

7 Criminal Law

modální
Slovesa

What is a crime?

In Chapter 3, crime was categorized as a part of public law—the law regulating the relations between citizens and the state. Crimes can be thought of as acts which the state considers to be wrong and which can be punished by the state. There are some acts which are crimes in one country but not in another. For example, it is a crime to drink alcohol in Saudi Arabia, but not in Egypt. It is a crime to smoke marijuana in England, but not (in prescribed places) in the Netherlands. It is a crime to have more than one wife at the same time in France, but not in Indonesia. It is a crime to have an abortion in Ireland, but not in Spain. It is a crime not to flush a public toilet after use in Singapore, but not in Malaysia. In general, however, there is quite a lot of agreement among states as to which acts are criminal. A visitor to a foreign country can be sure that stealing, physically attacking someone or damaging their property will be unlawful. But the way of dealing with people suspected of crime may be different from his own country.



Figure 7.1 An arrest during a student demonstration.

Elements of proof

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In many legal systems it is an important principle that a person cannot be considered guilty of a crime until the state proves he committed it. The suspect himself need not prove anything, although he will of course help

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himself if he can show evidence of his innocence. The state must prove his guilt according to high standards, and for each crime there are precise elements which must be proven. In codified systems, these elements are usually recorded in statutes. In common law systems, the elements of some crimes are detailed in statutes; others, known as "common law crimes," are still described mostly in case law. Even where there is a precise statute, the case law interpreting the statute may be very important since the circumstances of each crime may be very different.

For example, the crime of **theft** is defined in England under the 1968 Theft Act as:

privatnem
dishonestly appropriating property belonging to another with the intention of permanently depriving the other of it.

There are further definitions of each element of the definition, such as appropriating, which may mean taking away, destroying, treating as your own, and selling. The same Act also defines in detail crimes such as **burglary** (entering someone's land without permission intending to steal or commit an act of violence) and **robbery** (using force or threats in order to steal from someone). Although the Theft Act was intended to cover many possible circumstances, it is still often necessary for the courts to refer to case law in order to apply the Act to a new case. For example, in the 1985 case of *R. vs. Brown*, the defendant argued he couldn't be guilty of burglary since he reached through the window of a house without actually going inside. However, the court decided a person can be judged to have "entered" a building if gets close enough to be able to remove something from it.

There are usually two important elements to a crime: (i) the criminal act itself; and (ii) the criminal state of mind of the person when he committed the act. In Anglo-American law these are known by the Latin terms of (i) **Actus Reus** and (ii) **Mens Rea**. The differences between these can be explained by using the crime of murder as an example.

In English law there is a rather long common law definition of **murder**: The unlawful killing of a human being under the Queen's Peace, with malice aforethought, so that the victim dies within a year and a day.

Na základě porušení zákona
Malice aforethought refers to the mens rea of the crime and is a way of saying that the murderer intended to commit a crime. Of course, the court can never know exactly what was in the head of the killer at the time of the killing, so it has the difficult task of deciding what his intentions must have been. The judgments in many recent cases show that English law is constantly developing its definition of intent.

There is a different definition of mens rea for each crime. Sometimes the

defendant must have intended to do a particular thing. In murder, however, it is interesting that the defendant need not have intended to kill, but just to have wounded someone seriously. He need not even have had a direct intention; in some cases, a defendant has been found guilty if he killed someone because of recklessness—not caring about the dangers. Several recent cases have considered the problem of whether recklessness means acting even though you know there is a high risk of danger or acting without thinking about risks which a reasonable person ought to consider. In other crimes, it is enough to have been negligent or careless without any clear intention or even recklessness.

The rest of the murder definition refers to the actus reus. The prosecution must show that the suspect did in fact cause the death of someone. It must be an unlawful killing under the "Queen's Peace" because there are some kinds of killing which the state considers lawful—for example, when a soldier kills an enemy soldier in a time of war. A time limit is specified in order to avoid the difficulties of proving a connection between an act and a death that takes place much later. This may be especially relevant in the case of a victim who has been kept alive for many months on a hospital life support machine.

