

ANSWER SHEET

Double jeopardy

Answer to the Chapter 11 'Double jeopardy' exercise on pages 341–43 of the textbook.

The first issue is jurisdiction. The *Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2006* (NSW) is a NSW Act, but the crime took place in Queensland, so on its face, using the statutory presumption that legislation only has effect within the jurisdiction in which it was enacted, the jurisdictional requirement is not met.

However, all statutory presumptions can be rebutted if there are clear words to that effect in the statute, so it is necessary to check the wording of the Act. Section 99(2) of the Act provides that it can apply to someone acquitted in proceedings outside of NSW, unless the law of that place does not permit the person to be retried. In Queensland, the law with respect to double jeopardy was changed in the *Criminal Code (Double Jeopardy) Amendment Act 2007* (Qld) with a new s 678B. Therefore the jurisdictional requirement is met. Also, as the Act entered into force on 15 December 2006, it is current and this legislation does cover the actions of Mr Carroll.

Section 100 of the Act provides that the Court of Criminal Appeal may order a person be retried 'for a life sentence offence' if satisfied that there is 'fresh and compelling evidence' and it is 'in the interests of justice' for the order to be made. 'Life sentence offence' is defined in s 98(1) to include murder. The meaning of 'fresh and compelling evidence' is given in s 102 of the Act, as evidence that is reliable, substantial and highly probative, and which was not adduced at the trial and could not have been adduced with reasonable diligence. Here, the bite mark evidence was adduced in the trial, it is just that the technology used to examine the evidence was not available at that time. It is really more like 'fresh and compelling' analysis of evidence, but perhaps the analysis is evidence in itself. This would require a consideration of the meaning of the word 'evidence'. Another consideration is whether it would be 'in the interests of justice' for the order to be made. Matters for consideration, under s 104, include the length of time since the person was acquitted, but it is unclear whether a shorter or longer time would make it more or less in the interests of justice to do so. Here, we have a man who murdered someone's baby and continues to taunt the mother by going through her aisle in the local Woolworths. It was a vicious and devastating crime for which the offender shows no remorse and it would be in the interests of justice for the case to be reheard.

Therefore, this legislation can be used to reopen the Carroll case. However, as there is similar legislation in Queensland now, it may be simpler to just use that rather than the NSW legislation.