

LL.B. I Term

Paper: LB - 104 – Law of Crimes-I

Objectives of the Course

The primary objectives of criminal law are to maintain law and order in the society, protect the life and liberty of people and punish the offender. As punishment to the offender has long term consequences for the convict, it is the basic principle that criminal liability may be imposed only if all the ingredients of an offence are fully proved beyond reasonable doubt. Various offences in the Indian Penal Code have been drafted keeping in view various principles of criminal liability. For example, most offences specify the required state of mind as well as the prohibited act for imposition of criminal liability. However, many situations require deviation from these principles due to the involvement of more than one person in the action, or due to the resultant harm to society, or due to prevailing social and cultural norms contrary to constitutional principles of equality and liberty to all. The course of Law of Crimes-I has been so designed as to enable the students to understand the general principles of criminal liability, to identify the ingredients of an offence, understand the range of state of mind required for different offences, as well as to sensitize the students about the inherent biases of criminal law against certain groups of people despite its claim of universality, neutrality and equality. The course will enable students to critically scrutinize the recent developments and changes that have taken place in the field. The primary objectives of this course are:-

- To familiarize the students with the key concepts regarding crime and criminal law.
- To expose the students to the range of mental states that constitute *mens rea* essential for committing crime.
- To teach specific offences under the Indian Penal Code.
- To keep students abreast of the latest developments and changes in the field of criminal law.

Prescribed legislation: The Indian Penal Code, 1860

Prescribed Books:

- 1) K.T. Thomas, M.A. Rashid (Rev.), **Ratan Lal & Dhiraj Lal's *The Indian Penal Code***, (34th ed., 2014)
- 2) K.D. Gaur, ***Criminal Law : Cases and Materials***, (8th ed., 2015)
- 3) R.C. Nigam, ***Law of Crimes in India*** (Vol. I) (1965)
- 4) V.B. Raju, ***Commentary on Indian Penal Code***, 1860 (Vol. I & II) (4th ed., 1982)
- 5) K.N.C. Pillai & Shabistan Aquil (Rev.), ***Essays on the Indian Penal Code*** (The Indian Law Institute, 2005)
- 6) K. I. Vibhute (Rev.), **P.S.A. Pillai's *Criminal Law*** (12th ed., 2014)
- 7) Syed Shamsul Huda, ***The Principles of the Law of Crimes in British India*** (1902)
- 8) K.N. Chandrasekharan Pillai, ***General Principles of Criminal Law*** (2nd ed., 2011)

Topic 1 : Principle of *Mens Rea* and Strict Liability**4 Lectures**

Common Law principle of *actus non facit reum, nisi mens sit rea* and exceptions to this principle - Strict liability offences

Nature of crime

viii-xii

Elements of crime

xiii -xvii

1. *State of Maharashtra v. Mayer Hans George*, (1965) 1 SCR 123
AIR 1965 SC 722 01
2. *State of M.P. v. Narayan Singh*, (1989) 3 SCC 596 23

Topic 2 : (a) Culpable Homicide and Murder**12 Lectures**

(Sections 299-302, 304 read with sections 8-11, 21, 32, 33, 39, 52)

Offences of culpable homicide amounting and not amounting to murder distinguished. - culpable homicide of first degree provided in clause (a), second degree in clause (b) and third degree in clause (c) of section 299, IPC. Each clause of section 299 contains comparable clauses in section 300. Every murder is culpable homicide but not *vice versa*. Culpable homicide is the *genus* and murder is its *species*.

Intention - clause (a) of section 299 and clause (1) of section 300

3. *Rawalpenta Venkalu v. State of Hyderabad*, AIR 1956 SC 171 29

Mens rea and actus reus-Relationship

4. *Palani Goundan v. Emperor*, 1919 ILR 547 (Mad) 33
5. *In re Thavamani*, AIR 1943 Mad 571 40

Cause and effect relationship- The act of the accused must be the causal factor or direct cause of death (read with section 301, IPC)

6. *Emperor v. Mushnooru Suryanarayana Murthy*
(1912) 22 MLJR 333 (Mad.) 42

Comparison of clause (b) of section 299 with clause (3) of section 300

7. *Kapur Singh v. State of PEPSU*, AIR 1956 SC 654 54
8. *Virsa Singh v. State of Punjab*, AIR 1958 SC 465 55
9. *State of Andhra Pradesh v. R. Punnayya*, AIR 1977 SC 45 60

Comparison of clause (c) of section 299 with clause (4) of section 300

Distinction between intention and knowledge and role of knowledge in S.300 secondly and then comparison of clause (c) of section 299 with clause (4) of section 300.

10. *Emperor v. Mt. Dhirajia*, AIR 1940 All. 486 70
11. *Gyarsibai v. The State*, AIR 1953 M.B. 61 75

Topic 3 : Specific Exceptions to section 300**2 Lectures**

General and partial defences distinguished – general defences in Chapter IV, IPC, if applicable in a given case, negate criminality completely.

Partial defences such as exceptions to section 300 partly reduce the criminality, not absolving an accused completely. The law, based on sound principle of reason, takes a lenient view in respect of murders committed on the spur of the moment. Exceptions I to V to section 300 are illustrative of partial defences.

(a) Exception I to section 300

12. *K.M. Nanavati v. State of Maharashtra*, AIR 1962 SC 605 79

Reading

- Katherine O'Donovan, 'Defences for Battered Women Who Kill', 18 (2) *Journal of Law and Society* 219 (1991) 88

(b) Exception IV to section 300

13. *Ghapoo Yadav v. State of M.P.*, (2003) 3 SCC 528 96

Topic 4 : Homicide by Rash or Negligent Act not amounting to Culpable Homicide**2 Lectures**

(Section 304A) Distinction between negligence and rashness as forms of *mens rea*; *mens rea* required is criminal negligence (inadvertent negligence) or criminal rashness (advertent negligence)

14. *Cherubin Gregory v. State of Bihar*, AIR 1964 SC 205 99
15. *S.N. Hussain v. State of Andhra Pradesh*, AIR 1972 SC 685 102

Topic 5 : General Exceptions -Chapter IV of the Indian Penal Code

General defences in Chapter IV, IPC, if applicable in a given case, negate criminality completely.

