

最新不列颠法律袖珍读本 (英汉对照)



刑法

Criminal Law



WUHAN UNIVERSITY PRESS
武汉大学出版社

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出版说明

最新不列颠法律袖珍读本(英汉对照)系列丛书之原本是英国凯文迪什出版有限公司(Cavendish Publishing Limited)最新推出的,我们采用英汉对照的形式出版,以利于读者研习法律及法律专业英语之用。该读本系列包括了对不列颠法律的广泛介绍,其中每一本都是研习一个专业科目的完整的袖珍指南。其精致的文本、原版的法律专业英语、规范的专业汉译以及简明的格式、友好的界面使得该读本系列成为读者研习各个学科的基本理论和最新研究成果,尤其是学习纯正的法律英语的理想帮手。

1 The nature of a crime

A crime is conduct which has been defined as such by statute or by common law.

Generally, a person may not be convicted of a crime unless he has acted in a proscribed way (that is, the *actus reus*) with a defined state of mind (that is, the *mens rea*). The main exception to this are crimes of strict liability where no *mens rea* need be proved.



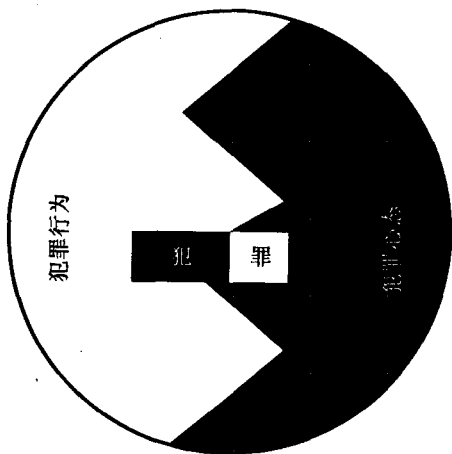
**CRIME = ACTUS REUS + MENS REA
+ ABSENCE OF A VALID DEFENCE**

The prosecution must prove the existence of the *actus reus* and *mens rea* beyond reasonable doubt. This is sometimes referred to as the *Woolmington* rule (*Woolmington v DPP* (1935)).

1 犯罪的性质

犯罪就是已被制定法或普通法定义为如此的行为。

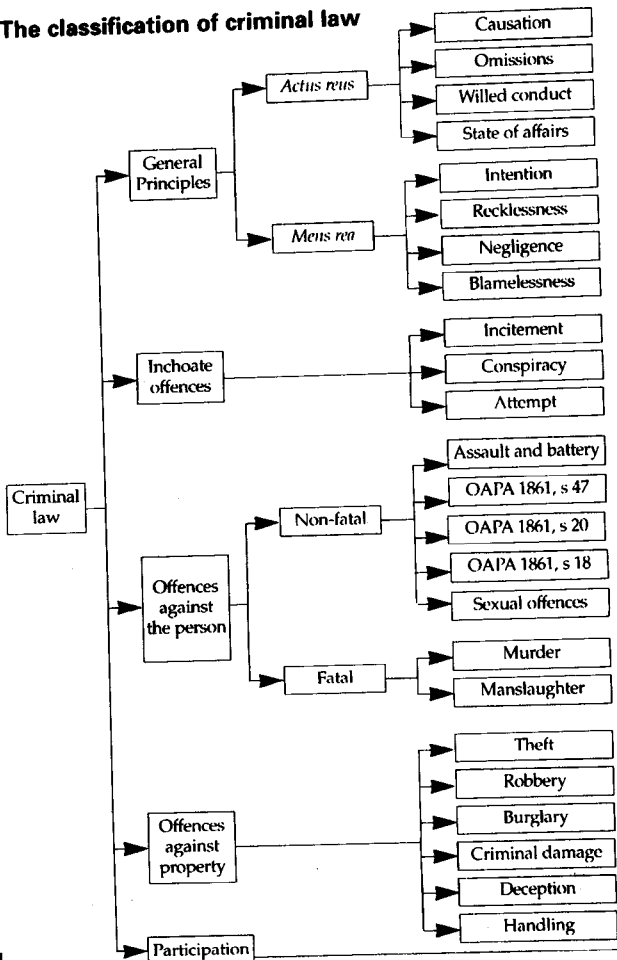
通常,一个人不会被宣告犯有某种犯罪,除非他在某种确定的心理状态(即犯罪心态)下实施了法律所禁止的行为(即犯罪行为)。对此的例外之处主要是严格责任的犯罪情形,即不需要证明犯罪心态的犯罪。



