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CHAPTER 10

CRIMINAL. LAW

Definition

There are as many definitions of a crime as there are textbooks on criminal law. This is because it is difficult to attach an exact definition to something which has many aspects; from motoring offences to murder; from theft to treason; from bigamy to blackmail and so on. From these examples it is possible to see the great variety and difference in gravity of the offences, although they are all crimes.

Earlier in the book, criminal law was classified as public law, because it is an offence against the State and is punished by the State. It would appear, therefore , first that a definition of a crime must show that an offence is against the public , although it might affect only one person , and, secondly, that the person who committed an offence either by a positive act or by omitting to do something which was a legal duty will be punished in some manner prescribed by the State. A definition which contains these points arose in the House of Lords when Lord Tucker,in Board of Trade v. Owen (1957) considered that the correct definition of a crime in the criminal law was the following passage from Halsburys Laws of England. "A crime is an unlawful act or default which is an offence against the public and renders the person guilty of the act or default liable to legal punishment."

CLASSIFICATION OF OFFENCES

Crimes may be classified in several ways as follows:

1.Method of trial

In order to establish the method of trial, offences are classed as:

(a) Indictable offences

These are serious offences, triable by judge and jury, for which a Bill of Indictment sets out the charges alleged to have been committed by the person(s) sent to the Crown Court for the trial.

(b) Summary offences

These are offences which are subject to trial by magistrates' courts. The cases are decided in these courts.

(c) "Hybrid" offences

These are offences created by statute and may be tried either summarily or on indictment.

2. Power to arrest

A new classification of offences was introduced by the Criminal Law Act 1967, which is important with respect to the power to arrest without a warrant (see p. 228).

(a) Arrestable offences

These are offences established by The Criminal Law Act 1967, "... for which the sentence is fixed by law or for which a person (not previously convicted) may ... be sentenced to imprisonment for a term of five years." The Police and Criminal Evidence Act 1984 extended the list by including certain offences under Customs and Excise law, Official Secrets Act, Sexual Offences Act, Theft Acts and offences of corruption in office. For a more detailed summary see p. 229. This classification is important in that arrestable offences are subject to the power to arrest without a warrant.

(b) Non-arrestable offences

Although this class is not defined by the Act, it relates to all other offences which are not arrestable offences.

Elements of a Crime

The rule of *mens rea* is an established rule of criminal law by which an act does not make a person guilty unless it is done with a guilty intention. A person is generally guilty of a crime (but not always) if two elements are present. First, there must be a wrongful act which would be a crime and, secondly, there must be the intention to do the wrongful act, knowing it to be a crime.

Therefore, in most crimes there must be the physical element; a wrong act (*the actus reus*) and the mental element; a guilty mind (*mens rea*), and if both elements are not present there is no crime. It should be noted that there are some crimes for which both elements are not necessary. These crimes are committed by the act, and the intention is not necessary (see strict liability below).

1. Mens Rea

Mens Rea means the guilty mind or wrongful intention and, obviously it differs from crime to crime. The wrongful intention of a person committing a theft is completely different from that of a person committing treason. To be criminally liable, a person must have intended to do wrong or have acted in such a Jo.reckless and negligent manner that a reasonable person must have realised that a crime would be committed. If a terrorist leaves a bomb in a train and kills a passenger, it would not be a defence to claim that there was no intention to kill anyone. Such an act is so reckless, and the likelihood of death so foreseeable, that the wrong or criminal intention is present.

The House of Lords have ruled that intent to kill or inflict serious bodily harm is necessary to establish malice aforethought and even the foresight of the probable consequences of an act does not automatically mean the consequences were intended.

In *R. v. Moloney* (1985) the accused received a friendly challenge by his step-father to see who was "quicker on the draw" with shotguns. Both men were drunk, but good friends. Moloney shot and killed his step-father, although he claimed he had no intention to do so and did not appreciate that the gun was aimed at the victim. The House of Lords held that Moloney was not guilty of murder as a person only intends the result of an act if his purpose is to bring about that result. As Moloney did not intend to kill his step-father he was not guilty of murder. He was, however, guilty of manslaughter.