(a) Private Defence (Sections 96-106, IPC) 4 Lectures

The right of private defence has come to be recognized by all civilized societies as a preventive and protective right where the state protection is not available; this right is essentially protective and preventive and never punitive. There are limitations on the exercise of this right both in relation to offences against human body and specific offences against property. The extent of this right, against whom it can be exercised, when this right commences and how long it lasts are dealt with elaborately in IPC.

16. *State of U.P. v. Ram Swarup* (1974) 4 SCC 764 :AIR 1974 SC 1570 106
17. *Deo Narain v. State of U.P.* (1973) 1 SCC 347: AIR 1973 SC 473 114
18. *Kishan v. State of M.P.* (1974) 3 SCC 623 : AIR 1974 SC 244 118
19. *James Martin v. State of Kerala* (2004) 2 SCC 203 120

Topic 6 : Kidnapping and Abduction (sections 359-363 read with sections 18, 82, 83, 90)
2 Lectures

Ingredients of the offence of kidnapping from lawful guardianship (section 362); distinction between taking, enticing and allowing a minor to accompany; Kidnapping from lawful guardianship is a strict liability offence (section 363) and distinction between 'Kidnapping' and 'Abduction'. Relevance of age, consent, force, deception and motive.

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| 20. <i>S. Varadarajan v. State of Madras</i> , AIR 1965 SC 942 | 127 |
| 21. <i>Thakorlal D. Vadgama v. State of Gujarat</i> , AIR 1973 SC 2313 | 132 |
| 22. <i>State of Haryana v. Raja Ram</i> , (1973) 1 SCC 544 138 | 143 |

Topic 7 : Sexual Offences **6 Lectures**

Section 354 (Assault or criminal force to woman with intent to outrage her modesty), section 354A (Sexual harassment), section 354B (Assault or use of criminal force to woman with intent to disrobe), section 354C (Voyeurism), section 354D (Stalking) and section 509 (Word, gesture or act intended to insult the modesty of a woman).

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| 23. <i>Kanwar Pal Singh Gill v. State (Admn., U.T. Chandigarh) through Secy.</i> , (2005) 6 SCC 161 | 149 |
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The offence of rape (sections 375, 376, 376A-E read with section 90).

Section 377 – Unnatural Offences

Comparison to be made with the definitions in The Protection of Children from Sexual Offences Act, 2012.

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| 24. <i>Tukaram v. State of Maharashtra</i> , AIR 1979 SC 185 | 153 |
| Reading : An Open Letter to the Chief Justice of India (1979) 4 SCC (J) 17 | 159 |
| 25. <i>State of Punjab v. Gurmit Singh</i> , (1996) 2 SCC 384 | 164 |
| 26. <i>Sakshi v. Union of India</i> , (2004) 5 SCC 518 | 177 |
| 27. <i>Suresh Kumar Koushal v. Naz Foundation</i> , (2014) 1 SCC 1 | 188 |

Reading: Upendra Baxi, "Naz 2 A Critique". Vol. XIIX (6) EPW 12, February 8, 2014. 203

Topic 8 : Group Liability (Section 34, Sections 141, 149 IPC) **4 Lectures**

Provisions for providing for group liability in crimes including sections 34 and 149 of the IPC are exceptions to the general rule of criminal liability that a man should be held liable for his own criminal acts and not for those of others. These provisions providing for vicarious liability/group liability are intended to deter people from committing offences in groups and to spare the prosecution to prove specific *actus reus* of each member of the group

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| 28. <i>Suresh v. State of U.P.</i> (2001) 3 SCC 673 | 209 |
| 29. <i>Mizaji v. State of U.P.</i> , AIR 1959 SC 572 | 222 |
| 30. <i>Maina Singh v. State of Rajasthan</i> (1976) 2 SCC 827: AIR 1976 SC 1084 | 228 |

Topic 9 : Attempt (Sections 511, 307, 309 IPC) **4 Lectures**

There are four stages in the commission of crime – (i) intention to commit an offence, (ii) preparation, (iii) attempt and (iv) forbidden consequence ensuing from the act of the accused after the stage of preparation is over. An attempt is direct movement towards the commission

of an offence after the preparation is made. An accused is liable for attempting to commit an offence even if the forbidden consequence does not ensue for reasons beyond his control and he is to be punished for creating alarm and scare in the society

31.	<i>Asgarali Pradhania v. Emperor</i> , AIR 1933 Cal. 893	235
32.	<i>Abhayanand Mishra v. State of Bihar</i> , AIR 1961 SC 1698	241
33.	<i>Om Parkash v. State of Punjab</i> , (1962) 2 SCR 254 : AIR 1961 SC 1782	248
34.	<i>State of Maharashtra v. Mohd. Yakub</i> , (1980) 3 SCC 57	254
35.	<i>Gian Kaur v. State of Punjab</i> , (1996) 2 SCC 648	262

Topic 10 : Offences of Theft, Extortion, Robbery and Dacoity **4 Lectures**

(Sections 378, 379, 383, 384, 390 and 391 read with sections 22-25, 27, 29, 30 and 44)

36.	<i>Pyare Lal Bhargava v. State of Rajasthan</i> , AIR 1963 SC 1094	274
37.	<i>Jadunandan Singh v. Emperor</i> , AIR 1941 Pat. 129	277
38.	<i>Sekar v. Arumugham</i> (2000) Cr.L.J. 1552 (Mad.)	279
39.	<i>State of Karnataka v. Basavegowda</i> (1997) Cr.L.J. 4386 (Kant.)	282

Topic 11 : Offences of Criminal Misappropriation, Criminal Breach of Trust and Cheating **3 Lectures**

(Sections 403-405, 415-416 and 420 read with sections 29-30)

40.	<i>Jaikrishnadas Manohardas Desai v. State of Bombay</i> , AIR 1960 SC 889	287
41.	<i>Mahadeo Prasad v. State of West Bengal</i> , AIR 1954 SC 724	292
42.	<i>Akhil Kishore Ram v. Emperor</i> , AIR 1938 Pat. 185	295
43.	<i>Shri Bhagwan S.S.V.V. Maharaj v. State of A.P.</i> , AIR 1999 SC 2332	299

IMPORTANT NOTE:

1. The students are advised to read only the books prescribed above along with legislations and cases.
2. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.
3. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.