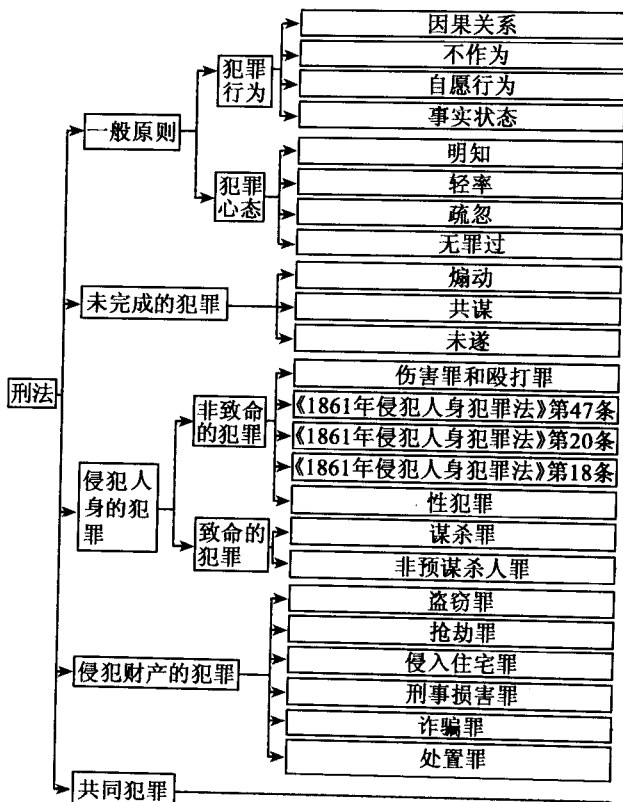
犯罪 = 犯罪行为 + 犯罪心态 + 不存在合法辩护理由

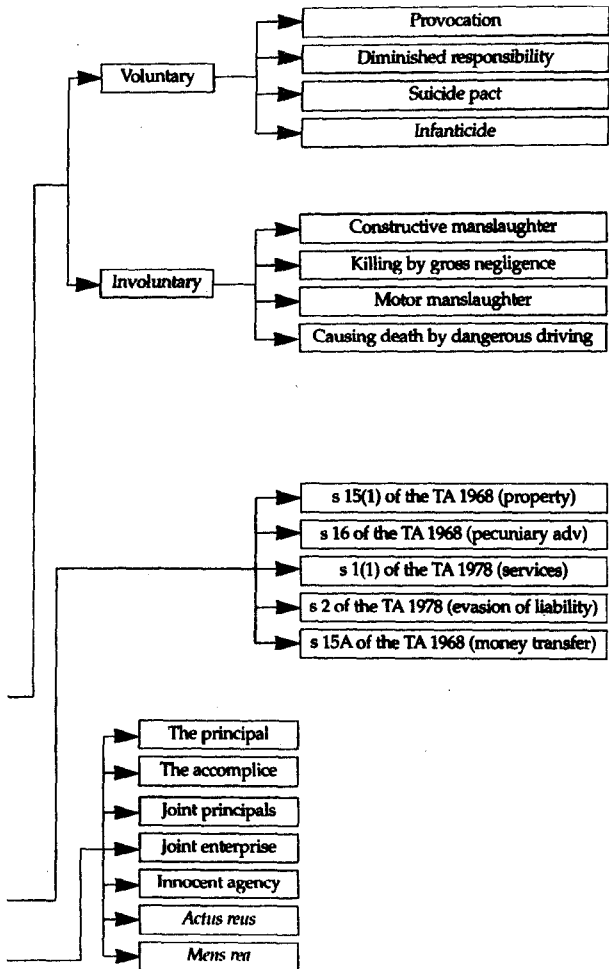
控方必须超越合理怀疑地证明犯罪行为和犯罪心态的存在。该项规则有时被称为 Woolmington 规则(Woolmington 诉检察长案(1935 年))。

