

Sample Essay, Criminal Law  
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Criminal law defined is the branch of law that defines what public wrongs are considered crimes and assigns punishment for those wrongs. A crime is an act or omission prohibited by law for the protection of the public, the violation of which is prosecuted by the state and punishable by fine, incarceration, and/or other restriction of liberty.

Our legal system is largely based on English common law. Many of these same laws, which in some cases are literally hundreds of years old, are enforced to this very day. Our modern approach has been to create statutes, enacted upon by the states or federal government, to protect the public. *Malum in Se* is inherently dangerous, bad, or immoral acts. *Malum Probitum* are necessary laws made to regulate such as driving on the wrong side of the road.

To convict a person of a criminal offense the prosecution must prove every element of the charge beyond a reasonable doubt. This differs from civil law in the fact that in civil proceedings a decision is made by the preponderance of the evidence.

Crimes are classified as either felonies or misdemeanors. Treason is an exception and has its own classification of wrongdoing. Statutory felonies are generally those offenses punishable by death or incarceration in a prison for more than one year. Misdemeanors are those offenses that are not classified as felonies. Misdemeanors are, generally speaking, crimes of a much less serious nature, such as traffic violations, etc.

The ultimate issue in the study of criminal law is whether the defendant's conduct creates criminal liability. This involves consideration of three main issues. First is whether the conduct constitutes a crime. Second is if there is a crime committed then are there any defenses which may be used. Third, consideration must be given to whether there are any constitutional bars to conviction and punishment.

If punishment is in order for a crime then justifications for that punishment must be addressed. Specific punishment may prevent an offender from committing future crimes through deterrence or incapacitation of the offender. Also by affording the person the opportunity for treatment and possible rehabilitation. Penalizing offenders may also prevent others from committing crimes by generally deterring them through anticipation of similar punishment.

The elements of crime include many aspects and these elements must be identified for a crime to have been committed. The *actus reus* element is the actual act or acts that the defendant performed. The *mens rea* element is the state of mind that the defendant was in at the time of the crime. This is the determination of criminal intent, which is of extreme importance in determining criminal behavior, unless it is the US Federal Justice system of course, which is only interested in conviction rate.

As previously stated, "*mens rea*" is the criminal state of mind. It is traditionally defined as the "nonphysical element" of a crime. This usually addresses what the defendant must have been thinking at the time he or she committed the *actus reus* or the actual

act of the crime. Most crimes require a mens rea. An exception to the mens rea is a strict liability offense. For this author a strict liability crime is explained in one simple statement: She said she was 18.

Complicity in crime can involve parties to the crime. Liability for a crime is not limited to the person who actually commits the proscribed act. Rather, liability extends to anyone who has encouraged or assisted the perpetration of the crime. All such persons are regarded as "parties" to the crime and can be convicted of the same crime as if they themselves had committed the criminal act.

Crime and criminal acts come in many different types and varieties. The major categories will be discussed as well as a brief description of them, as space permits. Solicitation is defined as to counsel, incite, or induce another to commit or to join in the commission of any offense. Conspiracy is a major part of criminal law, and especially in the federal system. The definition of conspiring to commit a crime is very broad but essentially any knowledge of a crime would constitute conspiracy. One does not even have to be a part of the conspirators that commit the act to be convicted.

Homicide offenses have a very complex grading scheme. Generally speaking, homicide is the killing of one human being by another human being. One most commonly thinks of murder when associating homicide. Murder requires malice of aforethought or there must be some thought process prior to the act to be considered as murder. There also has to be intent to kill. Felony murder, which does not exist in most countries and was abolished in English law in 1957, is the killing of someone during the act of committing a felony. This is whether there was intent to kill that person or not. Degrees of murder are generally first or second degree. Both require some premeditation but the time of that meditation is split within jurisdictions. Any homicide that is not murder is manslaughter. Manslaughter is usually classified as voluntary and involuntary. Voluntary manslaughter is the killing of another human being that would not otherwise be murder and was committed in response to certain provocation. This is usually without malice or aforethought. Involuntary manslaughter is an unintended killing usually the result of criminal negligence or caused during the commission of an unlawful act.

Rape and related offenses at common law is unlawful sexual intercourse with a female person without her consent. It is useful to distinguish between cases in which the intercourse is accomplished by means of force, threats, or fraud and those in which consent is given but is ineffective because of the victim's age. Modern statutes often redefine the offense and rename it as sexual assault, and classify it as a crime against the person rather than a sexual offense.