LL.B. I Term Examination, December 2015

Law of Crimes–I : Question paper

Attempt any five questions
All questions carry equal marks.

1. (a) Explain the rationale behind punishing a person guilty of a strict liability offence in the absence of guilty mind.
- (b) Raghav Ram, a film actor, was returning from a party past midnight when he dozed off and the car that he was driving ran over two persons sleeping on the pavement

killing them and thereafter rammed into a pole. He was jolted out of sleep by the impact of the accident when his car hit the pole. Tests confirmed high dosage of alcohol in his blood. Discuss his liability for the death of those two persons.

- 2.(a) What are the circumstances wherein right of private defence of body extends to voluntarily causing death?
- (b) Can a student leader on indefinite fast during a protest be forced-fed in order to save his life? Discuss in the light of relevant case law.
- 3.(a) A, a police sub-inspector, in exercise of his lawful powers goes to the house of a murder suspect, B, to arrest him. The sub-inspector behaves in an unusually high-handed manner that provokes B. Due to this, B picks up a kitchen knife lying nearby and thrusts it into the abdomen of A resulting in grievous injury and ultimately death of A. During trial B pleads the defence of grave and sudden provocation. Decide.
- (b) A is attacked by Z, a person of unsound mind, who has a spear in his hand. In order to protect himself, A strikes Z with a stick on his head, resulting in his death. During trial A pleads the right of private defence. Decide, with the help of relevant legislative provision.
4. Reshma, a 16 year old girl, fed up with her step-mother's ill treatment and her father's stand of neutrality, writes a letter to her school principal complaining against the atrocities and requesting him to provide her shelter in his house. The principal assures her that he will talk to her parents, but in the meantime, Reshma leaves her house and goes to the principal's house and begs him to allow her to stay there and promises to do domestic work in return for the favour. A week later Reshma is recovered from the Principal's house. He is charged under Section 363 for kidnapping from lawful guardianship. Discuss his liability.
 Would the position be any different if he had himself brought Reshma to his place, on receiving her letter, in order to save her from the ill-treatment of her step-mother? Decide.
5. Six persons enter a house at night to commit theft. While the others are busy looking for valuables on the ground floor of the house, one of them climbs up to the first floor of the house and finding the maid-servant sleeping alone there rapes her and threatens to kill her if she raises an alarm. Then, he comes down and joins his associates in the process of collecting valuables after which they all leave the house. Discuss the liability of all of them for the offences of theft and rape.
6. (a) What offence, if any, has been committed by X in the following:
 - (i) X finds a gold ring lying on the road. He picks it up and sells it for Rs. 5000.
 - (ii) Y deposited her pearl necklace with X. X substituted the genuine ones with imitation pearls.
- (b) Write short notes on any two:

- (i) Stalking
 - (ii) Voyeurism
 - (iii) Disrobing
7. (a) “Dishonest intention is the gist of the offence of theft.” Explain. Also discuss how extortion is different from the crime of theft.
- (b) “Rape is a question of Law.” Explain the essentials of the crime of rape. How is this law different from the law against sexual assault provided under the POCSO Act?
8. Discuss the liability of X in the following. Attempt any *two* out of the three.
- (a) X stabs B who is five year old son of A in his leg due to which there is significant blood loss. Doctors advise blood transfusion. A refuses to get it done since his religious belief doesn't allow the same. B dies after three days due to extreme blood loss.
 - (b) X is learning shooting. Despite being cautioned against practicing in crowded places, he fires shots at his dummy target after placing it in a crowded street. A shot from his gun hits a person there causing his death.
 - (c) X and B are sworn enemies. One day, finding B alone, X gives him a deep wound in his chest with the help of a sharp dagger that pierces his heart and causes his death.

LL.B. I Term Examination, December 2014
Law of Crimes–I : Question paper

Attempt any five questions. All questions carry equal marks.

1. (a) The fundamental principle of criminal liability is that, “there must be wrongful act combined with wrongful intention”. Elaborate.
- (b) Having taken loan from Areal Bank, A purchased a vehicle. A was to pay regular monthly instalments. Failure to pay two consecutive instalments would result in impounding of vehicle by the Bank. A went abroad and could not pay three instalments. On his return, he found that the vehicle parked in the premises was taken by the Bank through their musclemen, without his consent. What, if any, offence has been committed by the Bank.
- 2.(a) Arguments between X ((husband) and W (wife) on repayment of loan to the Bank, turned ugly. Husband slapped his wife and not satisfied with this threw a burning stove (kerosene oil) on her. The oil with flame resulted into fire in which the wife was engulfed. Husband tried to dose it off. However, the burn injuries were beyond 70% which resulted into death of the wife four days later in the hospital. Determine the liability of the Husband X in the case.
- (b) Annoyed due to insufficient dowry brought by X, her mother-in-law and husband deliberately starved and ill treated her by locking in a room. As a result X’s health deteriorated. One day she managed to escape to reach to a hospital where she was admitted. Doctor refused the request of her husband to send her home in such a critical condition. It took more than 10 months for the lady to recover. Discuss the offence the mother-in-law and husband have committed. Give reasons to support your answer.
- 3.(a) Due to rivalry arising out of landed property between A and B, A caused multiple injuries to B and various parts of body to teach him a lesson. B was admitted to the hospital, where he was treated and discharged. When B was on his way to recovery, he became negligent about his medicines. He, therefore, developed fever and septic of two wounds. B died a week later. State the liability of A. Cite relevant legal provisions and decided cases.
- (b) Accused X was running a bus at a high speed on a dusty and damaged road. While negotiating a curve with the same speed, without applying brakes, the bus over turned, killing a pedestrian and injuring some of the passengers. Prosecution is interested to prosecute X under Section 304-A of IPC. Can they do so and will they succeed? Give reasons.
4. (a) Due to breaking of communal riots between community A and B, members of community A caused loot, plunder and fire of the property belonging to members of community B. X, who was a member of community B was also targeted. He tried to remain within closed door, to save himself and his family. However, the mob reached and started knocking at his door. Before the mob could enter, X fired from his

licensed revolver and killed a member out of the mob. Mr. X is charged of murder, however he pleads his right of private defence against his charge. Can he do so? Give reasons.