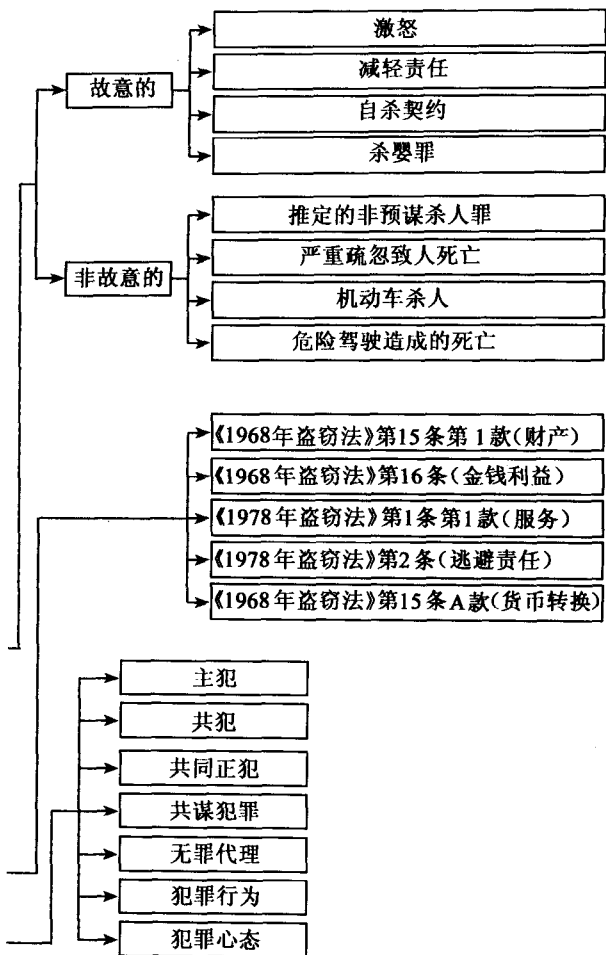
The classification of criminal law



刑法的分类







Characteristics of an *actus reus*

Definition

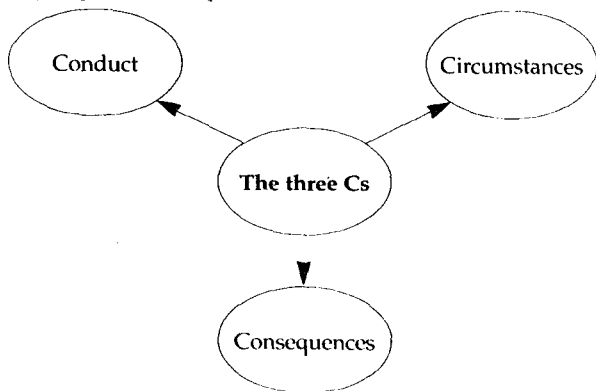
An *actus reus* consists of all the elements in the statutory or common law definition of the offence except the defendant's mental element.

Analysis of the *actus reus*

An *actus reus* can be identified by looking at the definition of the offence in question and subtracting the *mens rea* requirements of 'knowingly', 'intentionally', 'recklessly', 'maliciously', 'dishonestly' or 'negligently'.

ACTUS REUS = DEFINITION OF THE OFFENCE - MENS REA

Once the *actus reus* has been identified, it can be further analysed into the central conduct of the offence, the surrounding circumstances in which it must take place and any requisite consequences.



犯罪行为的特征

定义

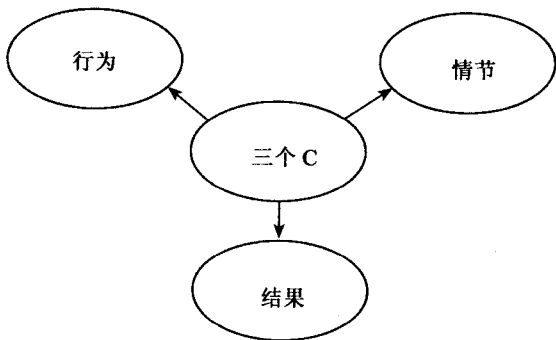
犯罪行为包括除被告心理因素之外的、由制定法或普通法所规定的关于犯罪的所有因素。

犯罪行为的分析

犯罪行为可以通过以下方式得以确认：研究所讨论的犯罪定义并减去犯罪心态所需要的要素，如“明知地”、“故意地”、“轻率地”、“恶意地”、“不诚实地”或“疏忽地”。

犯罪行为 = 犯罪定义 - 犯罪心态

一旦犯罪行为被确认，就可以进一步分析犯罪的中心行为、犯罪发生于其中的周边情节以及一切必要的犯罪结果。

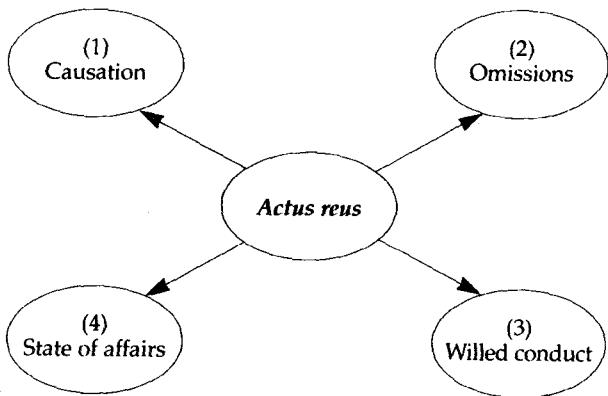


This process of identifying and analysing an *actus reus* can be illustrated in relation to s 1(1) of the Criminal Damage Act 1971 which provides:

A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether such property would be destroyed or damaged shall be guilty of an offence.

