

HANDOUT 1: The Criminal Law

Criminal Law in Canada

Criminal law is a category of public law that punishes behaviour that results in injury to people and/or property. In Canada, most criminal law is made by the federal government. Some laws made by the provincial and municipal governments are called "quasi-criminal." For example: offences under the Motor Vehicle Act. "Quasi" is Latin for "as if". Most of the criminal laws are found in the *Criminal Code of Canada* which applies to all provinces and territories in Canada. It contains a description of crimes and criminal law procedures.



Principles of Criminal Law

Presumption of innocence is a principle of the Canadian criminal justice system. The accused is presumed to be innocent until proven guilty.

Burden of proof means that it is Crown counsel's responsibility to prove that the accused is guilty. The defence lawyer does not have to prove that the accused is innocent.

Beyond a reasonable doubt is the expression used when determining the likelihood that the accused committed a crime. The Crown must prove that the accused is guilty and there cannot be any reasonable doubt about it in the minds of the judge or jury. If there is a reasonable doubt then the accused must be found not guilty.

Types of Crime

In the *Criminal Code of Canada*, three broad categories of criminal offences are used. The least serious are summary conviction offences, the more serious are called indictable offences. An offence that can be a summary offence or an indictable offence is known as a dual or hybrid offence.

Summary conviction offences are punishable by no more than six months in prison or a fine. Indictable offences allow for life sentences and larger fines. The punishment for a dual or hybrid offence is determined by the Crown's election of whether to proceed summarily or by indictment, with the Code prescribing available sentences. For some hybrid offences, summary proceedings can result in penalties higher than those allowable for straight summary offences (for example, assault causing bodily harm, upon summary conviction, is punishable by a maximum of 18 months in jail.)

The *Criminal Code of Canada* has distinguished between different types of offences for three reasons. First, some offences cause greater harm to individuals or society. Second, some offences are considered more morally repugnant than others and third because some offences are conducted against property while others are against people.

The Elements of a Crime

A crime occurs when an individual breaks one of our criminal laws. Every crime has two essential parts: the physical action or actus reus and the intent or mens rea (guilty mind). For example, the crime of arson has two parts: actually setting fire to a building and doing it wilfully and deliberately. Setting a fire by accident may not be a crime. For most criminal cases both the

actus reus and the mens rea must be proven. If either element is missing, then no crime has been committed.

Actus reus

The physical act of committing an offence (actus reus) is more than an act, it can be an omission to act or a 'state of being'. For example if one is in possession of an illegal narcotic, one is not acting or failing to act but merely in possession. This is a state of being. Omissions to act can also be crimes (a failure to act when required to do so by law).

If a parent fails to provide the basic necessities for children's survival the failure to provide is an omission and a crime. The majority of crimes are acts or kinds of misconduct. Proof of the physical element requires more than simply determining an act, omission or state of being exists. It is necessary to consider the four C's-conduct, consequences, circumstances and causation. The conduct must be as described earlier an act, omission to act or a state of being as outlined in a specific section of the criminal charge. Of particular importance to the concept of conduct is that it be voluntary. The law will not hold someone criminally responsible for an involuntary act. Consequences refer to the outcome of a specific act. For a homicide the consequence would be the death of a human being.

The circumstances aspect of the actus reus refers to the relevant circumstances under which an act must occur to be criminal. In the case of the crime of trespassing at night the relevant circumstances would be that the act occurred at night, on someone's property other than your own and that you entered the property without consent or lawful excuse.

The final element is causation, meaning that the conduct of the accused person must be shown to have caused the consequence (the criminal act) to occur. If Sally is charged with murdering Bill then it must be proven that Sally's conduct caused the death of Bill.

Mens rea

The physical act represents one element in the commission of a criminal act while the guilty mind represents the second key element. The guilty mind refers to the intention, knowledge or recklessness of the accused. Essentially the law states that we must mean to cause a wrongful consequence.