- (b) Discuss statutory limitations on the exercise of right of private defence as laid down in the Indian Penal Code.
- 5.(a) Mr. B and Ms. A who were class fellows from class Xth, developed infatuation towards each other. They carried the relationship for 6 long years till the boy did his master's course and was employed in good multinational. They had promised to marry each other and were firm to do so, knowing fully well they belonged to different castes. On the basis of this promise and long relationship they entered into sexual relationship many a times.

However, finally, when boy disclosed it to his parents, they refused to do so on the basis of caste. They threatened the boy of social ostracisation and even death of both of them in case they do the same. Compelled by these reasons, the boy married another girl. A charges the boy B of having committed rape with her. Decide the fate of B.

- (b) Write short notes on any two of the following:
- (i) Voluntarily causing grievous hurt by acid attack
 - (ii) Voyeurism
 - (iii) Stalking

6. A young girl was left to live with his maternal grandfather, as the relationship between her mother and father were strained. One day the father (F) visited the himself where she was kept and took her with him for a picnic. Mother (M) on reaching home (the place where she was living), found that minor daughter has been taken away without her or maternal grandfather's consent. She files an FIR, where she alleges that her daughter has been kidnapped. Advise her about the success of her case.

7. (a) "Establishment of an overt act is not a requirement of law to allow section 34 to operate in as much as the section gets attracted when a criminal act is done by common intention of all." Explain.

(b) A, B, C, D and E, all members of an unlawful assembly, decided to attack X, who was member of a rival political party. Each one of them was explained that the attack should not exceed to cause the death. While all of them went on one night to attack X, on reaching D and E found that Mr. X is the same person who has deprived them earlier of some rightful claim, hence they decided to take revenge from him(X). While A, B and C attacked X by using hockey sticks, D and E had hidden pistol, they directly shot X dead. Can A, B, C, D and E be held guilty under Section 149 of the Indian Penal Code. Explain your answer.

8. Write notes on the following:
- (a) Grave and Sudden Provocation
 - (b) Impossible attempts
 - (c) Distinction between kidnapping and abduction

GENERAL INTRODUCTION

NATURE AND DEFINITION OF CRIME*

I. NATURE OF CRIME

WHAT IS A CRIME? We must answer this question at the outset. In order to answer this question we must know first, what is law because the two questions are closely inter-related. Traditionally, we know a law to be a command enjoining a course of conduct. The command may be of a sovereign or of political superiors to the political inferiors; or it may be the command of a legally constituted body or a legislation emanating from a duly constituted legislature to all the members of the society. A crime may, therefore, be an act of disobedience to such a law forbidding or commanding it. But then disobedience of all laws may not be a crime, for instance, disobedience of civil laws or laws of inheritance or contracts. Therefore, a crime would mean something more than a mere disobedience to a law, "it means an act which is both forbidden by law and revolting to the moral sentiments of the society." Thus robbery or murder would be a crime, because they are revolting to the moral sentiments of the society, but a disobedience of the revenue laws or the laws of contract would not constitute a crime. Then again, "the moral sentiments of a society" is a flexible term, because they may change, and they do change from time to time with the growth of the public opinion and the social necessities of the times. So also, the moral values of one country may be and often are quite contrary to the moral values of another country. To cite a few instances, heresy was a crime at one time in most of the countries of the world, because in those days it offended the moral sentiments of the society. It was punished with burning. But nobody is punished nowadays for his religious beliefs, not even in a theocratic state. The reason is obvious. Now it does not offend the moral sentiments of the society. Adultery is another such instance. It is a crime punishable under our Penal Code, but it is not so in some of the countries of the West. Then again *suttee*, i.e., burning of a married woman on the funeral pyre of her deceased husband, was for a long time considered to be a virtue in our own country, but now it is a crime. Similarly, polygamy was not a crime in our country until it was made so by the Hindu Marriage Act, 1955. This Act, it may be stated, does not apply to Mohammedans or Christians. But Christians are forbidden to practise polygamy under their law of marriage, while Mohammedans are yet immune from punishment for polygamy. All these instances go to show that the content of crime changes from time to time in the same country and from country to country at the same time because it is conditioned by the moral value approved of by a particular society in a particular age in a particular country. A crime of yesterday may become a virtue tomorrow and so also a virtue of yesterday may become a crime tomorrow. Such being the content of crime, all attempts made from time to time beginning with Blackstone down to Kenny in modern times to define it have proved abortive. Therefore, the present writer agrees with Russell when he observes that "to define crime is a task which so far has not been satisfactorily accomplished by any writer. In fact, criminal offences are basically the creation of the criminal policy adopted from time to time by those sections of the community who are powerful or astute enough to safeguard their own security

* R.C Nigam, *LAW OF CRIMES IN INDIA* 25-37 (1965)

and comfort by causing the sovereign power in the state to repress conduct which they feel may endanger their position".

But a student embarking on study of principles of criminal law must understand the chief characteristics and the true attributes of a crime. Though a crime, as we have seen, is difficult of a definition in the true sense of the term, a definition of a crime must give us "the whole thing and the sole thing," telling us something that shall be true of every crime and yet not be true of any other conceivable non-criminal breach of law. We cannot produce such a definition of crime as might be flexible enough to be true in all countries, in all ages and in all times. Nevertheless, a crime may be described and its attributes and characteristics be clearly understood. In order to achieve this object, we propose to adopt two ways, namely, first, we shall distinguish crime from civil and moral wrongs, and *secondly*, we shall critically examine all the definitions constructed by the eminent criminal jurists from time to time.

