



Part One: Lesson One

Introduction

One of the most interesting areas of substantive law is crime! Criminal Law is somewhat different to Civil Law subjects, such as Contract and Tort. Both of these are laws of 'obligations'. An 'Obligor' owes responsibility, or duty, to an 'Obligee'. In the Law of Contract, for example, where an obligation arises under a contract, the Obligor (or Promisor) is required to perform certain contractual obligations and is liable in damages if he does not perform them or does not perform them adequately.

In Tort, when someone owes another a duty of care or a duty not to cause a nuisance etc., then this obligation will be enforced by way of injunction or damages.

Indeed, the whole of Civil Law is mainly concerned with obligations. Matrimonial Law, Employment Law, Welfare Law and Property Law - all consist of obligations from one person/class, to another, giving rise to the performance of a duty or, failing this, compensation for a breach of the obligation.

Criminal Law is different. In Criminal Law there is no 'Obligee'. It is true that criminal duties may exist for the *benefit* of others, but they are not *owed* to them. It is not possible, generally speaking, to obtain damages in respect of the commission of a crime, nor to obtain an injunction to prevent one happening. Fines, if they are imposed, go to the State and not to the victim.

The only real exceptions to lack of obligations in a criminal situation occur either:

- As a result of a criminal injury compensation claim (the rules for such a claim are referred to as the Criminal Injury Compensation Scheme 2008.)

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- Under the powers of the Criminal Courts Sentencing Act 2000 a compensation order can be obtained by a victim against the perpetrator of a crime. It should be noted, however, that strictly speaking this is part of the concept of 'sanctions' (i.e. punishment), not of obligations.

Criminal Law is also different in other ways. It is dealt with in different courts, which have different procedures to the Civil Courts. There are different rules of evidence and a different burden of proof.

Criminal Law is linked to issues of moral philosophy and the 'punishment' of offenders - it protects a way of life, reflecting community values. This, of course, often produces problems where society is divided over whether certain issues should be criminalised or de-criminalised. Many people, for example, (the Lord Chief Justice has expressed his views on the subject) advocate that the possession of some drugs (especially 'soft' drugs) should be de-criminalised. Further, some argue that the suppliers or dealers are the real criminals as they exploit the weak for profit, whilst the user might be addicted and cannot (without help) stop.

Supporters of this further argue that alcohol and tobacco, for example, are legal but just as addictive and dangerous. The prohibition of possession of alcohol in America in the 1930s caused huge problems in terms of criminal activity.

The age of consent for homosexuals, viewing pornography and other areas have also caused arguments between sections of society. Should the State take a moral stand or should the criteria be the liberty of the individual?

These are some of the issues that make Criminal Law different from its civil counterpart. To simplify matters, however, we can say that whereas the Civil Law deals with 'wrongs' between individuals dealing with compensation in some form or other, crimes are wrongs against society as a whole, for which the State will 'punish' the wrongdoer.

This section of the study material is divided as follows:

- **The nature & classification of crimes** - The elements (or necessary ingredients) of a crime called the *actus reus* (pronounced 'aktus rey-us') and the *mens rea* (pronounced 'mens ree-er').
- **General defences to a crime** - Defences that are available in respect of all crimes, and criminal capacity.
- **Specific crimes** - Fatal Offences against the person (murder and manslaughter), and Offences against property (Theft, Obtaining property by deception and Burglary).
- **Types of sentences** - Imposed by the courts.

You will come across much case law in this unit. In the majority of the cases cited, there will be a brief explanation of what the case was about. In others, however, the case may just be quoted as the authority to the aspect of law being referred to. Should you want a full explanation, most cases can be found on the Internet by performing a search.

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Coursework Sample

Assignment 1

Explain and discuss what is meant by the 'elements' of a Crime?

This subject includes five assignments in total. Guidance is provided on how to write assignments.

A multiple-choice achievement test is also included to assess overall knowledge and understanding.