The Nature of Crime

- **THE MEANING OF CRIME:**
  - Crimes Act 1900 (NSW) lists many different types of criminal behaviour --**fails** to define crime
  
  Crime = an act or omission against the community at large that is punishable by the state
  
  **Legal Characteristics of Crime:**
  - MUST be conduct that brings harmful results
  - Harm MUST be legally forbidden
  - Mens rea/criminal intent MUST be present
  - Harm caused MUST be natural consequences of voluntary act
  - Harm should have been caused, mere intention NOT enough
  - MUST be a fusion/concurrence of mens rea & conduct
  - MUST be legally prescribed punishment

  **Aim of Criminal Law:**
  - Prevent certain behaviour society feels harmful, potentially harmful, unacceptable/undesirable
  - Protect community & provide a sanction/punishment to an offender found guilty by a court of law

  **Definition of Crime has 3 parts:**
  1. Any act/omission
  2. Results in harm to society at large
  3. Punishable by the state

  Omission = failure to do something

  **Examples of where an omission constitutes a crime:**
  - Failing to pay taxes, child support & alimony
  - Failing to report a traffic accident

  **CRIMINAL LAW:**
  - Accused = person/alleged offender the criminal action is being taken against
  - Prosecute = when the Crown/State takes action against the accused person in a court of law

  - Crown/State MUST prove its case **BEYOND REASONABLE DOUBT**

  **ELEMENTS OF CRIME:**

  **Actus Reus (Latin for guilty act):**
  Actus Reus = the physical act of committing the crime

  - MUST be voluntary
  - Can incl. an omission/failure to act

  E.g. physical evidence, witness testimony

  **Mens Rea (Latin for guilty mind):**
  Mens Rea = the mental state of the accused
• Accused intended to commit the crime
• Defendant understood what was happening when act was committed

3 Main Levels:
1. Intention
2. Recklessness = accused was aware their action could lead to a crime being committed, but chose to take the risk
3. Criminal Negligence = accused fails to foresee risk where should have & so allows avoidable danger to occur, usually resulting in harm to/death of another that accused had a duty to protect

E.g. when defendant acts: intentionally, fraudently, maliciously, negligently, recklessly, wilfully.

• STRICT LIABILITY OFFENCES:

• Require prosecution to ONLY prove element of actus reus --> accused carried out the act, not that they intended to commit the crime

E.g. speeding offences, selling alcohol/cigarettes to people under 18, graffiti

• CAUSATION:

Causation = the casual link between the actions of the accused & the result

Case:
R v Thomas Sam; R v Manju Sam (2009) NSWSC

Defendants: Thomas & Manju Sam
Victim: their 9-month-old daughter
Charge: Manslaughter by criminal Negligence
Verdict: Guilty
Father’s Penalty: 8 years imprisonment
Mother’s Penalty: 5 years & 4 months imprisonment
Causation:
• Rejected conventional medical eczema treatment
• Used ineffective homeopathic treatments instead --> despite child constantly crying w/ broken oozing skin

• CATEGORIES OF CRIME:

<table>
<thead>
<tr>
<th>TYPE OF OFFENCE</th>
<th>DESCRIPTION</th>
<th>EXAMPLES</th>
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</table>
| Offences against the Person | Involve harm/injury to an individual | Homicide
| | Homicide = unlawful killing of another --> both deliberate & accidental | Homicide
| | 4 main categories in NSW: | Assault
| | • Murder | Sexual Assault
| | • Manslaughter | |
| | • Infanticide | |
| | • Death by Reckless Driving | |
| | Murder: | |
| | Murder = deliberate killing of a person | |
**Max penalty in NSW is life imprisonment**

In order to be convicted of murder, prosecution MUST prove at least ONE of the following:

- Accused intended to deliberately kill victim
- Accused set out to inflict serious bodily harm, resulting in death
- Act done w/ reckless indifference to human life
- Act done while committing/attempting to commit another serious crime

**Stats:**
- 222 murder victims in Aus (2018)

**Manslaughter:**
Manslaughter = the killing of a person in a manner considered to be less intentional than murder

**Max penalty in NSW is 25 years imprisonment**

3 main types:

- **Voluntary** = the killing of a person where accused DID intend to kill/was reckless about killing someone w/ mitigating circumstances
- **Involuntary** = the killing of a person where death occurred because accused acted in reckless/negligent way w/o intention to kill
- **Constructive** = the killing of a person while accused was carrying out another dangerous/unlawful act

**Infanticide:**
Infanticide = death of a baby under 12 months at the hands of its mother

**Dangerous Driving Causing Death:**
- Occurs when a person drives in an unsafe & reckless way (e.g. under influence of alcohol/drugs/at excessive speed), & in doing so causes death of another