II. DISTINCTION BETWEEN MORAL, CIVIL AND CRIMINAL WRONGS

In order to draw a distinction between civil and criminal liability, it becomes necessary to know clearly what is a wrong of which all the three are species. There are certain acts done by us which a large majority of civilised people in the society look upon with disapprobation, because they tend to reduce the sum total of human happiness, to conserve which is the ultimate aim of all laws. Such acts may be called wrongs, for instance, lying, gambling, cheating, stealing, homicide, proxying in the class, gluttony and so on. The evil tendencies and the reflex action in the society of these acts or wrongs, as we have now chosen to call them, differ in degree. Some of them are not considered to be serious enough as to attract law's notice. We only disapprove of them. Such wrongs may be designated as moral wrongs, for instance, lying, overeating or gluttony, disobedience of parents or teachers, and so on. Moral wrongs are restrained and corrected by social laws and laws of religion.

There are other wrongs which are serious enough to attract the notice of the law. The reaction in the society is grave enough and is expressed either by infliction of some pain on the wrongdoer or by calling upon him to make good the loss to the wronged person. In other words, law either awards punishment or damages according to the gravity of the wrong done. If the law awards a punishment for the wrong done, we call it a crime; but if the law does not consider it serious enough to award a punishment and allows only indemnification or damages, we call such a wrong as a civil wrong or tort. In order to mark out the distinction between crimes and torts, we have to go deep into the matter and study it rather elaborately.

Civil and Criminal Wrongs: We may state, broadly speaking, *first*, that crimes are graver wrongs than torts. There are three reasons for this distinction between a crime and a tort. First, they constitute greater interference with the happiness of others and affect the well-being not only of the particular individual wronged but of the community as a whole. Secondly, because the impulse to commit them is often very strong and the advantage to be gained from the wrongful act and the facility with which it can be accomplished are often so great and the risk of detection so small that human nature, inclined as it is to take the shortest cut to happiness, is more likely to be tempted, more often than not, to commit such wrongs. A pickpocket, a swindler, a gambler are all instances. Thirdly, ordinarily they are deliberate acts and directed by an evil mind and are hurtful to the society by the bad example they set. Since crimes are

graver wrongs, they are singled out for punishment with four-fold objects, namely, of making an example of the criminal, of deterring him from repeating the same act, of reforming him by eradicating the evil, and of satisfying the society's feeling of vengeance. Civil wrongs, on the other hand, are less serious wrongs, as the effect of such wrongs is supposed to be confined mainly to individuals and does not affect the community at large.

Secondly, the accused is treated with greater indulgence than the defendant in civil cases. The procedure and the rules of evidence are modified in order to reduce to a minimum the risk of an innocent person being punished. For example, the accused is not bound to prove anything, nor is he required to make any statement in court, nor is he compellable to answer any question or give an explanation. However, under the Continental Laws an accused can be interrogated.

Thirdly, if there is any reasonable doubt regarding the guilt of the accused, the benefit of doubt is always given to the accused. It is said that it is better that ten guilty men should escape rather than an innocent person should suffer. But the defendant in a civil case is not given any such benefit of doubt.

Fourthly, crimes and civil injuries are generally dealt with in different tribunals. The former are tried in the criminal courts, while the latter in the civil courts.

Fifthly, in case of a civil injury, the object aimed at is to indemnify the individual wronged and to put him as far as practicable in the position he was, before he was wronged. Therefore he can compromise the case, whereas in criminal cases generally the state alone, as the protector of the rights of its subjects, pursues the offender and often does so in spite of the injured party. There are, however, exceptions to this rule.

Lastly, an act in order to be criminal must be done with malice or criminal intent. In other words, there is no crime without an evil intent. *Actus non facit reum nisi mens sit rea*, which means that the act alone does not make a man guilty unless his intentions were so. This essential of the crime distinguishes it from civil injuries.

Criminal and Moral Wrongs: A criminal wrong may also be distinguished from a moral wrong. It is narrower in extent than a moral wrong. In no age or in any nation an attempt has ever been made to treat every moral wrong as a crime. In a crime an idea of some definite gross undeniable injury to someone is involved. Some definite overt act is necessary, but do we punish a person for ingratitude, hard-heartedness, absence of natural affection, habitual idleness, avarice, sensuality and pride, which are all instances of moral lapses? They might be subject of confession and penance but not criminal proceeding. The criminal law, therefore, has a limited scope. It applies only to definite acts of commission and omission, capable of being distinctly proved. These acts of commission and omission cause definite evils either on definite persons or on the community at large. Within these narrow limits there may be a likeness between criminal law and morality. For instance, offences like murder, rape, arson, robbery, theft and the like are equally abhorred by law and morality. On the other hand, there are many acts which are not at all immoral, nonetheless they are criminal. For example, breaches of statutory regulations and bye laws are classed as criminal offences, although they do not involve the slightest moral blame. So also "the failure to have a proper light on a bicycle or keeping of a pig in a wrong place," or the neglect in breach of a bye-law to cause a child to attend school during the whole of the

ordinary school hours; and conversely many acts of great immorality are not criminal offences, as for example, adultery in England, or incest in India. However, whenever law and morals unite in condemning an act, the punishment for the act is enhanced.

