 - s 64, 8.4
- Human Tissue Act 1983
 - s 33, 3.10
- Mental Health (Criminal Procedure) Act 1990
 - s 38, 11.5
- South Australia*
 - Criminal Law Consolidation Act 1935, 1.4
 - Pt 1A, 1.8
 - s. 20, 6.1
 - s 5, 7.4
 - s 5(1), 7.4, 7.7
 - s 5C, 1.8
 - ss 5E-5H, 1.7
 - s 5G, 1.8
 - s 11, 2.8, 4.2
 - s 12, 10.53
 - s 12A, 4.2, 4.20
 - s 14, 5.67
 - s 15, 12.18, 12.23
 - s 15(1)(a), 12.23
 - s 15(1)(b), 12.23
 - s 15(2), 5.59, 12.26
 - s 15C, 12.23
 - s 15C(1), 12.23
 - s 18, 3.11
 - s 19a, 2.37
 - s 19AA, 6.18
 - s 20, 6.4, 6.6, 6.9, 6.14, 6.18

TABLE OF STATUTES

- s 20(2), 6.33
- s 20(4), 6.25
- s 20(c)(ii), 6.16
- s 21, 6.55
- s 22(4), 6.6
- s 23, 6.55
- s 24, 6.55
- s 39, 2.8
- s 43(b), 6.43
- s 43(c), 6.42
- s 46, 7.4, 7.18
- s 46(2), 7.8
- s 46(3), 7.10
- s 46(3)(a), 7.15
- s 46(3)(e), 7.17
- s 46(3)(g), 7.12
- s 46(3)(h), 7.13
- s 47, 7.23
- s 47(b), 7.26
- s 48, 7.1, 7.4, 7.8, 7.9, 7.20, 7.21
- s 48(1), 7.23
- s 48(1)(b), 7.5
- s 49, 7.16, 7.17
- s 81, 3.9
- s 82A, 3.9
- s 130, 9.3, 9.4, 9.6, 9.7, 9.8, 9.9, 9.10, 9.18, 9.29
- s 131, 9.27
- s 131(4), 9.26
- s 131(5), 9.26
- s 132(2), 9.18, 9.26
- s 132(3), 9.18, 9.29
- s 134, 9.5
- s 134(1), 9.2
- s 134(1)(c)(ii), 9.20
- s 134(2), 9.20
- s 134(2)(a), 9.22, 9.24
- s 134(2)(b), 9.21, 9.22, 9.23
- s 135, 9.4
- s 137, 9.39, 9.41, 9.42, 9.43, 9.44
- s 137(1)(ii), 9.39
- s 139, 9.29, 9.31
- s 158, 6.45
- s 168, 9.52
- s 168(1), 9.46, 9.49
- s 241, 10.3, 10.45
- s 241(1), 10.43, 10.44, 10.51
- s 267, 10.2, 10.3, 10.4, 10.5, 10.11
- s 268, 12.2, 12.4
- s 269, 12.1, 12.2
- s 269A, 11.8, 11.12
- s 269C, 11.2, 11.5
- s 269C(b), 11.14
- s 269C(c), 11.19
- s 269D, 1.19, 11.2
- s 269I, 1.19, 11.2
- s 270A, 10.62
- s 296C(a), 11.13
- Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994
 - s 12A, 4.19
- Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002
 - s 4, 9.1
- Criminal Law (Sentencing) Act 1988
 - s 19, 1.13
- Death (Definition) Act 1983
 - s 2, 3.10
- Summary Procedure Act 1921
 - s 5, 1.13
- Young Offenders Act 1993
 - s 5, 2.4
- Tasmania*
 - Criminal Code (Amendment) Act 1997, 1.3
- Victoria*
 - Abortion Law Reform Act 2008
 - s 4, 3.9
 - s 5, 3.9
 - Children, Youth and Families Act 2005
 - s 344, 2.4
 - Crimes Act 1958, 1.4, 9.16
 - s 3, 2.8, 4.2
 - s 3A, 4.2, 4.25
 - s 3A(1), 4.21
 - s 3A(2), 4.26
 - s 4, 3.9, 12.26
 - s 5, 3.9
 - s 9, 1.8
 - s 9AA, 3.11
 - s 9AB, 12.2
 - s 9AD, 5.59, 12.26
 - s 9AF, 12.26
 - s 9AG, 12.28
 - s 9AH, 5.59
 - s 9AI, 10.41, 12.35
 - s 9AJ, 12.2

