

CRIMINAL LAW SUMMARY



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INTRODUCTION TO CRIMINAL LAW

DEFINITION OF CRIMINAL LAW

Criminal law concerns behaviours and activities which have been criminalised by Parliament or common law. Traditionally, morality is seen as an element of criminal law, but this is contentious. There are clearly offences which are both illegal and immoral, e.g. murder. However, some offences are not immoral, e.g. parking offences, while many types of immoral conduct, e.g. lying, are not criminal offences. Criminal law exists primarily to punish wrongdoers through the use of incarceration, fines and other punitive measures. Theories put forward to explain why offenders are punished include deterrence, rehabilitation, public protection and retribution.

Deterrence

Deterrence broadly means punishment to stop someone from re-offending. There are two types of deterrence: individual and general. Individual deterrence aims to stop the individual from re-offending by punishing him. General deterrence aims to 'deter' other would-be offenders by punishing the individual.

Rehabilitation

Rehabilitation aims to stop people from re-offending by helping people to recognise their behaviour, with the intention of sending them back into society, reformed.

Public Protection

Many minor offences are committed by individuals which are not regarded as dangerous, e.g. illegal parking. However, there are some offences, e.g. murder, grievous bodily harm, theft and so on, where offenders constitute a threat to people's safety or security. The idea behind public protection is that punishment of the offender protects society at large from the offender (usually by incarcerating the offender).

Retribution

This is perhaps the most primitive aim of punishment and differs from the other three because it is not about stopping people from committing criminal offences. It is centred on revenge, but it is also about the victim. Many offences are victimless, but for those where there are victims, they want offenders to be punished for the harm that they have caused.

CRIMINAL LAW AND MORALITY

It was stated earlier that some offences are illegal but not immoral and equally, many types of immoral conduct are entirely legal. There are certain cases which are controversial because they raise the issue of the extent to which certain types of conduct should be criminalised and whether the law should have a role in the enforcement of moral values. This can be seen by considering the similarities and differences of two cases: *R v. Brown*¹ and *R v. Wilson*².

R v. Brown³

FACTS: This case concerned a group of men who consented to pain inflicted in the course of sadomasochistic activities (e.g. branding, whipping, application of stinging nettles). The men were consequently convicted of assault causing actual bodily harm as per the ***Offences Against the Person Act 1861, s47***. They argued that as they had consented to these activities, the defence of consent should be available.

DECISION: It was proved that none of the men had suffered permanent injury and medical treatment was unnecessary. However, Lord Templeman indicated that the defence of consent was unavailable in this case because it was not in the public interest. He stated that: 'Society is entitled and bound to protect itself against a cult of violence. Pleasure derived from the infliction of pain is an evil thing. Cruelty is uncivilised'.

R v. Wilson⁴

FACTS: A husband branded his initials on his wife's buttocks with a knife. He did so with her consent. Consequently, his wife's burns became infected and she sought medical treatment. The husband was convicted of assault causing actual bodily harm as per the ***Offences Against the Person Act 1861, s 47***. He argued that she had consented to the branding.

DECISION: The Court of Appeal did not follow *R v. Brown*⁵. The conviction of the husband was quashed. Russell LJ indicated that:

'...it is not in the public interest that activities such as the appellant's in this appeal should amount to criminal behaviour. Consensual activity between husband and wife, in

¹ [1993] 2 WLR 556

² [1996] 3 WLR 125

³ [1993] 2 WLR 556

⁴ [1996] 3 WLR 125

⁵ [1993] 2 WLR 556

the privacy of the matrimonial home, is not, in our judgment, a proper matter for criminal investigation, let alone criminal prosecution...'

These two cases are very similar: they both concern adults consenting to the participation of activities in the privacy of their own homes. Both original charges were assault causing actual bodily harm as per the ***Offences Against the Person Act 1861, s47***. However, there are a number of differences between the two: one case concerned homosexual activity whereas the other concerned heterosexual activity between a married couple. Brown was seen as a group concerned with sexual gratification whereas Wilson was distinguished on the basis that the branding was 'personal adornment'.