**Assault:**
Assault = causing physical harm/threatening to cause physical harm to another

- Threatening phone calls, text messages/emails are forms of assault

Aggravated Assault = serious type of assault -- occurs when assailant (attacker) assaults a person w/ an object rather than own body

- Threatening someone w/ a syringe/knife are forms of aggravated assault

**Sexual Offences:**
Sexual Assault = when someone is forced into sexual intercourse against their will & w/o consent

**Crimes Act** states a person is NOT CONSENTING when:
- Intoxicated by drugs & alcohol
- Intimidated/coerced into the act
- The accused is in a position of trust

**Aggravated Sexual Assault occurs when:**
- Violence is used
- Victim is under 16
- Victim has a serious physical/intellectual disability

**CASE:**
R v Camplin (1978):
- A 15-year-old boy successfully argued provocation after killing his sexually abusive uncle w/ a frying pan
- Court held that an ‘ordinary person’ would have formed the intent to kill/inflict grievous bodily harm on the person assaulting them, therefore accepted the provocation defence

**Aggravated Sexual Assault in Company (‘gang rape’):**
Aggravated Sexual Assault in Company = sexual assault performed w/ another(s) present together w/ either depriving victim of their liberty/the infliction/threatened infliction of bodily harm

- Punishable by life imprisonment

**Case:**
R v AEM (Snr); R v KEM; R v MM (2002)

Ages of defendants: 19, 16 & 16 (at time of crime)
Age of victims: 16
Charge(s): Aggravated Sexual Assault
Aggravating Factors of Crime:
- Threatened w/ knives & verbal death threats
- Forcibly detained
Verdict: Guilty
Original Sentence: 5-6 years imprisonment each
Sentence after Crown appealed: 13-14 years imprisonment each

**Offences against the Sovereign**

**Treason:**
Treason = an attempt/manifest intention to levy war against the state, assist the enemy/cause harm to/the death of a head of state

**Sedition:**
Sedition = promoting discontent, hatred/contempt against a government/leader of the state through slanderous use of language; in Aus, sedition incl. offences urging force/violence against gov

- Treason
- Sedition
- Anti-Terrorism Act (No. 2) 2005 (Cth) is an e.g. of an Aus
sedition law

<table>
<thead>
<tr>
<th>Economic Offences</th>
<th>Property Offences</th>
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<tbody>
<tr>
<td>Relate to a wide range of crimes that may result in person(s) losing money/property</td>
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<tr>
<td>3 main categories:</td>
<td>White-collar Crime</td>
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<tr>
<td>- Crimes Against Property</td>
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<tr>
<td>- White-Collar Crime</td>
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<tr>
<td>- Computer Offences</td>
<td>Computer Offences</td>
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</table>

**Crimes Against Property:**
Larceny (a.k.a. theft/stealing) = when one/more persons intentionally take another’s property w/o consent & w/o intention of returning

- **Penalty is up to 5 years imprisonment**

Robbery = when use of force is present in the act of stealing goods/when property is taken directly from the victim

Armed Robbery = when violence/threat of violence involves use of weapon

Break & Enter = when a person enters a home w/ intent to commit an offence

**White-Collar Crime:**

- Associated w/ professionals/business people

Embezzlement = when an employee steals money from their employer over time

E.g. transferring sums of money from an account to the employee’s own account

Tax Evasion = when a person/company tries to evade paying taxes to the gov

E.g. people fraudently completing tax returns stating their income is lower than it actually is

Insider Trading = related to buying & selling of company shares; occurs when a person (stockbroker/company director) has inside information about a company’s share price

- Illegal because it gives an unfair advantage to investors who have special knowledge

E.g. a banker may know that a company is about to be taken over & that the share price will rise dramatically. If the banker buys shares in the company on basis of this info & then sells them, they are guilty of ‘insider trading’
## Computer Offences:

**Crimes Act** lists the following computer offences:
- Unauthorised access to modification/impairment of restricted data
- Impairment of electronic communication
- Unauthorised access/modification of restricted data w/ intent to commit a serious offence

- **Penalty can be up to 10 years imprisonment**

**Fraud** = deceitful/dishonest contact carried out for personal gain

**Common types of fraud:**
- Identity theft
- Internet phishing
- Nigerian email scams
- ATM Skimming Devices

- AFP estimates cost of identity fraud at over $4 bn/year

**Stats (from AFP website):**
- Recent estimates by A.G’s (Attorney-General) Dep indicate identity crime costs Aus upwards of $1.6 bn/year, w/ majority (approx. $900m) lost by individuals through credit card fraud, identity theft & scams
- More alarmingly, identity crime continues to be a key enabler of serious & organised crime, which in turn costs Aus approx. $15 bn annually

