

THE LAW OF PROPERTY

SUPPLEMENTAL READINGS

Class 10

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Common Law Felonies in the US

Presently, almost all countries have their own laws. How their laws have evolved come in many different ways. The United States is no exception to that.

In the US, there are different sources of laws which have evolved thru time. Although this country has 50 different states, each state has their own laws.

One of the known sources of laws in the U.S. is the common law. With criminal law in particular, there are nine different known common law felonies. At common law, these were punishable by the death penalty. To remember them easily, let us use the acronym - MR & MRS LAMB.

M - represents murder which is the killing of another person by another with malice aforethought.

R – represents robbery which is larceny committed while (1) the property is taken from the person or in the presence of the owner, and (2) the taking is accomplished with the use of force or putting the owner in fear.

M – represents manslaughter which is homicide without malice while committing the wrongful act.

R - represents rape which is sexual intercourse by a woman, with a man, not her husband, without consent.

S – represents sodomy which is the anal copulation between humans (buggery) also the copulation between a human being and an animal (bestiality).

L – represents larceny which is the intent to permanently deprive the other of his/her possessory interest in the property.

A – represents arson which is the burning of the dwelling house of another with malice.

M – represents mayhem which is the disfigurement of any part of the male body useful in time of war.

B – represents burglary which is the trespassory breaking and entering the dwelling house of another in the night time with the intent to commit a felony therein.

The specific definitions for each of the nine common law felonies may differ on how some lawyers define them.

However, many laws in the US have evolved from these common law felonies. Yet, most U.S. states refer to them and observe them.

Suppose among your camping gear, one of your tents was stolen, you should know by now that the common law crime of larceny is involved in this case.

For reference purposes only, to know the common law felonies in the U.S., simply remember the acronym MR & MRS LAMB.

The Criminal Law Continued

Generally

Criminal law is the body of law that relates to crime. It proscribes conduct perceived as threatening, harmful, or otherwise endangering to the property, health, safety, and moral welfare of people inclusive of one's self.

Most criminal law is established by statute, which is to say that the laws are enacted by a legislature.

Criminal law includes the punishment and rehabilitation of people who violate such laws.

Criminal law varies according to jurisdiction, and differs from civil law, where emphasis is more on dispute resolution and victim compensation than on punishment or rehabilitation.

Criminal procedure is a formalized official activity that authenticates the fact of commission of a crime and authorizes punitive or rehabilitative treatment of the offender.

Objectives

Criminal law is distinctive for the uniquely serious potential consequences or sanctions for failure to abide by its rules. Every crime is composed of criminal elements.

Capital punishment may be imposed in some jurisdictions for the most serious crimes.

Individuals may also be incarcerated in prison upon conviction of a crime. Such confinement may be either communal or solitary. The Length of incarceration may vary from a day to life.

Government supervision may also be imposed as an alternative, including house arrest, and convicts may be required to conform to particularized guidelines as part of a parole or probation regimen.

Fines also may be imposed, seizing money or property from a person convicted of a crime.

Five objectives are widely accepted for enforcement of the criminal law by punishments: retribution, deterrence, incapacitation, rehabilitation and restoration. Jurisdictions differ on the value to be placed on each.

Retribution – Criminals ought to *Be Punished* in some way. This is the most widely seen goal. Criminals have taken improper advantage, or inflicted unfair detriment, upon others and consequently, the criminal law will put criminals at some unpleasant disadvantage to "balance the scales." People submit to the law to receive the right not to be murdered and if people contravene these laws, they surrender the rights granted to them by the law.

Deterrence – *Individual or specific* deterrence is aimed toward the specific offender. The aim is to impose a sufficient penalty to discourage the offender from criminal behavior. *General* deterrence, on the other hand, aims at society at large. By imposing a penalty on those who commit offenses, other individuals are discouraged from committing those offenses.

Incapacitation – Designed simply to keep criminals *away* from society so that the public is protected from their misconduct. This is often achieved through prison sentences today. The death penalty or banishment have served the same purpose.

Rehabilitation – Aims at transforming an offender into a valuable member of society. Its primary goal is to prevent further offense by convincing the offender that their conduct was wrong.

Restoration – This is a victim-oriented theory of punishment. The goal is to repair, through state authority, any injury inflicted upon the victim by the offender. For example, one who embezzles will be required to repay the amount improperly acquired. Restoration is commonly combined with other main goals of criminal justice and is closely related to concepts in the civil law, i.e., returning the victim to his or her original position before the injury.

Criminal Law in Practice

Many laws are enforced by threat of criminal punishment, and the range of the punishment varies with the jurisdiction. The scope of criminal law is too vast to catalog easily. Nevertheless, the following are some of the more typical aspects of the criminal law.

Elements

The criminal law generally prohibits undesirable *acts*.

Thus, proof of a crime requires proof of some act.

Scholars label this the requirement of an *actus reus* or *guilty act*.

Some crimes – particularly modern regulatory offenses – require no more, and they are known as strict liability offenses (E.g. Under the *Road traffic Act 1988* it is a strict liability offence to drive a vehicle with an alcohol concentration above the prescribed limit). Nevertheless, because of the potentially severe consequences of criminal conviction, judges at common law also sought proof of an *intent* to do some bad thing, the *mens rea* or *guilty mind*. As to crimes of which both *actus reus* and *mens rea* are requirements, judges have concluded that the elements must be present at precisely the same moment and it is not enough that they occurred sequentially at different times.