There are facts about these cases which make the final decision (a conviction upheld in one case and quashed in the other) of the courts difficult to understand. In Wilson, the branding caused permanent injury which needed medical attention. Brown, on the other hand, concerned serious injuries, but none of them were permanent or in need of medical attention. In light of this, and the similarities of the activities in these two cases, was it right for the court in Brown, to label the men's behaviour as criminal?

These two cases certainly raise questions about the line-drawing exercise the courts must take when deciding what behaviour is criminal. They also demonstrate the difficulties that occur when the criminal law has to consider morality.

ACTUS REUS

INTRODUCTION TO ACTUS REUS

Actus reus refers to the conduct of the defendant. The nature of the act will dictate what type of act it is. There are four types:

- Action crimes, e.g. making a false statement (perjury).
- State of affairs, e.g. being in a prohibited area.
- Result crimes, e.g. a particular result must be produced by the defendant's actions (causation is relevant here). Examples of result crimes would be criminal damage and arson.

- Omissions will be punishable when the defendant has a duty to act but does not do so.

Omissions

Some countries and US states have what is known as a 'Good Samaritan' Law. This means that if the defendant omits to do something that a Good Samaritan would do, he may be liable in criminal law. England does not have this rule and takes the perspective that liability for omissions is too burdensome on particular defendants and too restrictive of individual freedom. However, there are some situations where criminal law will punish individuals for omissions:

- Contractual duty – where the defendant has a duty to act by virtue of a contract (often employment). This can be seen in ***R v. Pittwood***⁶ where the defendant, a gatekeeper at a railway station, caused a death by failing to keep a gate shut when a train passed through a station.
- Assumed duty of care – this is where the defendant would not ordinarily have a duty of care but owes a duty to another when he voluntarily undertakes care of that individual. This happened in ***R v. Stone and Dobinson***⁷, where a couple with learning difficulties undertook care of Mr. Stone's sister, a sufferer of anorexia nervosa, who died in their care. In taking her in and looking after her, they had undertaken a duty of care. As the defendants failed to draw local authority or medical attention to the lady, they were held to be responsible for her death.
- Parental duty – when parents or those caring for children fail to look after them, they can be liable for their omissions. This is demonstrated by ***R v. Gibbins and Proctor***⁸, where a father and step-mother were both held to be liable for the death of child, when she died as a result of their neglect.

⁶ [1902] 17 TLR 37

⁷ [1977] QB 354

⁸ [1918] 82 JP 287

- Creator of peril – this is where the defendant sets a string of events into motion, which results in the commission of an offence. In **R v. Miller**⁹, the defendant was a homeless man who started a fire accidentally, but when he realised what he had done, he failed to put the fire out, which resulted in criminal damage. It was held that where a defendant creates a dangerous situation, he is under a duty to act, as the defendant was in this case.

CAUSATION

Causation or ‘novus actus interveniens’ refers to whether or not the defendant’s act was the cause of the harm and looks at whether a particular event in a series of events may break the chain of causation¹⁰. When the courts decide whether there is a break in the chain of causation, they first consider factual causation and then legal causation. Both types of causation need to be satisfied, otherwise the chain of causation will be broken.

Factual Causation

This refers to whether or not, on the facts, the defendant caused the harm. There are two limbs to this test:

- ‘But for’ the conduct of the defendant, the victim would not have been killed. This can be demonstrated by the case of **R v. White**¹¹, where the defendant attempted to murder his victim by poisoning her, but the victim’s actual cause of death was a heart attack not caused by the poisoning. Therefore, although there was no doubt that the defendant intended to kill the victim, it could not be proved that his actions killed the victim, so factual causation could not be satisfied.
- It must then be demonstrated that the victim’s original injury caused by the defendant’s conduct was more than a ‘minimal cause’ of the victim’s death.