Typical crimes against habitation are generally burglary or arson. The traditional crimes of burglary and arson protect a citizen's security in their habitation. At common law burglary is the breaking and entering of the dwelling house of another in the nighttime with intent to commit a felony. Modern statutes have made the times much broader and have also defined other conditions such as breaking, entry, the curtiage included, and many other factors. Arson is the malicious burning of the dwelling house of another. It is interesting to note that under common law there must be actual burning

as opposed to just scorching. Modern trends tend to broaden this to include explosions and probably ray guns if we ever have them. Generally speaking, these crimes are felonies.

Crimes against property are numerous and somewhat complex in our society today. They would include larceny, embezzlement, obtaining property under false pretenses, robbery, and extortion or blackmail. Also, receiving of stolen property is included. Multiples of these offenses can come under consolidation of acquisition offenses and would be defined as theft.

Perjury is a crime under modern law and is defined by giving false testimony where oath may be administered. Thus, perjury can be committed before a legislative or administrative committee or board, if that body has the authority by law to administer an oath to witnesses who appear before it.

Crimes against the government are generally in a class unto themselves. The most common is treason, which is crime against the country but one can only be convicted if owed allegiance to the government. Interesting also is the fact that treason is either a felony or misdemeanor but a separate class in itself. There are also treason-like crimes, such as rebellion, or overthrow of the government that come under this classification.

Defense of crime is a major element of the study of criminal law and probably the most significant aspect of our legal system as far as the general public is concerned. There are many different defenses and in this paper we will attempt to cover the major classifications of them.

Generally speaking, children are not held liable for criminal acts. Common law infancy defense is under the presumption that a child under age seven is unable to form criminal intent. A child from seven to 14 is reputable under the presumption that they are able to form criminal intent. For 14 and older there is no presumption of incompetency. This is of course the age at the time the act was committed and not at the time of court.

Insanity is many times used as a defense. Many defendants have felt that their legal counsel, the prosecuting attorney, or even the judge in some cases, would fall under this classification but the insanity plea is for the defendant only. Insanity concerns the defendant's state of mind at the time of the crime and must be distinguished from "incompetency to stand trial," which concerns the defendant's condition at the time of trial. Usually a successful defense of insanity will return a verdict of "not guilty by reason of insanity" or "NGRI", at the time of the crime. A number of different tests and methods are used throughout different jurisdictions to determine sanity.

Diminished capacity is a defense in some jurisdictions. Evidence of mental illness that does not establish insanity may be admissible to prove that the defendant did not have, or could not have formed, the specific intent necessary for the crime charged. This position is sometimes referred to as the "Wells-Gorshen" rule or the doctrine of "diminished capacity" and it permits the use of evidence that the defendant's capacity

was so diminished that he could not have formed the requisite mens rea.

The effect of intoxication upon criminal liability depends upon whether the accused was voluntarily or involuntarily intoxicated. While involuntary intoxication may be a defense, voluntary intoxication generally is never a defense with the exception of possibly used to prove lack of mens rea.

Ignorance or mistake as to a matter of fact is ordinarily not a defense in the fact that it invokes a defensive doctrine unrelated to the elements of the offense. Ignorance or mistakes of law, versus mistake of fact, arise in two different contexts. One is that the defendant lacked the mental state required for conviction. In addition, one could have the mental state but mistaken about the applicable law and thus believed his conduct did not commit a criminal offense.

Necessity or justification may also in some cases be used as a defense. It is generally available where the accused acted in the reasonable belief that perpetration of the offense would prevent the occurrence of a greater harm or evil.

Duress is sometimes a defense to a criminal charge that the defendant committed the criminal act under. It is a threat made by another human being to use force against the defendant or another unless the defendant commits the offense.

Entrapment is the leading of a person into committing a crime. It must be noted that one can only be entrapped by a law enforcement officer or agent or such. Consent is a defense if it negates some element of the crime. This usually is for minor assault or battery. I do not think that entrapment has ever been used as a defense to terminate or nullify a marriage, however wrong that may seem.

A defendant charged with an assaultive crime may assert in defense that he reasonably believed his actions were necessary to defend himself (self-defense) against an apparent threat of unlawful and immediate violence from another. Requirements to use this as a defense differ depending upon whether there was the use of deadly force. Defense of others may also be used with essentially the same criteria applied as self-defense. One may also defend property but generally deadly force is not allowed. The exception to this is possibly the defense of dwelling. Many authorities recognize a somewhat greater right to use force in defense of their property. Common law does allow deadly force to protect a dwelling. However, modern views somewhat limit the right to use deadly force.

The study of criminal law is a very complex and sometimes difficult subject. Each crime committed, due to the human factor, is essentially different from any other commission of a crime. It is a very important part of our legal system if not the most important. Without adequate protection from people who commit crimes then our society would be in chaos. However, there is a fine line between too many laws and not enough. We as educated humans will continue to tweak our laws and rules for probably as long as civilization lasts. This has been an interesting journey and certainly one can understand the criminal element of our society much better after completion of this module.