Once expressions relating to the *mens rea* requirements of intention or recklessness have been subtracted, the *actus reus* consists of destroying or damaging property belonging to another.

CONDUCT	= the act of destroying or damaging
CIRCUMSTANCES	= the fact that the property must belong to another
CONSEQUENCES	= the resultant damage or destruction

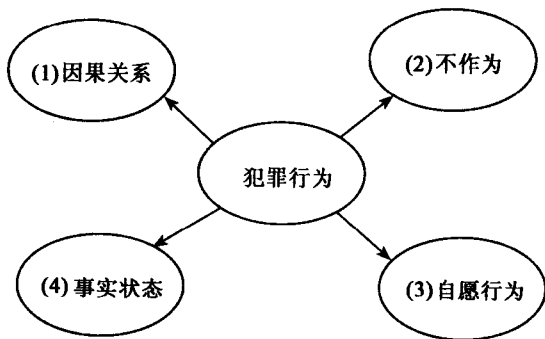


对犯罪行为的确认和分析过程可以通过《1971 年刑事损害法》第 1 条第 1 款加以举例说明,该款规定:

一人没有合法的理由故意破坏或损害他人的任何财产,或者对于这样的财产是否将被破坏或损害持轻率态度,即为犯罪。

一旦与犯罪心态所要求的故意或轻率相关的要求被除去,犯罪行为就由破坏或损害他人财物的行为构成。

行为 = 破坏或损害的行为
情节 = 财物属于他人所有的事实
结果 = 导致了破坏或损害结果的发生



(1) Causation

If the definition of an offence specifies a particular consequence, then it is a 'result' crime and the prosecution must prove, in order to establish the *actus reus*, that the defendant *caused* that consequence.

For example, in order to establish the *actus reus* of an offence of homicide, it is necessary to prove that the defendant caused the death of the victim.

Causation in fact

The first step in establishing causation is to ask 'was the defendant's act a *cause in fact* of the specified consequence (for example, death in the case of homicide)?'. This question can be answered by asking: 'But for what the defendant did would the consequence have occurred?' If the answer is no, the result would not have occurred but for what the defendant did and, therefore, causation in fact is established.

An example where the prosecution failed to establish causation in fact is the case of *R v White* (1910). The defendant had put cyanide into his mother's drink, but the medical evidence showed that she died of heart failure before the poison could take effect. Consequently, the answer to the question 'But for what the defendant did would she have died?' is 'yes'. She would have died anyway.

Causation in law

Just because the prosecution establish that the defendant's act was a cause in fact of the prohibited consequence, does not necessarily mean that the defendant is liable. It is also necessary to prove that the defendant's act was a cause in law of the specified consequence.

(1)因果关系

如果一个犯罪行为的定义明确规定特定的结果,那么这个犯罪就是结果犯。在结果犯中,控方为了确认犯罪行为的存在,必须证明被告人的行为导致了该结果。

例如,为了确认杀人行为的存在,有必要证明被告人的行为导致了该受害人的死亡。

事实因果关系

为了确认因果关系存在,第一步要做的是问:“是否被告人的行为在事实上导致了特定结果(如,在杀人案件中被害人的死亡)?”可以通过这样提问来回答这个问题:“如果没有被告人的行为,该结果会发生吗?”如果回答是否定的,即没有被告人的行为,结果就不会发生,那么,在该案件中,事实因果关系就确认了。

控方未能确认事实因果关系的一个例证是 R 诉 White 案(1910 年)。在该案中,被告人在其母亲的饮料中投放了氰化物,但医学证据表明,被告的母亲在毒物发作之前死于心脏衰竭。因此,对于“没有被告人的行为,她母亲会死吗”的问题,答案是肯定的。不论如何,她都会死。

法律因果关系

控方仅仅确认了被告人的行为是导致法律所禁止的结果发生的事实原因,并不必然意味着被告人就是有责的。在此仍然有必要证明,被告的行为是特定结果发生的法律原因。