

Chapter 11 – Core Subjects: Criminal Law

The criminal law is the area of law which is often most familiar to people who are new to the law. It is the criminal law that we most often read about in the newspapers and see from various perspectives on the television and online.

English criminal law is found in both statutes and case law decisions. The law of murder for example is, as we saw earlier, a common law offence and many of the rules are therefore found in the decisions made by judges over the years as cases have come before them. The rules about theft, on the other hand, are found mainly within the Theft Act 1968, although again there are plenty of relevant case decisions which help us to interpret that Act and establish how it is to be applied to particular sets of facts.

The “body” of criminal law is huge and certainly too large to attempt to list all the offences in this book. Indeed, that is not the purpose of this chapter. Rather this chapter is trying to give you an easy to follow introduction to the subject. I’m sure you could make a fairly lengthy list of criminal offences in any event. They range from serious offences like murder, manslaughter, rape, robbery and blackmail, to burglary, theft, criminal damage and arson, down to often so called “less serious” offences like assault, most driving offences, littering and so on. The list is in fact almost endless when the huge spectrum of minor technical offences is included in the list. My plan in this chapter is to use some interesting examples to help explain what makes criminal law different to the range of varying civil law topics that exist.

Earlier in the book we looked at the differences between civil and criminal law. In particular, we noted the different court systems used by each, and the different remedies or punishments available to those courts. When we looked at tort we saw that to make a successful claim in negligence, for example, a person needs to show that they were owed a duty of care by the wrongdoer, and that the duty was breached, causing harm or damage. In contract law we saw that a contract must first be entered into, following which a breach of contract could be remedied by compensation if the breach caused loss to the innocent party.

Criminal law takes a different approach. Each offence generally has two elements to it. Much as I have tried to avoid using too many technical terms in this book, on this occasion I cannot. The two

elements have Latin terms and are known as the actus reus (“act–us–ray–us”) and mens rea (“mens–ray–uh”) of the offence.

The actus reus of an offence refers to the physical act that constitutes the offence. The mens rea refers to the state of mind that the person committing the offence needs to have to be guilty of the offence.

An example will help to explain these concepts. Let’s consider the offence of murder. The actus reus of murder is that I have killed somebody. Therefore, if I harm someone very seriously but they do not die, then I cannot be convicted of murder; I would have to be tried for some other offence such as attempted murder, or grievous bodily harm. The mens rea (state of mind) required for murder is generally the intention to kill or the intention to cause grievous bodily harm (really serious harm). If I deliberately shoot someone and they die then it is likely that I will be convicted of murder; I have killed them and I (presumably) intended to kill them or at least cause them serious harm.

This can be contrasted to the sadly familiar situation in which someone punches or pushes another person, who then falls and hits their head and dies. Whilst this has resulted in a death, and therefore satisfies the actus reus for murder, it is unlikely that the person who threw the punch or did the pushing actually intended to cause serious harm and certainly not to kill. In that case the offence is likely to be manslaughter (the mens rea for manslaughter is complicated by the fact that there are different types of manslaughter, but it usually involves some kind of extreme negligence or recklessness). The important thing to note is that *both* the mens rea and actus reus need to be proved in order for the accused person to be convicted of a crime.

The type of crime which has been committed is crucial because that is what determines the sentence which the judge can give. We saw earlier that serious criminal cases are heard in the Crown Court and that a jury will be present in that court. The jury assess the evidence, such as CCTV pictures, photographs, medical reports, documentary evidence and of course, evidence given by witnesses who come to court to be questioned by lawyers representing the prosecution and the accused. If the jury decided that the accused is guilty then the judge will pass sentence. Murder generally carries a mandatory life sentence, whereas for manslaughter the potential sentence ranges from life in prison to an unconditional discharge (where the offence is recorded but no punishment is given).

That reflects the huge range of circumstances and levels of culpability which can result in a charge of manslaughter.

Another good example to consider is the offence of theft, which is set out in the Theft Act 1968. This act contains provisions covering not only theft, but also burglary, robbery, blackmail and taking a vehicle without the authority to name but a few. All these offences have their own characteristics which must be proved before someone can be convicted of that offence. For the purposes of this book we are going to focus on the general offence of theft.

Theft is defined in section 1 of the Theft Act 1968 as follows:

A person is guilty of theft, if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.

This is quite a complex statement and some analysis is required in order to pick out the actus reus and the mens rea for theft. In fact the actus reus is found in the middle of the sentence – "... *appropriates property belonging to another...*" So in order to be guilty of theft I must have appropriated property belonging to another. I can appropriate property by taking it from another person or simply finding it in the street - if I then treat it as my own I have appropriated it. The term property itself is very wide and includes land, buildings and objects as well as things we may not be able to physically touch such as rights. Whether that property belongs to another is usually quite straightforward to determine, although can be complicated when property is owned by one person but in the possession or control of another. Such complexities are beyond the scope of this book; suffice to say that if I take property from someone else it is likely to satisfy the actus reus for theft.

However, as we know, before I can be said to have committed theft, I would need to satisfy the mens rea element of the crime as well as the actus reus element. The mens rea for theft can again be lifted from the basic definition above. The appropriation which is required for theft must be done *dishonestly*, and with the *intention of permanently depriving the other person of the property*. There are two aspects to prove here. Dishonesty is a matter for the jury to decide based on what is expected of reasonable and honest people. If I take a bicycle which I genuinely believe has been abandoned then am I acting dishonestly?

The other aspect of mens rea is that I intend to permanently deprive the other person of the property. Note that this is not part of the actus reus. The test is simply, "was it my intention that the property will never find its way back to the owner?" The test is *not* "did the property find its way back to the owner?" If the latter test applied then I could not be convicted of theft in any case in which the property was recovered. I could steal something and wait to see if I was caught. If I was I could then simply hand the property back and not be guilty of theft. However, the actual position is that when I stole the item I intended to permanently deprive the owner of it, and so I am guilty of theft even if the property is subsequently recovered.

Finally for this chapter, it is worth noting that some offences do not require a mens rea element. These are called "strict liability" crimes and a person is guilty of committing such an offence once they have satisfied the actus reus element. One example is the offence of speeding in a motor vehicle. If I drive at more than 30 miles an hour on a road which is subject to a 30 miles an hour speed limit then I am guilty of the offence of speeding. It does not matter whether I intended to speed, or was reckless as to my speed or even negligent about my speed; the fact that I have allowed my car to speed is enough, and I am guilty of the offence.

I have tried to give you a brief introduction here as to how the criminal law works. We know that cases are heard in the criminal courts, but we have seen here that many offences have two elements to them, the act (actus reus) and the mental element (mens rea). Both need to be satisfied for the crime to be committed, unless it is a strict liability offence which only has an actus reus.