<table>
<thead>
<tr>
<th>Drug Offences</th>
<th>Drug Offences = involving prohibited &amp; restricted drugs</th>
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<tbody>
<tr>
<td>Drug Offence Related Laws:</td>
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<tr>
<td>- Drug Misuse and Trafficking Act 1985 (NSW)</td>
<td></td>
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<tr>
<td>- Customs Act 1901 (Cth)</td>
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<tr>
<td>Most Common Drug Offences:</td>
<td></td>
</tr>
<tr>
<td>- Production of prohibited drugs</td>
<td></td>
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<tr>
<td>- Use of prohibited drugs</td>
<td></td>
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<tr>
<td>- Cultivation = the growing of plants classified as controlled substances --&gt; usually refers to illegal growing of plants like marihuana, opium, &amp; other types of intoxicants/hallucinogenic plants</td>
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<tr>
<td>- Supply of prohibited drugs</td>
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<td>User Penalties:</td>
<td></td>
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<tr>
<td>- Attending drug rehab program(s)</td>
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<tr>
<td>- Good behaviour bonds</td>
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<tr>
<td>Large Scale Supply:</td>
<td></td>
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<tr>
<td>- Higher penalties apply for charges involving supply of large amounts of drugs</td>
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**Drug Misuse and Trafficking Act** divides trafficking offences into:
- Trafficking
- Possession
- Use
• Indictable quantities
• Commercial quantities
• Large commercial quantities

• Proof of possession of relevant quantity is sufficient to establish that a person is guilty of a particular trafficking offence, unless person can prove possession for a reason other than supply

<table>
<thead>
<tr>
<th>DRUG</th>
<th>INDICTABLE</th>
<th>COMMERCIAL</th>
<th>LARGE COMMERCIAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannabis Leaf/Heads</td>
<td>1 kg</td>
<td>25 kg</td>
<td>100 kg</td>
</tr>
<tr>
<td>Heroin</td>
<td>5 gm</td>
<td>250 gm</td>
<td>1 kg</td>
</tr>
<tr>
<td>Amphetamine</td>
<td>5 gm</td>
<td>250 gm</td>
<td>1 kg</td>
</tr>
<tr>
<td>Ecstasy</td>
<td>5 gm/25 tabs</td>
<td>0.5 kg</td>
<td>2 kg</td>
</tr>
<tr>
<td>LSD</td>
<td>0.005 gm/25 tabs</td>
<td>0.5 gm</td>
<td>2 gm</td>
</tr>
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</table>

Penalties (accurate as of 2016):
• Max penalty for dealing indictable quantity is $220,000 fine & 15 years imprisonment (10 years for Cannabis)
• Max penalty for dealing commercial quantity is $385,000 fine & 20 years imprisonment (15 years for Cannabis)
• Max penalty for dealing large commercial quantity is $500,000 fine & life imprisonment (20 years for Cannabis)

Driving Offences

Laws:
• Road Transport (Safety and Management) Act 1999 (NSW)
• Crimes Act 1900 (NSW)

Most common traffic offences:
• Exceeding the speed limit
• Driving w/o a licence/disqualified
• Ignoring road signs
• Driving above legal BAC limit/under influence of drugs
• Negligent driving causing death

Penalties:
• Fines
• Suspended/cancelled licences
• Imprisonment

Public Order Offences

Public Order Offences = acts society deems to disturb the public order in some way

E.g. a disturbance in/insight of a public area

Common public order offences:
• Obscene, indecent/threatening language/behaviour in public
• Possessing a knife in a public place w/o reasonable excuse
• Obstructing traffic

• Speeding
• Drink Driving
• Negligent Driving
- Damaging public fountains
- Affray
- Riot
- Bomb hoaxes
- Criminal trespass; malicious damage; soliciting

**Affray** = using/threatening to use unlawful violence on another causing them to fear for their safety; results from a public fight

**Penalties:**
- Fines
- Imprisonment (up to 10 years for affray)

### Preliminary Offences

**Preliminary Offences** = offences that precede commission of a crime/where crime has not been completed for some reason (unsuccessful/interrupt)

**Attempt** = Crimes Act states that (except for attempted murder) attempting to commit a crime is the same as the successful committal of the act

**Case:**

**R v Whybrow 1951**

- Whybrow was convicted of attempted murder after he wired up the bath to electrocute his wife but his plan didn't succeed

**Conspiracy** = when 2/more people jointly conspire to commit a crime

### Regulatory Offences

**Regulatory Offences** = minor offences that don't harm a person/society

- Are strict liability offences

**Penalties:**
- Fines
- Loss of a particular licence

### SUMMARY AND INDICTABLE OFFENCES:

**Summary Offences:**

- Less serious offence heard in LC in front of magistrate who determines verdict & punishment
- **NO JURY**
- Charge laid by police officer