Stephen on the relationship between criminal law and morality observes:

The relation between criminal law and morality is not in all cases the same. The two may harmonise; there may be a conflict between them, or they may be independent. In all common cases they do, and, in my opinion, wherever and so far as it is possible, they ought to harmonise with and support one another. Everything which is regarded as enhancing the moral guilt of a particular offence is recognised as a reason for increasing the severity of the punishment awarded to it. On the other hand, the sentence of the law is to the moral sentiment of the public in relation to any offence what a seal is to hot wax. It converts into a permanent final judgement what might otherwise be a transient sentiment. The mere general suspicion or knowledge that a man has done something dishonest may never be brought to a point, and the disapprobation excited by it may in time pass away, but the fact that he has been convicted and punished as a thief stamps a mark upon him for life. In short, the infliction of punishment by law gives definite expression and a solemn ratification and a justification to the hatred which is excited by the commission of the offence, and which constitutes the moral or popular as distinguished from the conscientious sanction of that part of morality which is also sanctioned by the criminal law. The criminal law thus proceeds upon the principle that it is morally right to hate criminals, and it confirms and justifies that sentiment by inflicting upon criminals punishments which express it.

Criminal Law and Ethics: Let us also distinguish criminal law from ethics. Ethics is a study of the supreme good. It deals with absolute ideal, whereas positive morality deals with current public opinion, and law is concerned with social relationship of men rather than with the individual's excellence of character. The distinction between law and morality has been discussed already. We may now bring out the distinction between law and ethics by citing two illustrations. Your neighbour, for instance, is dying of starvation. Your granary is full. Is there any law that requires you to help him out of your plenty? It may be ethically wrong or morally wrong; but not criminally wrong. Then again, you are standing on the bank of a tank. A woman is filling her pitcher. All of a sudden she gets an epileptic fit. You do not try to save her. You may have committed an ethical wrong or a moral wrong, but will you be punished criminally? However, with the growth of the humanitarian ideas, it is hoped that the conception of one's duty to others will gradually expand, and a day might arrive when it may have to conform to the ideal conduct which the great Persian Poet, Sheikh Saadi, aimed at, viz.: "If you see a blind man proceeding to a well, if you are silent, you commit a crime." This was what the poet said in the 13th century. But we may have to wait for a few more decades, when we might give a different answer to the question: "Am I my brother's keeper?"

Are Crimes and Torts Complementary? In the foregoing, we have drawn a clear distinction between crimes and civil injuries. In spite of those distinctions, however, it should be remembered that crimes and torts are complementary and not exclusive of each other. Criminal wrongs and civil wrongs are thus not sharply separated groups of acts but are often one and the same act as viewed from different standpoint, the difference being not

one of nature but only of relation. To ask concerning any occurrence, "is this a crime or a tort?" is, to borrow Sir James Stephen's apt illustration, no wiser than it would be to ask of a man, "Is he a father or a son? For he may be both." In fact, whatever is within the scope of the penal law is crime, whatever is a ground for a claim of damages, as for an injury, is a tort; but there is no reason why the same act should not belong to both classes, and many acts do. In fact, some torts or civil injuries were erected and are being erected into crimes, whenever the law-making hand comes to regard the civil remedy for them as being inadequate. But we cannot go so far as to agree with Blackstone when he makes a sweeping observation that "universally every crime is a civil injury." This observation of Blackstone is proved incorrect in the following three offences which do not happen to injure any particular individual. *First*, a man publishes a seditious libel or enlists recruits for the service of some foreign belligerent. In either of these cases an offence against the state has been committed but no injury is caused to any particular individual. *Secondly*, an intending forger, who is found in possession of a block for the purpose of forging a trade mark or engraving a bank-note or for forging a currency note, commits a serious offence but he causes no injury to any individual. *Thirdly*, there are cases where though a private individual does actually suffer by the offence, yet the sufferer is no other than the actual criminal himself who, of course, cannot claim compensation against himself, for example, in cases of attempted suicide. However, in England as elsewhere the process of turning of private wrongs into public ones is not yet complete, but it is going forward year to year. For instance, the maiming or killings of another man's cattle were formerly civil wrongs but they were made crimes in the Hanoverian reign. Then again, it was not until 1857 a crime for a trustee to commit a breach of trust. So also, incest was created a crime in 1908. In fact, the categories of crimes are not closed. In our own country, since Independence, many acts have now been enacted into crimes which we could not even have conceived of, for instance, practice of untouchability or forced labour or marrying below a certain age and so on. A socialistic state does conceive of many anti-social behaviours punishable as crimes more frequently.

We must remember that crime is a relative concept and a changing one too. Different societies have different views as to what constitutes a criminal act and the conception of a crime may vary with the age, locality and several other facts and circumstances. For example, people were burned for heresy a few centuries ago, but in modern times no civilised nation punishes a man on the ground that he professes a different religious view. Then again, adultery is a crime according to our penal code, while it is a civil wrong according to English law.

CONSTITUENT ELEMENTS OF CRIME*

ELEMENTS OF A CRIME

The two elements of crime are *mens rea* and *actus reus*. Apart from these two elements that go to make up a crime, there are two more indispensable elements, namely, first, “a human being under a legal obligation to act in a particular way and a fit subject for the infliction of appropriate punishment,” and secondly, “an injury to another human being or to the society at large.” Thus the four elements that go to constitute a crime are as follows: *first*, a human being under a legal obligation to act in a particular way and a fit subject for the infliction of appropriate punishment; *secondly*, an evil intent or *mens rea* on the part of such human being; *thirdly*, *actus reus*, i.e., act committed or omitted in furtherance of such an intent; and *fourthly*, an injury to another human being or to society at large by such an act.

A Human Being: The first element requires that the act should have been done by a human being before it can constitute a crime punishable at law. The human being must be “under a legal obligation to act, and capable of being punished.” .