⁹ [1982] 2 All ER

¹⁰ Note: Causation is a favourite in criminal law examination problem questions.

¹¹ [1910] 2 KB 124

Legal Causation

Once the requirements of factual causation have been satisfied, the court must then direct the jury as to whether the defendant's acts will be sufficient, in law, to amount to a cause of the victim's death.

- The original injury must have been an operative and significant cause of death, e.g. ***R v. Jordan***¹². In this case, the victim died as a result of receiving medication that he was allergic to. If his injuries had still been an operative and significant cause of death, this would not have amounted to a break in the chain of causation, as can be seen from ***R v. Smith***¹³. However, because the victim's wounds had healed, the chain of causation was broken.
- The intervening act must be foreseeable, e.g. ***R v. Pagett***¹⁴. In this case, it was held that it was reasonably foreseeable that by shooting at police and using an individual as a human shield, that the individual could be shot.
- It should also be noted that a pre-existing weakness of the victim will not break the chain of causation. This is known as the 'thin skull' test and can be demonstrated by ***R v. Blaue***¹⁵. In this case, a woman's injuries were not life-threatening and she would have lived if she had agreed to a blood transfusion. However, because she was a Jehovah's Witness, she refused to accept the blood and died. The defendant was still liable for her death.

R v. Dear¹⁶

FACTS: The defendant stabbed the victim, severing an artery. The victim failed to seek medical attention, apparently using the opportunity to commit suicide. The defendant

¹² [1956] 40 Cr APP R 152

¹³ [1959] 2 All ER 193

¹⁴ [1983] Crim LR 393

¹⁵ [1975] 3 All ER 446

¹⁶ [1996] Crim LR 595

argued that the victim's actions constituted a break in the chain of causation and thus, the defendant was not liable for murder.

DECISION: The court held that the victim's actions did not amount to a break in the chain of causation. The cause of the victim's death was blood loss, which was caused by the stab wounds which the defendant inflicted. Therefore, the defendant caused the victim's death.

MENS REA

INTRODUCTION TO MENS REA

Mens rea refers to the mental element of the offence, in contrast to actus reus which is about the actual conduct of the defendant. It is necessary to prove that the defendant has the mens rea of the offence in question as well as be able to demonstrate that the defendant has committed the actus reus. Offences outline what mens rea must be proved for the defendant to be liable. The three main types of mens rea are:

- Intention
- Recklessness
- Gross negligence

INTENTION

Direct Intention

A direct intention can be described as a state of affairs 'that a person does more than merely contemplate'¹⁷. A direct intention exists where a defendant has a particular aim in mind e.g. to kill and intends to achieve the aim. In many cases it will be easy to demonstrate that the defendant directly intended to commit a specific offence, however in some circumstances it will be more difficult to demonstrate this, which is why oblique intention exists.

¹⁷ *Cunliffe v. Goodman* [1950] 1 All ER 720

Oblique Intention

Oblique intention is relevant in rare cases where a defendant commits an offence which requires the mens rea of intention, but the defendant did not have the direct intention to commit the specific offence. This can be demonstrated by considering the cases and seeing how the law has developed.

Hyam v. DPP¹⁸

FACTS: Ms Hyam posted burning newspapers through the letterbox of a neighbour in order to frighten her. The fire spread through the house and killed the neighbour's children. Ms Hyam argued that her intention was to frighten the neighbour – not to kill the children, which was an undesired consequence of her act. Therefore, she did not have direct intention to kill or cause serious bodily harm and could not be liable for murder.

DECISION: The court held that the actions of the defendant were such that it was highly probable that the acts would cause death or serious bodily harm. The court held that if the accused had foreseen that there was a high probability of either death or serious injury, that this would be regarded by the court as the same as intending to kill. (Note: this case is no longer good law).



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¹⁸ [1975] AC 55