In *R. v. Hancock and Shankland* (1985) the defendants were striking miners. They pushed blocks of concrete from a bridge above a road, which landed on a windscreen of a taxi carrying a miner to work. The driver of the taxi was killed and the defendants were charged with murder. They claimed that they had not intended to kill or injure anyone, but merely to block the road. The House of Lords ruled that in such cases the probability of death or injury arising from the act done is important, because "if the likelihood that death or serious injury will result is high, the probability of that result may be

seen as overwhelming evidence of the existence of the intent to kill or injure." The men were found not guilty of murder but guilty of manslaughter.

This decision was followed by the Court of Appeal in *R. v. Nedrick* (1986), where the court considered that in such cases a person would only be guilty if his actions will inevitably result in death or serious harm, regardless of intent.

Certain offences have **strict or absolute liability**, and *mens rea* is not essential. For example, the Health and Safety at Work, etc., Act provides that certain machines must have safety covers, and if these covers are not fixed, the employers are strictly liable. In one case, the employers asked an outside contractor to supervise the safety regulations but the employers were still liable when the contractors did not comply with the statutory requirements. Strict liability arises when the crime consists of performing a forbidden act or not performing a statutory duty (the *actus re us*); the wrongful intention (the *mens rea*) is irrelevant here.

In *Meah v. Roberts* (1977) two children were served with glasses of caustic soda instead of lemonade. Me ah was found guilty of selling food unfit for human consumption, contrary to the Food and Drug Act 1955, even though another person was responsible for the cleaning fluid being in the lemonade bottle.

When interpreting statutes, there is a general presumption that *mens rea* is necessary in all crimes. This rule can only be replaced if an Act of Parliament expressly or impliedly excludes the necessity of *mens rea* (*Sweet v. Parsley* (1970)).

2. Actus Reus

This element includes all circumstances relating to a crime other than the *mens rea*. It is the wrongful act or omission which leads to a crime. For example, burglary is committed when a person enters a building as a trespasser with intent to steal, or to inflict grievous bodily harm on any person, or to rape a woman ; or to do unlawful damage to the building.

The *actus reus* of burglary is the entering into a building without right to do so. The *mens rea* is the intention of committing certain crimes when in the building. It is not burglary to enter a building without this intention, but merely the tort of trespass. The crime is committed when both elements are present. The *actus reus* of entering the building and the *mens rea* of intending to commit the other crimes, even though the other crimes were not actually committed.

The above is only a part of the definition of burglary, see p. 222 for the complete definition.

Specific Crimes

OFFENCES AGAINST THE PERSON

1. Unlawful homicide

Homicide is the killing of a human being by another human being and it is not necessarily a crime. To kill as a means of lawful self-defence is not unlawful homicide and is not a crime. The following are examples of unlawful homicide, and are crimes.

(a) Murder

Murder is unlawful homicide, and it is defined as unlawful killing with malice aforethought, with the death taking place within a year and a day of the attack or event that caused the death.

Malice aforethought may be defined as the intention to kill or cause grievous bodily harm to the other person. It could be murder if the killer intended to murder one person, but killed another instead.

When a person kills whilst committing a crime or avoiding arrest, it would not be murder unless there was an intention to kill or inflict serious bodily harm (*R. v. Hancock and Shankland* (1985) see p. 215).

The punishment for murder is imprisonment for life, and, when sentencing, the judge may recommend a minimum term to be served.

The defences to a murder charge are:

(i) Diminished responsibility. The defence is that the killer was suffering from an abnormality of the mind, that impaired the mental responsibility for committing the act or omission. If this defence is accepted the charge would be manslaughter. In the "Yorkshire Ripper" case the jury did not accept this defence, and found Peter Sutcliffe guilty of murder.

(ii) Provocation. The act by the dead person was such that would have made any reasonable person lose control of the mind. If the defence is accepted the charge would be manslaughter.

It should be noted that the House of Lords in *R. v. Howe, etc.* (1987), declared that duress (where a person is forced by another person to commit the crime) is no defence to murder.

