



Part I of the Core – Crime

Property of Prestige Tuition

❖ The nature of crime

Is an act or omission that harms society and the individuals in it for which a punishment has been determined by the law and is enforced by the state. Any act punishable by the law

A crime is an act or failure to act which break the law, causing harm and is punishable by law. Laws on crime change over time to reflect society's beliefs and values.

- **The elements of crime**

Mens Rea – guilty mind (often referred to as the mental element, but more accurately described as the fault element) requires someone to intend to commit a crime, and to have the mental capacity to have intent. For example, someone who plans to commit a robbery clearly meets the condition of intent. If the robber hits and kills a pedestrian with the car on the way to the robbery, however, the robber cannot be charged with murder because he or she did not intend to kill the pedestrian. The pedestrian is still dead, of course, and the robber will be liable for manslaughter.

Categories: intention, recklessness and negligence

Actus Reus – actual committing of crime (often referred to as the prohibited conduct, but more accurately described as the external elements of the offence) To borrow our robber example again, someone can *intend* to commit a robbery but never actually do it, in which case the robber is not guilty because no conduct occurred. Concurrence requires a connection to be present between intent and conduct. While concurrence is often defined as “at the same time,” it is recognized that sometimes intent and conduct can occur at different points in time and someone can still be guilty.

Causation - that the mens rea and Actus Reus of the accused led to the crime. Someone can intend to commit a crime and engage in criminal conduct, but not actually commit the crime at issue in the court. For instance, if an assassin fires a gun and misses, intent and conduct are present, but causation is not. If the would-be victim later drops dead, the assassin's bullet was not the cause.

The elements of a criminal offense

Most types of crime need to have 2 elements to be proved before it can be said that a criminal offense has occurred and that the person is criminally liable.

These 2 elements are actus reus and mens rea.

Actus Reus is the guilty act. This is the voluntary commission of an act that breaks the law. Important factors: the act actually took place, it was done by the accused, it was voluntary

Mens rea is the guilty mind. The person must have committed the act with the intention to do so, recklessly or with gross negligence. Important factors: intention (specific desire), recklessness (person could foresee the probability or



possibility of harm but acted anyway), negligence (means the person failed to exercise care, skill or foresight)

Strict liability – means that no mens rea needs to be proved. Only Actus Reus needs to be proved. In criminal law, strict liability is liability for which mens rea (Latin for "guilty mind") does not have to be proven in relation to one or more elements comprising the Actus Reus (Latin for "guilty act") although intention, recklessness or knowledge may be required in relation to other elements of the offence. The liability is said to be strict because defendants will be convicted even though they were genuinely ignorant of one or more factors that made their acts or omissions criminal. The defendants may therefore not be culpable (blameworthy) in any real way, i.e. there is not even criminal negligence, the least blameworthy level of mens rea. E.g. traffic offenses

Causation – the act that was performed must also have caused the crime that took place. The act must be the 'operative and substantial' cause of the crime. Which means that it must be what was ultimately responsible for the offense.

Omission - failure to perform an act agreed to, where there is a duty to an individual or the public to act (including omitting to take care) or is required by law. Such an omission may give rise to a lawsuit in the same way as a negligent or improper act.

Impacts of crime

- **The effect on the victim** – their family & friends, this impact can be financial, physical, psychological, emotional or a combination of these
- **The effect on the community** – which is immeasurable, public order, is disrupted & people fear for their property & their personal safety
- **The cost to society** – this includes the cost of administering the justice system (the courts, prisons, police, legal personnel and so on)

Factors affecting a definition of crime and criminal behaviour

Students should note that this is a complex issue and that crimes are committed for many reasons and often a number of factors influence a persons' decision to disobey the law. Some of the broad factors which influence a persons' attitude toward crime include:

1. **Social:** People, and in particular, their attitude to the law and the authority of the state, are shaped in part by the society they live in. Factors such as upbringing and personal networks can impact, often negatively, upon a persons' view of the law and respect (or lack of) for it.
2. **Economic:** People who suffer economic disadvantage can feel "disconnected" from main stream society and its value and hence may feel less respect for the law. Further poverty, in terms of need can also be a factor, particularly in property offences.
3. **Genetic:** This is a controversial theory, originating in 19th century phrenology studies and more recently in DNA analysis. There is no conclusive evidence to support a genetic based theory explaining criminal behaviour.
4. **Political:** Individuals and organisations may oppose certain criminal laws (or indeed the whole notion of the state in the case of anarchists) on political grounds. They therefore believe that the law is wrong or unjust and may not feel



compelled to comply with the law. Political motives cover the spectrum of criminal behaviour from public order type offences through to violent criminal behaviour.

5. **Self interest:** Self interest and greed can motivate people to commit crime. It can be seen as an easy road to power and/or wealth.

Elements of crime

For the prosecution to prove that a crime has been committed, they must prove beyond a reasonable doubt the three elements of a crime i.e. mens rea, actus rea and causation. The exception is for strict liability offences where it is not necessary for the prosecution to prove mens rea. Most students know and understand mens rea (mental state of the offender) and actus rea (conduct of the offender of the act) but few understand the third element of crime – causation. The prosecution must show that there is a link between the act and the crime. That is, it is an act by which an effect is produced. For example, if you stabbed someone and they died on the operating table, it is the act of the stabbing that caused the person to die, rather than the fault of the doctor. A good case to examine on causation is *R v Blaue* (1975) 1 WLR 1411 CA.