Actus Reus

Actus reus is Latin for "*guilty act*" and is the physical element of committing a crime. It may be accomplished by an action, by threat of action, or exceptionally, by an omission to act, which is a legal duty to act. For example, the act of *A* striking *B* might suffice, or a parent's failure to give food to a young child also may provide the *actus reus* for a crime.

Where the *actus reus* is a *failure* to act, there must be a *duty of care*. A duty can arise through contract, a voluntary undertaking, a blood relation with whom one lives, and occasionally through one's official position.

Duty also can arise from one's own creation of a dangerous situation. On the other hand, it was held in the U.K. that switching off the life support of someone in a persistent vegetative state is an omission to act and not criminal.

Since discontinuation of power is not a voluntary act, not grossly negligent, and is in the patient's best interests, no crime takes place. In this case it was held that since a PVS patient could not give or withhold consent to medical treatment, it was for the doctors to decide whether treatment was in the patient's best interest. It was reasonable for them to conclude that treatment was not in the patient's best interest, and should therefore be stopped, when there was no prospect of improvement.

It was never lawful to take active steps to cause or accelerate death, although in certain circumstances it was lawful to withhold life sustaining treatment, including feeding, without which the patient would die.

An *actus reus* may be nullified by an absence of causation. For example, a crime involves harm to a person, the person's action must be the *but for* cause and *proximate cause* of the harm.

If more than one cause exists (e.g. harm comes at the hands of more than one culprit) the act must have "more than a slight or trifling link" to the harm.

Causation is not broken simply because a victim is particularly vulnerable. This is known as the thin skull rule.

However, it may be broken by an intervening act (*novus actus interveniens*) of a third party, the victim's own conduct, or another unpredictable event.

A mistake in medical treatment typically will not sever the chain, unless the mistakes are in themselves "so potent in causing death."

Mens Rea

Mens rea is another Latin phrase, meaning "guilty mind".

This is the mental element of the crime.

A guilty mind means an intention to commit some wrongful act. Intention under criminal law is separate from a person's motive.

A lower threshold of *mens rea* is satisfied when a defendant recognizes an act is dangerous but decides to commit it anyway.

This is recklessness. It is the mental state of mind of the person at the time the actus reus was committed.

Courts often consider whether the actor did recognize the danger, or alternatively ought to have recognized a risk.

Of course, a requirement only that one *ought* to have recognized a danger (though he did not) is tantamount to erasing *intent* as a requirement. In this way, the importance of mens rea has been reduced in some areas of the criminal law but is obviously still an important part in the criminal system.

Wrongfulness of intent also may vary the seriousness of an offense and possibly reduce the punishment but this is not always the case.

A killing committed with specific intent to kill or with conscious recognition that death or serious bodily harm will result, would be murder, whereas a killing effected by reckless acts lacking such a consciousness could be manslaughter.

On the other hand, it matters not who is actually harmed through a defendant's actions. The doctrine of transferred malice means, for instance, that if a man intends to strike a person with his belt, but the belt bounces off and hits another, mens rea is transferred from the intended target to the person who actually was struck.

Strict Liability

Strict liability can be described as criminal or civil liability notwithstanding the lack mens rea or intent by the defendant.

Not all crimes require specific intent, and the threshold of culpability required may be reduced or demoted.

In offenses of absolute liability, other than the prohibited act, it may not be necessary to show the act was intentional.

Generally, crimes must include an intentional act, and "intent" is an element that must be proved in order to find a crime occurred.

The idea of a "strict liability crime" has been referred to as an oxymoron. The few exceptions are not truly crimes at all – but are administrative regulations and civil penalties created by statute, such as crimes against the traffic or highway code.

Fatal Offenses

A *murder*, defined broadly, is an unlawful killing. Unlawful killing is probably the act most frequently targeted by the criminal law.

In many jurisdictions, the crime of murder is divided into various gradations of severity, e.g., murder in the *first degree*, based on *intent*.

Malice aforethought is a required element of murder. Manslaughter is a lesser variety of killing committed in the absence of *malice*, brought about by reasonable provocation, or diminished capacity.

Involuntary manslaughter, where it is recognized, is a killing that lacks all but the most attenuated guilty intent, recklessness.

Settled insanity is a possible defense.

Personal Offenses

Many criminal codes protect the physical integrity of the body.

The crime of battery is traditionally understood as an unlawful touching, although this does not include everyday knocks and jolts to which people silently consent as the result of presence in a crowd.

Creating a fear of imminent battery is an assault, and also may give rise to criminal liability.

Non-consensual intercourse, or rape, is a particularly egregious form of battery.

Property Offenses

Property often is protected by the criminal law. Trespassing is unlawful entry onto the real property of another.

Many criminal codes provide penalties for conversion, embezzlement, theft, all of which involve deprivations of the value of the property.

Robbery is a theft by force.

Fraud is the intentional misrepresentation of a material fact with the intent to induce harm or incur a benefit.

Mala in se vs. mala prohibita

While crimes are typically broken into degrees or classes to punish appropriately, all offenses can be divided into 'mala in se' and 'mala prohibita' laws.

Both are Latin legal terms.

Mala in se meaning crimes that are thought to be inherently evil or morally wrong, and thus will be widely regarded as crimes regardless of jurisdiction. Mala in se offenses are felonies, property crimes, immoral acts and corrupt acts by public officials.

Mala prohibita, on the other hand, refers to offenses that do not have wrongfulness associated with them. Parking in a restricted area, driving the wrong way down a one-way street, jaywalking or unlicensed fishing are examples of acts that are prohibited by statute, but without which are not considered wrong.

Mala prohibita statutes are usually imposed strictly, as there does not need to be a mens rea component for punishment under those offenses, just the act itself.

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