

Criminal Law

Lecture 1: Crime in context

Cases:

Starred cases mean they are very important.

Squiggly line means you need more information on it (use westlaw.)

Criminal Law vs Civil Law:

Criminal:

- State instigates proceedings against an individual.
- Aim to punish guilty.
- Burden of proof is 'beyond reasonable doubt' (higher burden of proof.)
- Lay-decision makers (no legal expertise.) Three volunteer magistrates and 12 members or jury.

Civil:

- Disputes between individuals/corporations. Individual instigates proceedings.
- Aim to provide remedy.
- Burden of proof is 'on a balance of probabilities.'

What is the purpose of criminal law?

Own answer: To keep society in order and to maintain justice. To differentiate from right and wrong and to teach people who commit wrongful acts. To set an example to others.

Procedural definition of crime: Glanville Williams- something becomes a crime if it's capable of being followed by criminal proceedings and punishment.

Moral definition of crime: Richard C.Fuller- for conduct to be criminal, it must be something more than the violation of group morality. It must also be a deviation from the criminal code established by the state. E.g. adultery is considered immoral and wrong by majority but it is not criminal.

On the other hand, there are a multitude of actions that are criminal, not because they are morally wrong but because it is in society's interest, for example driving three mph over limit. It is a crime because we need to have hard lines on speed limits to ensure safety.

Modern definition of crime: that it is there to prevent harm.

Allen- there are some harms that threaten the security of society if left unchecked, so criminal law is not about protecting individuals from harm as much it is about ensuring the stability of society.

2) Unlawful Act Manslaughter (AKA constructive manslaughter)

Unlawful act + objectively dangerous + causing death = criminal liability

1) **Unlawful Act-** So D's actions have to be unlawful and they must have committed an act.

- Unlawful act must be a crime, not a civil wrong.
- D must have satisfied all elements of the base offence (must establish actus reus and mens rea for offence and not have any defences.)
- Base offence must also be one that requires subjective mens rea.
- Base offence does not need to be targeted at the victim, for D to be liable.
- Must be an act not an omission.

2) **Objectively Dangerous.**

- Objective? Test is whether all sober (meaning sensible) and reasonable people would recognise that D's actions were dangerous.
- Is behaviour likely to cause physical harm?

3) **Causes death**

- Standard principles of causation apply.
- The unlawful act must cause the death, not another act that occurred at the same time.

3) Reckless manslaughter (RARE)

- D killed V foreseeing a risk of death or serious injury.
- The D MUST have been reckless as to the risk of serious injury (this is assessed subjectively- what the D knew and saw.)

Engaging with a problem question

Mens rea:

- Intentionally touches.
- Does not reasonably believe that C consented.

Section 4: causing a person to engage in sexual activity without consent.

- Offence would overlap with section one, two and three.

(1) [D] commits an offence if—

- (a) he intentionally causes [V] to engage in an activity,
- (b) the activity is sexual,
- (c) [V] does not consent to engaging in the activity, and
- (d) [D] does not reasonably believe that [V] consents.

Actus reus:

- Causes c to engage in an activity.
- The activity is sexual.
- C does not consent to engaging in the activity.

Mens rea:

- Does not reasonably believe that C consented.

'Activity is sexual' requirements:

Lecture 9: Property offences; Theft and Robbery

Property crimes exist to protect the civil law notions of ownership.

Property offence is codified so in a statute: Theft Act of 1968.

Theft:

1	<p>Basic definition of theft.</p> <p>(1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and "thief" and "steal" shall be construed accordingly.</p> <p>(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.</p> <p>(3) The five following sections of this Act shall have effect as regards the interpretation and operation of this section (and, except as otherwise provided by this Act, shall apply only for purposes of this section).</p>
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Max penalty= 7 years imprisonment.