Intention is commonly used in the *Criminal Code* to establish a type of guilty mind. Words like 'willfully,' 'means to' or 'intentionally' are used to describe a state of mind. There are two basic types of intention-specific and general. Specific intent offences frequently use the phrase 'with intent' or 'for the purpose of' to demonstrate a specific purpose behind the crime. General intent crimes are those that do not require a further purpose or intention and are often crimes committed in moments of uncontrolled passion or aggression.

The knowledge form of a guilty mind means that the accused must have knowledge of the specific circumstances of the crime. The phrases 'knowingly' or 'knowing' are commonly used here to indicate a specific type of knowledge. For example, to knowingly lie to a judge or jury is called perjury and is a criminal offence but to give false evidence unknowingly is not a criminal offence.

The third kind of intent is recklessness. This is type of intent is found in crimes like dangerous driving causing death. It means that the accused has been unduly careless in their actions by not exercising good judgment and foresight. If one drives 100km/h through a school zone in the

daytime, with no intention of killing or harming a child, and hits a child crossing the street and that child dies, the law would use recklessness to establish the guilty mind. Contrary to TV law, it is not necessary for the Crown to establish why an accused has committed an offence (the motive). Motive may be used to establish intention and can be used in sentencing to mitigate or aggravate the sentence depending on the reason for committing the crime.

Other Elements of Crime

In addition to the physical act and guilty mind the criminal law also ascribes guilt in specific circumstances to incomplete offences and to those who are less than full participants in the offence. A crime is considered attempted if it can be established that there was intention, that some act toward committing the offence occurred and that the offence did not reach full completion.

Anyone that helps, aids, or assists before, during or after the commission of an offence is a *party* to that crime and can be charged under the *Criminal Code* as though they had actually committed the offence. Aiding or assisting someone that you know to have committed a crime is also a separate offence in Canada. Where people form an intention and common purpose to carry out an unlawful act and any one of them commits a crime in carrying out the common purpose, each person who knew that the criminal act was a likely consequence of the common purpose is also a *party* to that crime. Agreeing with one or more people to commit an offence is a conspiracy and is a crime in Canada. Therefore if you plan to commit a crime, even if you do not complete the act, it is a crime. Counselling others to commit an offence is also unlawful.

Criminal Case Studies

Look at the case studies below and answer the questions posed with respect to the key criminal elements covered above (e.g. mens rea, actus reus, party to an offence).

Criminal Case Studies

Case 1

Marion asked Sarah to take care of her infant boy for a few days. Marion also asked Sarah to give the infant a teaspoonful of “medicine” every night. In fact, the medicine was poison. Sarah did not think that the infant needed medicine so she did not give it to him. She put the medicine on a shelf in her living room. Later, Sarah’s five-year-old son gave the infant a large dose of the ‘medicine’ and the infant died. Marion was charged with murder.

Is Sarah or Marion guilty of murder? Explain.

Case 2

Eva, Donna, and Claudia are walking through the park when they see their enemy Jim walking with a friend. They decide to “have some fun.” So Donna and Claudia hold back Jim’s friend while Eva punches and kicks him. Donna and Claudia laugh and yell their support to Eva. Meanwhile Mike, who is walking his dog, stops for a moment to see what is going on. Mike decides not to get involved and walks on. Eva is convicted of assault causing bodily harm.

Should Donna or Claudia be charged with an offence? Explain.

What about Mike? Explain.

Case 3

Murray, Josie (Murray’s wife) and Rosa agree to steal some money from Pete’s clothing store. They also agree that Pete will not be harmed and that no weapons will be used. Murray enters the store and gets Pete’s attention by asking him questions about an article of clothing. Then Josie enters the store and walks toward the cash register while Rosa acts as a look-out near the store entrance. Pete notices Josie reaching into the drawer of the cash register and yells loudly. Rosa panics, pulls a gun, and shoots Pete, severely wounding him. Murray, Josie, and Rosa run from the store and go to Russ’s apartment around the corner. Russ agrees to let them use his car and Murray, Josie, and Rosa drive to a hiding place. Pete later dies from the wound he received.

Explain the criminal acts of Murray, Josie, Rosa, and Russ.