Mens Rea: The *second element*, which is an important essential of a crime, is *mens rea* or guilty mind. In the entire field of criminal law there is no important doctrine than that of *mens rea*. The fundamental principle of English Criminal jurisprudence, to use a maxim which has been familiar to lawyers following the common law for several centuries, is “*actus non facit reum nisi mens sit rea*”. *Mens rea* is the state of mind indicating culpability, which is required by statute as an element of a crime. It is commonly taken to mean some blameworthy mental condition, whether constituted by intention or knowledge or otherwise, the absence of which on any particular occasion negatives the intention of a crime. The term ‘*mens rea*’ has been given to volition, which is the motive force behind the criminal act. It is also one of the essential ingredients of criminal liability

As a general rule every crime requires a mental element, the nature of which will depend upon the definition of the particular crime in question. Even in crimes of strict liability some mental element is required. Expressions connoting the requirement of a mental element include: ‘with intent’, ‘recklessly’, ‘unlawfully’, ‘maliciously’, ‘unlawfully and maliciously’, ‘wilfully’, ‘knowingly’, ‘knowing or believing’, ‘fraudulently’, ‘dishonestly’, ‘corruptly’, ‘allowing’, and ‘permitting’. Each of these expressions is capable of bearing a meaning, which differs from that ascribed to any other. The meaning of each must be determined in the context in which it appears, and the same expression may bear a different meaning in different contexts. Under the IPC, guilt in respect of almost all offences is fastened either on the ground of intention or knowledge or reason to believe. All the offences under the Code are qualified by one or the other words such as wrongful gain or wrongful loss, dishonestly, fraudulently, reason to believe, criminal knowledge or intention, intentional co-operation, voluntarily, malignantly, wantonly. All these words describe the mental condition required at the time of commission of the offence, in order to constitute an offence. Thus, though the

* **Edited from:** R. C. Nigam, *LAW OF CRIMES IN INDIA* 38-43 (1965); V. Suresh and D. Nagasaila (eds.), *P.S. ATCHUTHEN PILLAI’S CRIMINAL LAW* 42-47(9thedn., 2006)

word *mens rea* as such is nowhere found in the IPC, its essence is reflected in almost all the provisions of the code. The existence of the mental element or guilty mind or *mens rea* at the time of commission of the *actus reus* or the act alone will make the act an offence.

Generally, subject to both qualification and exception, a person is not criminally liable for a crime unless he intends to cause, foresees that he will probably cause, or at the lowest, foresees that he may cause, the elements which constitute the crime in question. Although the view has been expressed that it is impossible to ascribe any particular meaning to the term *mens rea*, concepts such as those of intention, recklessness and knowledge are commonly used as the basis for criminal liability and in some respects may be said to be fundamental to it:

Intention: To intend is to have in mind a fixed purpose to reach a desired objective; it is used to denote the state of mind of a man who not only foresees but also desires the possible consequences of his conduct. The idea foresees but also desires the possible consequences of his conduct. The idea of 'intention' in law is not always expressed by the words 'intention', 'intentionally' or 'with intent to'. It is expressed also by words such as 'voluntarily', 'wilfully' or 'deliberately' etc. Section 298 IPC makes the uttering of words or making gestures with deliberate intent to wound the religious feelings punishable under the Act. ON a plain reading of the section, the words 'deliberate' and 'intent' seem synonymous. An act is intentional if, and in so far as it exists in idea before it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied. Intention does not mean ultimate aim and object. Nor is it a synonym for motive.

Transferred intention: Where a person intends to commit a particular crime and brings about the elements which constitute that crime, he may be convicted notwithstanding that the crime takes effect in a manner which was unintended or unforeseen. A, intends to kill B by poisoning. A places a glass of milk with poison on the table of B knowing that at the time of going to bed B takes glass of milk. On that fateful night instead of B, C enters the bedroom of B and takes the glass of milk and dies in consequence. A is liable for the killing of C under the principle of transferred intention or malice.

Intention and Motive: Intention and motive are often confused as being one and the same. The two, however, are distinct and have to be distinguished. The mental element of a crime ordinarily involves no reference to motive. Motive is something which prompts a man to form an intention. Intention has been defined as the fixed direction of the mind to a particular object, or determination to act in a particular manner and it is distinguishable from motive which incites or stimulates action. Sometimes, motive plays an important role and becomes a compelling force to commit a crime and, therefore, motive behind the crime become a relevant factor for knowing the intention of a person. In *Om Prakash v. State of Uttaranchal* [(2003) 1 SCC 648] and *State of UP v. Arun Kumar Gupta* [(2003) 2 SCC 202] the Supreme Court rejected the plea that the prosecution could not signify the motive for the crime holding that failure to prove motive is irrelevant in a case wherein the guilt of the accused is proved otherwise. It needs to be emphasised that motive is not an essential element of an offence but motive helps us to know the intention of a person. Motive is relevant and important on the question of intention.

Intention and knowledge: The terms ‘intention’ and ‘knowledge’ which denote *mens rea* appear in Sections 299 and 300, having different consequences. Intention and knowledge are used as alternate ingredients to constitute the offence of culpable homicide. However, intention and knowledge are two different things. Intention is the desire to achieve a certain purpose while knowledge is awareness on the part of the person concerned of the consequence of his act of omission or commission, indicating his state of mind. The demarcating line between knowledge and intention is no doubt thin, but it is not difficult to perceive that they connote different things. There may be knowledge of the likely consequences without any intention to cause the consequences. For example, a mother jumps into a well along with her child in her arms to save herself and her child from the cruelty of her husband. The child dies but the mother survives. The act of the mother is culpable homicide. She might not have intended to cause death of the child but, as a person having prudent mind, which law assumes every person to have, she ought to have known that jumping into the well along with the child was likely to cause the death of the child. She ought to have known as prudent member of the society that her act was likely to cause death even when she may not have intended to cause the death of the child.

Recklessness: Intention cannot exist without foresight, but foresight can exist without intention. For a man may foresee the possible or even probable consequences of his conduct and yet not desire this state of risk of bringing about the unwished result. This state of mind is known as ‘recklessness’. The words ‘rash’ and ‘rashness’ have also been used to indicate this same attitude.