(b) Manslaughter

Manslaughter is unlawful homicide without malice aforethought. Manslaughter occurs when:

- (i) A person acts with gross negligence and kills another person.
- (ii) A person kills another person whilst carrying out an unlawful act which would not normally kill or seriously hurt that other person.
- (iii) A person is directly the cause of another's death, although the actual killing was the act of a third party. For example, where a person involved in a shooting incident with police uses the victim as a shield as protection against the police bullets.
- (iv) The defences of provocation, suicide pact or diminished responsibility are pleaded successfully.

Examples (i), (ii) and (iii) above are classed as involuntary manslaughter because of the absence of malice aforethought. The last example is classed as voluntary manslaughter because the crime would have been murder but for the specific defences. The maximum punishment for manslaughter is imprisonment for life.

(c) Suicide

Suicide and attempted suicide are not crimes, but it is a criminal offence to aid, abet, counsel or procure the suicide of another. (Suicide Act 1961 s.2.) A suicide pact occurs when two or more persons agree that they shall be killed by some means. Survivors of such a pact are charged with manslaughter, whether they killed another or whether the dead person killed himself.

It should be noted that, as with murder, death by suicide must take place "within a year and a day" of the injury. (*R. v. Inner West London Coroner* (1988)).

(d) Infanticide

Infanticide is committed when a child under the age of 12 months is killed:

- (i) by its mother, and
- (ii) at the time of the killing, the mother was mentally disturbed as a result of not fully recovering from the effects of the child's birth.

The maximum punishment is the same as for manslaughter.

(e) Causing death by reckless driving

This offence is committed when a motorist does not drive with due care and attention and causes the death of another. It is punishable by imprisonment of up to five years and/or a fine.

2. Assault and battery

It is common to hear these two charges joined as one. They are, however, separate offences.

(a) Assault

This is an act which causes another person to be in immediate fear of an unlawful physical attack. It is generally considered that mere words are not sufficient but that they must be accompanied by some positive action. An action which arouses fear, although there was no intention to harm, would still be an assault.

(b) Battery

This is the actual unlawful force on another person, without lawful reason or just cause. The force may be the merest touch which caused no physical harm or injury.

It is usual for both offences to occur at the same time, but assault is not committed if the person is unaware that the battery is to take place. For example, if an attack takes place behind a person's back.

Defences include lawful consent, parental or quasi-parental authority and reasonable self-defence.

3. Wounding with intent

This offence is committed when a person, with intent, unlawfully and maliciously wounds or causes grievous bodily harm to another person. (Offences Against the Person Act 1861, s.18.) It is only possible to make this charge if there has been serious bodily harm or wounding by a breaking of the skin.

A bruise, burn or scratching of the skin is not wounding in this sense, nor would the breaking of a bone be so if the skin was not broken. It would appear, therefore, that bleeding from the wound is necessary for this offence. In *C. v. Eisenhower* (1983) a pellet from an airgun did not break the skin, but caused internal bleeding. The court held the

defendant to be not guilty of unlawful wounding as there had not been a breaking of the skin.

4. Rape

This offence occurs when a man has unlawful sexual intercourse with a woman without her free consent. It would still be rape if consent was given by a trick, such as a man pretending to be the woman's husband.

A husband cannot rape his wife unless they are legally separated but a husband may be charged with assault or causing bodily harm if he uses violence to force his wife to have intercourse.

Boys under 14 may not be charged with rape but they could be liable in a civil case involving affiliation proceeding, where a boy is the father of a child (L. v. K. (1985)). A woman who forces a male to have unlawful sexual intercourse would be liable to the charge of indecent assault.

OFFENCES AGAINST PROPERTY

The Theft Acts 1968 and 1978 provide many offences against property. The main crimes are as follows:

I. Theft

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

The punishment for theft is a maximum of 10 years' imprisonment. The definition of theft, set out above, which is found in section 1(1) of the 1968 Act contains certain words or phrases which need to be explained.

(a) Dishonestly appropriates

This could be considered the "*mens rea*" of stealing, so that if a person did not intend to be dishonest, there would be no theft. For example, if I took another person's coat from a rack, thinking it was my own, there would be no theft, but if I took it knowing it was not my coat, it would be dishonest. If I took the coat thinking it was mine, but later discovered it belonged to another person, it would be theft if I decided to keep it.

The Act does not define "dishonestly" but gives examples of when the appropriation of another's property would not be dishonest.