Criminal Law Elements

- s 15, 6.56, 6.58
 - ss 15-24, 6.1
 - s 16, 2.23, 6.56
 - s 17, 2.23, 6.56
 - s 18, 6.56
 - s 20, 6.58
 - s 20(1), 11.2, 11.12
 - s 20(1)(b), 11.14, 11.15
 - s 21, 6.58
 - s 21A, 6.18
 - s 23, 2.23
 - s 24, 2.37, 6.10, 6.58
 - s 25, 6.58
 - s 26, 6.58
 - s 27, 6.58
 - s 28, 6.58
 - s 29, 4.22
 - s 29-30, 6.58
 - s 31, 6.58
 - s 31(1)(b), 6.43
 - s 31(1)(c), 6.42
 - s 35, 7.1
 - s 35(1), 7.4, 7.7
 - s 36, 7.10, 7.18
 - s 36(8A), 7.18
 - s 36(8B), 7.18
 - s 36(8C), 7.18
 - s 36(8D), 7.18
 - s 36(a)-(c), 7.15
 - s 36(d), 7.8, 7.17
 - s 36(f), 7.8, 7.12
 - s 36(g), 7.13
 - s 37, 7.18
 - s 37A, 7.18
 - s 37(a), 7.18
 - s 37AA, 7.18, 7.26
 - s 37AAA(b), 7.15
 - s 37AAA(d), 7.15, 7.18
 - s 37AAA(e), 7.18
 - s 37B, 7.18
 - s 38, 7.1, 7.8, 7.21
 - s 38(2), 7.1, 7.9, 7.23
 - s 38(2)(a), 7.20
 - s 38(2)(b), 7.5
 - s 38(3), 7.7
 - s 39, 6.1
 - s 45, 7.16
 - s 45(2), 7.16
 - s 45(4)(b), 7.16
 - ss 50-52, 7.17
 - s 51, 7.17
 - s 52, 7.17
 - s 57(2), 7.12, 7.14
 - s 61HA(3), 7.23
 - s 61HA(3)(b), 7.25
 - s 61HA(3)(c), 7.26
 - s 63A, 4.22
 - s 65, 3.9
 - s 71(1), 9.3, 9.4
 - s 72, 9.22
 - s 72(1), 9.2, 9.5, 9.7, 9.22
 - s 72(2), 1.5, 9.2, 9.5, 9.9
 - s 73(2), 9.27, 9.28
 - s 73(2)(a), 9.26, 9.44
 - s 73(2)(b), 9.25, 9.26
 - s 73(2)(c), 9.26
 - s 73(4), 9.12
 - s 73(6), 9.4
 - s 73(7), 9.4
 - s 73(8), 9.9
 - s 73(9), 9.10, 9.11
 - s 73(10), 9.15
 - s 73(12), 9.20, 9.22
 - s 73(13), 9.23, 9.24
 - s 73(14), 9.24
 - s 75, 4.22, 4.25, 9.42
 - s 75(1), 9.39, 9.43
 - s 75A, 4.22, 4.25
 - s 76, 6.1
 - s 76(1), 9.46
 - s 77, 4.22
 - s 77(1), 4.25
 - s 81, 9.15, 9.29
 - s 81(1), 9.29
 - s 81(2), 9.29
 - s 81(4), 9.32
 - s 321, 10.53
 - s 321, 10.61
 - ss 321A-F, 10.53, 10.61
 - s 321M, 10.62
 - s 321N, 10.62, 10.67
 - s 321N(1), 10.64
 - s 321N(2), 10.63
 - s 321S, 10.62
 - s 323, 10.2, 10.3, 10.4, 10.5, 10.11
 - s 324, 10.2, 10.3, 10.5
 - s 325, 10.3, 10.4
 - s 325(1), 10.43, 10.44, 10.50, 10.51
 - s 326, 10.45
 - s 371, 10.67
- Crimes (Mental Impairment and Unfitness to be Tried) Act 1997
- s 20(1), 11.13

TABLE OF STATUTES

s 20(1)(a), 11.13
s 20(1)(b), 11.15
s 20(2), 11.5
s 21, 1.19
s 25(1), 11.2
Crimes (Theft) Act 1973, 9.1
Human Tissue Act 1982
s 41, 3.10
Magistrates' Court Act 1989
Sch 4, 1.13
Sentencing Act 1991
s 113, 1.13
s 113A, 1.13
s 113B, 1.13

Western Australia

Criminal Code
s 371, 8.18

United Kingdom

Homicide Act 1957
s 3, 5.22
Larceny Act 1916, 12.6
Theft Act 1968, 9.1, 9.12

International

International Covenant on Civil and
Political Rights (ICCPR), 1.2

CONTENTS

<i>Foreword</i>	v
<i>Preface</i>	xi
<i>Table of Cases</i>	xiii
<i>Table of Statutes</i>	xix
CHAPTER 1: INTRODUCTION	1
Structure of criminal law in Australia	1
Classification of offences	5
The burden and standard of proof	7
CHAPTER 2: ELEMENTS OF CRIMINAL LIABILITY	12
Introduction	12
<i>Actus reus</i>	14
<i>Mens rea</i>	18
Requirement of temporal coincidence	28
CHAPTER 3: EXTERNAL ELEMENTS OF HOMICIDE	30
Introduction	30
Human being	31
Year and a day rule	35
Act or omission	35
Voluntariness	35
Causation	38
CHAPTER 4: MURDER	47
Introduction	47
Common law murder: South Australia and Victoria	49
Murder: New South Wales	60
Miscellaneous aspects of murder	64
Temporal coincidence of <i>mens rea</i> and <i>actus reus</i>	68