Negligence: If anything is done without any advertence to the consequent event or result, the mental state in such situation signifies negligence. The event may be harmless or harmful; if harmful the question arises whether there is legal liability for it. In civil law (common law) it is decided by considering whether or not a reasonable man in the same circumstances would have realized the prospect of harm and would have stopped or changed his course so as to avoid it. If a reasonable man would not, then there is no liability and the harm must lie where it falls. The word ‘negligence’, therefore, is used to denote blameworthy inadvertence. It should be recognized that at common law there is no criminal liability for harm thus caused by inadvertence. Strictly speaking, negligence may not be a form of *mens rea*. It is more in the nature of a legal fault. However, it is made punishable for a utilitarian purpose of hoping to improve people’s standards of behaviour. Criminal liability for negligence is exceptional at common law; manslaughter appears to be the only common law crime, which may result from negligence. Crimes of negligence may be created by statute, and a statute may provide that it is a defence to charges brought under its provisions for the accused to prove that he was not negligent. Conversely, negligence with regard to some subsidiary element in the *actus reus* of a crime may deprive the accused of a statutory defence which would otherwise have been available to him.

Advertent negligence is commonly termed as wilful negligence or recklessness. In other words, inadvertent negligence may be distinguished as simple. In the former the harm done is foreseen as possible or probable but it is not willed. In the latter it is neither foreseen nor willed. In each case carelessness, i.e. to say indifference as to the consequences, is present; but in the former this indifference does not, while in the latter it does prevent these

consequences from being foreseen. The physician who treats a patient improperly through ignorance or forgetfulness is guilty of simple or inadvertent negligence; but if he does the same in order to save himself trouble, or by way of a scientific experiment with full recognition of the danger so incurred, his negligence is wilful. It may be important to state here that the wilful wrong doer is liable because he desires to do the harm; the negligent wrong doer is liable because he does not sufficiently desire to avoid it. He who will excuse himself on the ground that he meant no evil is still open to the reply: - perhaps you did not, but at all event you might have avoided it if you had sufficiently desire to do so; and you are held liable not because you desired the mischief, but because you were careless and indifferent whether it ensued or not. It is on this ground that negligence is treated as a form of *mens rea*, standing side by side with wrongful intention as a formal ground of responsibility.

Actus Reus: To constitute a crime the third element, which we have called *actus reus* or which Russell¹ has termed as “physical event”, is necessary. Now what is this *actus reus*?² It is a physical result of human conduct. When criminal policy regards such a conduct as sufficiently harmful it is prohibited and the criminal policy provides a sanction or penalty for its commission. The *actus reus* may be defined in the words of Kenny to be “such result of human conduct as the law seeks to prevent.”³ Such human conduct may consist of acts of commission as well as acts of omission. Section 32 of our Penal Code lays down: “Words which refer to acts done extend also to illegal omissions.”

It is, of course, necessary that the act done or omitted to be done must be an act forbidden or commanded by some statute law, otherwise, it may not constitute a crime. Suppose, an executioner hangs a condemned prisoner with the intention of hanging him. Here all the three elements obviously are present, yet he would not be committing a crime because he is acting in accordance with a law enjoining him to act. So also if a surgeon in the course of an operation, which he knew to be dangerous, with the best of his skill and care performs it and yet the death of the patient is caused, he would not be guilty of committing a crime because he had no *mens rea* to commit it.

As regards acts of omission which make a man criminally responsible, the rule is that no one would be held liable for the lawful consequences of his omission unless it is proved that he was under a legal obligation to act. In other words, some duty should have been imposed upon him by law, which he has omitted to discharge. Under the Penal Code, Section 43 lays down that the word “illegal” is applicable to everything which is an offence or which is prohibited by law, or which furnishes a ground for a civil action; and a person is said to be “legally bound to do whatever it is illegal in him to omit.” Therefore, an illegal omission would apply to omissions of everything which he is legally bound to do. These indicate problems of *actus reus* we have discussed in detail elsewhere. However, the two elements *actus reus* and *mens rea* are distinct elements of a crime. They must always be distinguished and must be present in order that a crime may be constituted. The mental element or *mens rea* in modern times means that the person’s conduct must be voluntary and it must also be

¹ Russell, *op. cit.*, p. 27

² It includes not only the result of active conduct (i.e. a deed), but also the result of inactivity.

³ Kenny, *Outlines of Criminal Law* (17th Ed.), p. 14.

actuated by a guilty mind, while *actus reus* denotes the physical result of the conduct, namely, it should be a violation of some law, statutory or otherwise, prohibiting or commanding the conduct.

Injury to Human Being: The fourth element, as we have pointed out above, is an injury to another human being or to society at large. This injury to another human being should be illegally caused to any person in body, mind, reputation or property. Therefore, it becomes clear that the consequences of harmful conduct may not only cause a bodily harm to another person, it may cause harm to his mind or to his property or to his reputation. Sometimes, by a harmful conduct no injury is caused to another human being, yet the act may be held liable as a crime, because in such a case harm is caused to the society at large. All the public offences, especially offences against the state, e.g. treason, sedition, etc. are instances of such harms. They are treated to be very grave offences and punished very severely also.

We may state again that there are four essential elements that go to constitute a crime. First, the wrongdoer who must be a human being and must have the capacity to commit a crime, so that he may be a fit subject for the infliction of an appropriate punishment. Secondly, there should be an evil intent or *mens rea* on the part of such human being. This is also known as the subjective element of a crime. Thirdly, there should be an *actus reus*, i.e. an act committed or omitted in furtherance of such evil intent or *mens rea*. This may be called the objective element of a crime. Lastly, as a result of the conduct of the human being acting with an evil mind, an injury should have been caused to another human being or to the society at large. Such an injury should have been caused to any other person in body, mind, reputation or property. If all these elements are present, generally, we would say that a crime has been constituted. However, in some cases we find that a crime is constituted, although there is no *mens rea* at all. These are known as cases of strict liability. Then again, in some cases a crime is constituted, although the *actus reus* has not consummated and no injury has resulted to any person. Such cases are known as inchoate crimes, like attempt, abetment or conspiracy. So also, a crime may be constituted where only the first two elements are present. In other words, when there is intention alone or even in some cases there may be an assembly alone of the persons without any intention at all. These are exceptional cases of very serious crimes which are taken notice of by the state in the larger interests of the peace and tranquillity of the society.

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XX



LL.B. I Term

Law of Crimes - I

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