Actus Reus:

1. Property (S4)

(V broad)- money, personal property, things in action (can't touch e.g. Bank accounts) and other tangible products (can't hold e.g. debt, shares in a company.) Contained water can be stolen, not freestanding water- **Ofrends and O'Brien.**

What you can't steal (still might be liable for other offence):

- Land doesn't constitute property- but a trustee can steal property, you can steal part of a land e.g. plants, soil and tenant can steal a fixture or structure e.g. a shed.
- Wild plants can't be stolen but if someone picks wild plants and uses it for commercial purposes, then it can be stolen.
- Wild animals can't be stolen but they must be truly wild and not tamed- if animal is tamed then it counts as property. Cresswell- feeding an animal doesn't mean its been tamed. **Blades and Higgs-** animal that's been trapped or killed- becomes property of person who did it.
- Electricity (there is a separate offence of abstracting electricity but it isn't property.)

genuinely believed he had consent- owner quashed conviction for arson.

2) Belief in defence of property (defending property.)

- **D must believe they have a vested interest in property they are trying to protect.** Property must belong to someone, but owner does not have need to be identified.
 - o **Cresswell v DPP**- protesting practice of badger culling in order to prevent the spread of bovine TB. They destroyed badger traps- saying it was necessary to protect wild badgers. Problem is they were wild- so not property and cannot be something to be protected. There was a practice of baiting the traps several months prior to badger culling to get them use to the traps. As a result of this, D tried to argue that feeding of badgers means they belonged to department that were setting traps. Upholding their conviction, they ruled this was insufficient for badgers being held property so they couldn't rely on this defence.
- **D must believe property is in immediate need of protecting.**
 - o **Hill and Hall**- court of appeal held this was an objective question.
- **D must believe their actions are reasonable in order to protect property.**
 - o Subjective test- **DPP v Unsworth**- D cut down tops of neighbour's trees, causing significant damage to them. She wrote to them twice but was ignored and charged with CD. She argued that she honestly believed she was protecting right of light in her kitchen. They accepted lack of light made her feel depressed- her conviction was quashed. Actions reasonable to defend property.

3) 25(3) makes clear both these defences are assessed subjectively. So based on what D honestly believed, not assessment of facts.

- o Is it really subjective? **Hunt 1977**- they asked whether the defendant's acts capable of protecting the property. This is automatically an objective test. D's argument that his actions were done to protect the building could not fall under s5(2)(b). **Hill and Hall**- confirmed.

- Innocent agent? Person whose acts causes harm to victim. Has AR, but who is innocent either because they lack criminal capacity or underage of criminal responsibility or unaware of criminal nature of act. Not guilty of any crime.
- P, who has MR, uses X to commit AR.
- X commits AR, but doesn't have MR.
- **Michael (1840)**- mother wanted to kill her baby. She gave nurse, Michael a bottle of poison and told him it was medicine to give to the baby. Son of nurse gave poison to baby who died. Mother charged, nurse and son not (Innocent agents.)

4) Accomplice

- D does not complete AR, but aids, abets, counsels or procures P to commit the offence, and P completes it.
- Not necessary for P to be identified or convicted for accomplice liability to arise.
- **Gnango 2011**- teenager was engaged in gang warfare and having conflict with another person, D took gun, went looking for this person and whilst out searching, someone started to shoot at him, he started to shoot back. Whilst they were shooting at each other, a woman was shot by a bullet and died (not by defendant, by other person.) The first shooter was never apprehended, and D was convicted of murder as an accomplice to the principal offender. The question arose: the two people were not trying to actively kill together this woman- court of appeal quashed conviction. Supreme court restored liability on basis that he assisted or encouraged principal offender to shoot.

How does law deal with cases where there is uncertainty on whether D is principal offender or an accomplice?

If it can be proved, D either killed victim or was an accomplice in killing the V by another principal offender, then the D may be convicted of the principal offence.

Giannetto 1997- D threatened to kill his wife and paid P to kill her. D was arrested after the death of the wife and the prosecution was unable to establish whether P or D actually killed her. So the court convicted D for murder on the basis that either he or someone acting on his behalf killed her. D appealed, but it was held that the jury does not have to be sure which D in