**Penalties:**
- Fine
- Good behaviour bonds
- Community service
- Jail (max 2 years for one offence)

**4 types of summary offences:**
- Road traffic offences
- Minor assaults
- Property damage

**Breach of:**
- Water Restrictions
- Fire Restrictions
- Public Transport Rules
- Offensive behaviour

**Indictable Offences:**
- More serious offence, tried by **JUDGE & JURY**
- Jury determines verdict
- Judge determines punishment
- Charge brought by public prosecutor

**Punishments:**
- Fine
- Imprisonment

**4 types of indictable offences:**
- Murder
- Manslaughter
- Drug trafficking offences
- Indecent assault

**PARTIES TO A CRIME:**

Party = any person involved in a crime --> punishment level determined by a person's involvement in crime

**4 main categories:**
1. Principal in the 1st degree = the principal offender
2. Principal in the 2nd degree = a person present at crime & assisted/encouraged principal offender perform offence
3. Accessory before the fact = a person who helped the principal offender to plan/carry out crime
4. Accessory after the fact = a person who helped the principal offender after the act

**FACTORS AFFECTING CRIMINAL BEHAVIOUR:**

Criminology = the scientific study of crime & criminal behaviour

**Psychological Factors:**
- Mental illness affects a person's behaviour
- An accused's state of mind can be raised by prosecution/defence during a criminal trial

**Social Factors:**
- A person's family situation, personal relationships & the type of people they associate w/ influence their attitude toward crime

**Economic Factors:**
- 1 of main reasons why people commit crimes in NSW
- Poor education & lack skills often linked to economic factors --> criminals often unemployed & unskilled/in poorly paid jobs

**Genetic Factors:**
- None of the conducted genetic studies have been conclusive in showing individuals w/ certain genes more likely than those w/o them to commit crimes

**Political Factors:**
- Protestors have been arrested because their moral beliefs led them to act in an illegal way
- People w/ political motives may commit violent crimes against:
  - Individuals
  - Groups
  - Gov
  - Society (in extreme cases)
• Riots may have politically motivating factors

**Self-Interest:**
• Profit & revenge are motivating factors for people committing crimes

E.g. White-Collar Crimes are driven by greed & self-interest

**Case:**
*R v Hassan (2014) NSWSC:

• Yassir Ibrahim Hassan (54) & Mariam Henery Yousif (24) were a married couple w/ 3 young children
• Tensions existed within the marriage, which deteriorated significantly after the birth of their 3rd child in 2010, to the extent that the couple separated in 2011
• w/ their understanding of Muslim law, the two were considered to be divorced, but reconciled after a number of weeks when Hassan 'rescinded' the divorce
• On the evening of 17th April 2012, during an argument at their apartment, Yousif is said to have verbally abused her husband, incl. questioning his manhood & whether he was the real father of their children
• Hassan attacked Yousif w/ a knife, stabbing her 14 times & killing her
• Found not guilt of murder, but guilty on manslaughter on the grounds that he was provoked into losing his self-control
• He was sentenced to 12 years imprisonment
• Links to psychological factors affecting criminal behaviour

• **CRIME PREVENTION: SITUATIONAL AND SOCIAL**

**Situational Crime Prevention:**
• Aims to make it more difficult for criminals to carry out a crime & therefore stop the crime before it's committed

E.g. bars on windows, alarm systems, computer passwords & internet firewalls (deter theft of data), playing classical music in shopping centres (deters young people from loitering), security guards, CCTV, surveillance cameras, steel bollards & steel shutters (makes ram raiding harder), ATMs on 1st floor rather than G floor of shopping centres (reduces ATM theft), electronic tracking devices in cars, decreasing rewards of crime (colour tags & magnetic strips), no-alcohol zones, improved lighting, blue fluorescent lights in pubs & bars (makes it harder to find veins in bathroom)

• Strategies DO NOT ALWAYS prevent crime --> people may be deterred from committing a crime when they have knowledge they are at risk of being caught

**Social Crime Prevention:**
• Attempts to address underlying social factors leading to criminal behaviour

Social Factors:
• Poor home environment & parenthood
• Social & economic disadvantage
• Poor school attendance --> high levels of truancy & misbehaviour at school
• Drug addiction & exposure to criminal elements at an early age
• Early contact w/ police

Ways of Dealing:
• Funding for educational programs to raise education levels of students 'at risk'
• Partnerships between schools, TAFEs & private orgs to provide better opportunities for students
• Parenting workshops
• Youth programs to teach dispute resolution & social skills
• Diversionary programs providing a venue for alt. activities (Police Citizens Youth Clubs (PCYC)s & drop-in centres, programs targeting substance abuse) --> enable intervention in violent behaviour
• Provide job training to reduce unemployment