- **Categories of crime**

Students should take care not to get confused between TYPES of crime and examples of specific offences, understanding the wording in the syllabus is crucial. For example, “offences against persons” is a TYPE OF CRIME, whereas “manslaughter” and “sexual assault” are examples of crimes that come under the type of crime “offences against persons”.

Students should aim to understand what each type of crime is and be able to correctly categorise specific offences to their appropriate type. An example is always an excellent way to support a definition of a concept and students should aim to do this in Legal Studies.

Creating a mnemonic can be an effective way for students to remember the TYPES of crimes.

The eight TYPES OF CRIME referred to in the syllabus are:

1. **Offences against persons:** involve the intended causing of injury to a person e.g. assault, manslaughter
2. **Economic offences:** involve the infliction of economic loss upon the victim by for example:
 - a. Loss or damage to the victims property e.g. robbery, larceny
 - b. White collar crime like embezzlement (the taking of money by an employee from a business) or tax evasion.
3. **Offences against the State:** involve criminal acts against the government. For example:



- a. Treason: involves the commission of acts aimed at bringing down the government/head of state.
- b. Sedition: involves the incitement of hatred and/or violence against the government/head of state. The federal government's recent anti terrorism laws, contain sedition provisions. These provisions have attracted quite a deal of debate about the need to balance protection of society against freedom of speech in our post 9/11 world.
4. **Drug Offences:** involve the use, supply and possession of prohibited drugs. Most offences are covered in the Drug Misuse & Trafficking Act 1985 (NSW). For example 'possess or supply prohibited drug' (the quantity of the drug will determine the severity of the offence).
5. **Public Order offences:** involve acts which the 'reasonable person' would deem unacceptable behaviour. Such offences include using offensive language (in public), indecent behaviour (e.g. being nude in public) and prostitution. The existence of such offences demonstrates how moral and social views influence law.
6. **Traffic offences:** involve breaches of traffic laws. Many traffic offences are strict liability offences such as speeding. With offences deemed 'strict liability' the prosecution has only to prove that an illegal act was performed (*actus reus*). It does not also have to prove that there was criminal intent (*mens rea*), negligence or fault. Other (non-strict liability) offences include dangerous driving occasioning death and driving in a manner dangerous to the public.
7. **Victimless Crimes:** as their name suggests, involve criminal acts which do not seem to involve a victim e.g. self use of a prohibited drug.
8. **Preliminary crimes:** involve attempting to or planning to commit a crime, both of which are criminal acts. For example:
 - a. Attempt e.g. Attempted break enter and steal, loitering with intent.
 - b. Conspiracy must involve two or more people agreeing to commit a crime e.g. planning to rob a bank.

Elements of crime

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- **Distinguishing Summary (minor) and Indictable (serious) Crimes**

It is important to distinguish between these. Summary offences are minor offences (e.g. driving under the influence of alcohol, shoplifting) that are dealt with quickly, usually in a Local Court. Indictable offences are more serious and complex (e.g. murder or sexual assault) and are usually tried before a judge and jury in a District Court or higher. The latter normally go through a committal hearing in the Court first to determine if there is enough evidence to go to trial.

An **indictable offence** is one that society considers to be very serious such as murder or sexual assault. As the charge is more serious, there are more steps in the legal process, including a committal hearing to ensure that there is enough evidence to warrant a trial. If there is sufficient evidence then a trial with a judge and jury will occur. Indictable offences are brought on a charge called an 'indictment'. The penalty for an indictable offence can be life in prison.

A **summary offence** is a less serious charge, such as shop-lifting or drink driving. These cases are heard by a magistrate in a local court, without a jury. Summary offences are brought on a charge called a 'summons' and carry penalties of no greater than two years in prison.

- **Parties to a crime**

Criminals do not always act alone. Persons involved in a crime are referred to as parties to a crime. The punishment such persons receive from the court, (if convicted) will depend upon the extent to which they were involved in the crime (as well as other factors such as if they have a previous record). The more involved the party to the crime is, the greater their punishment.

The parties to a crime may be identified as:

- a. **Principal in the first degree:** the person(s) directly responsible for the criminal act e.g. robbed the bank.
- b. **Principal in the second degree:** the person(s) who assists the principal in the first degree to commit the crime e.g. drove the getaway car.
- c. **Accessory before the fact:** the person(s) who help to plan the crime e.g. stole the bank plans.
- d. **Accessory after the fact:** the person(s) who knowingly assists the offender after the crime has been committed e.g. helped hide the offender from police.



- **Crime prevention**

Crime prevention is seen as a more effective method of dealing with crime than simply being reactive and responding to crime once it has occurred. Public officers who are visible on the streets play an important role in deterring people from committing criminal offences. E.g. security guards, police officers, transit & parking officers.

Situational crime prevention involves making it difficult for criminals to commit crimes by increasing the risk of being caught, and making the crime more difficult or less rewarding to perpetrate. This is often referred to as 'opportunity reduction'. The use of this method is increasing, particularly in commercial settings e.g. many shops now make use of surveillance cameras and security guards, which significantly increases the risk of offenders being caught.

Social crime prevention is designed to give people access to society and an education in order to reduce the factors that are likely to cause a person to commit a crime. These factors include poor parenting and/or home environment, high levels of truancy and misbehaviour at school, drug addiction and exposure to criminal elements at an early age. Lawmakers and enforcers are beginning to see the socio-economic value in social crime prevention. The most common strategy to encourage young people away from crime is the use of diversionary programs that provide a venue for alternative activities, such as sporting groups, the Police Citizens Youth Clubs and drop-in centres. Programs that target substance abuse, enable intervention in violent behaviour and provide job training to reduce unemployment have also been adopted.