In deciding if the defendant's act caused death, the court must be sure that the act was a **substantial cause** of the result. In the 1983 case of *Pagett*, the defendant held a girl in front of him to prevent police from firing at him. But he himself shot at a policeman and one of the policeman fired back, accidentally killing the girl. The court decided that the defendant could have foreseen such a result when he shot at the policeman from behind the girl, and, as a result, his act was a substantial cause of the death. In the 1959 case of *Jordon*, the defendant stabbed a man who was then taken to a hospital where he started to recover. But the man died when hospital staff gave him drugs to which he was allergic. In this case the court decided that the hospital's error was the substantial cause of death rather than the attack by the defendant.

In some cases doing nothing at all may be considered an actus reus, such as in the 1918 case of *R. vs. Gibbons and Proctor*, in which a child starved to death because his father did not feed him.

In general, if the prosecution fails to prove either actus or mens, the court must decide there was no crime and the case is over. However, there are a small number of crimes for which no mens rea need be proved. For example, in *Alphacell vs. Woodward* (1972), waste from a factory entered a river because of a blocked pipe. The factory owners were able to show that they had no intention to pollute, were not reckless, and

were not even negligent since they had carried out all the checks required. Nevertheless a court found them guilty under the 1951 Rivers (Prevention of Pollution) Act. The court decided that the Act was intended to encourage very high standards and so it was enough simply for the prosecution to show that pollution from the factory had entered the river.

Defenses

If actus and mens have been proved, a defendant may still avoid guilt if he can show he has a **defense**—a reason the court should excuse his act. Different systems of law recognize different and usually limited sets of defenses. For example, English law sometimes allow the defense of **duress**—being forced to commit a crime because of threats that you or someone else will be harmed if you don't. Duress may be used as a defense against the charge of murder as a secondary party (helping the murderer), but is not available if the defendant is charged as the principal murderer.

Another defense is that of **insanity**. In most countries a person cannot be found guilty of a crime if in a doctor's opinion he cannot have been responsible for his actions because of mental illness. But this defense requires careful proof. If it is proven the defendant will not be sent to a prison, but instead to a mental hospital.

It might be argued that a person is not responsible for his actions if he is **intoxicated**—drunk or under the influence of drugs. In fact, an intoxicated person may not even know what he is doing and thus lacks mens rea. However, in Britain and many other countries, there is a general principle that people who knowingly get themselves intoxicated must be held responsible for their acts. Consequently, intoxication is not a defense.

Nearly every system of law recognizes the defense of **self-defense**. In English law, a defendant can avoid guilt for injuring someone if he can convince the court that the force he used was reasonable to protect himself in the circumstances. In some countries, shooting an unarmed burglar would be recognized as self-defense, but in other it might be considered unreasonable force.

The concept of defense should not be confused with that of **mitigation**—reasons your punishment should not be harsh (see Chapter 19). If a person has a defense, the court finds him not guilty. It is only after being found guilty that a defendant may try to mitigate his crimes by explaining the specific circumstances at the time of the crime. In France, the defense of

crime of passion is sometimes used to lessen the sentence: that your act was directly caused by the unreasonable behavior of your lover.

Although most criminal laws in the world refer to acts of violence or theft, there are laws regulating almost every kind of human behavior: for example, what we do with our land (Chapter 10); what we say and write (Chapters 15, 16); how we run our businesses (Chapter 11); even what we wear. Sometimes governments "create new crimes" by identifying a form of behavior and passing a new law to deal with it. In most industrialized countries existing theft laws were not adequate to deal with computer crimes where complex kinds of information are stolen, altered or used to deceive other, and, thus, new laws have been passed.

Technical change is one reason criminal law is one of the fastest growing areas of the law. Another reason is that the number of crimes committed in some countries seem to be increasing rapidly—although sometimes it is not clear whether people are breaking the law more, being caught more, or reporting other people's crimes more. One more reason is that different societies—or perhaps it is different governments—continually review their ideas of what should and shouldn't be a considered crime. Homosexual acts, suicide and blasphemy (attacking religion, see Chapter 16) were once crimes in all European countries, but have now mostly been decriminalized. On the other hand, discrimination against someone on the grounds of race or sex was not acknowledged as a crime until relatively recently, and is still not recognized in some countries (Chapter 18). Recent cases of **euthanasia** (shortening the life of a sick person) are causing re-evaluations of the concept of murder.