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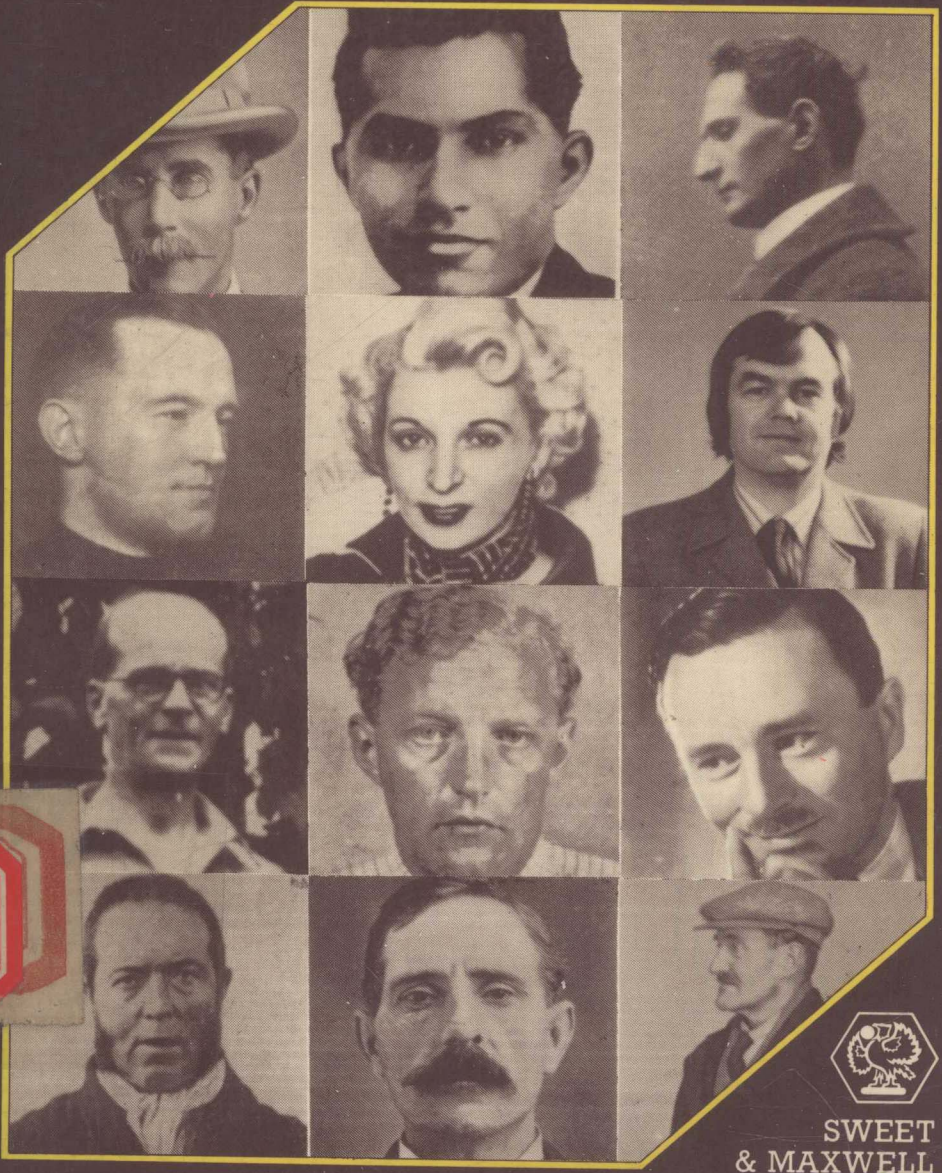
# CRIMINAL LAW

PETER SEAGO



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# CRIMINAL LAW

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# PREFACE

THERE are many detailed studies of criminal law; this book is not one of them. It is an attempt to provide the beginner with a simple account of the basic elements of the subject which hopefully will leave him with an overall picture of how the various pieces fit together. Since most newcomers to the subject innocently imagine that criminal law is all about particular criminal offences, particularly violent ones, I have decided to open with an account of murder and manslaughter. In the following chapters I have tried to extract from these crimes the elements which are common to criminal offences in general. Although this may seem to be throwing the reader in at the deep end, it does have the advantage of enabling the discussion of general principles to be based upon actual crimes with which the reader is already familiar.

The book is heavily weighted in favour of general principles as opposed to a description of specific offences. Thus apart from unlawful homicide only the offences under the Theft Acts of 1968 and 1978 receive any extensive coverage. In a work of this size any attempt to be comprehensive could be achieved only by dealing with every topic in a few lines. I therefore decided to be highly selective and have tried to discuss the various issues in a chatty style, making use of hypothetical examples to illustrate the principles wherever possible.

I hope that the book will be of some use not only as a starting point for students on law degrees or professional courses but also for others such as lay magistrates and social workers who wish to get some idea of how the criminal law operates.

I cannot conclude without acknowledging many sources of help in the compilation of this work. My initial interest in the subject was kindled by John Smith and Brian Hogan in their lectures at Nottingham University in the days before the publication of their books. Since that time I have joined Brian Hogan on the staff of the Law Faculty at the University of Leeds; he read much of the book in manuscript and made many invaluable suggestions, especially in the way that the subject-matter might better be expressed so as to be readily understandable by the complete novice. He also provided the original idea for the cover design. I was very fortunate that we were joined at Leeds by Adrian Briggs, who has read the entire manuscript and has saved me from many errors. To both I am extremely grateful. I should also like to thank the publishers for their agreeing to undertake this venture and for their support during the preparation. It goes without saying that any errors that remain are due entirely to my own obstinacy.

The manuscript was submitted in July 1980, but I have been able to incorporate into the body of the text one or two significant cases which were reported before November 1, 1980.

Peter Seago

Leeds
February 1981

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## ADDENDUM

*Recent cases which should be read in conjunction with the text on the pages indicated.*

**p. 67.** In *Albert* v. *Lavin*, *The Times*, December 4, 1980 the Divisional Court considered the question of mistake on a charge of assaulting a police officer in the execution of his duty. The court accepted as proved that the police constable had acted properly in restraining the accused in order to prevent a breach of the peace, that the accused responded by hitting the constable in the stomach and that the accused honestly but without reasonable cause believed that the constable was not a police officer. On this basis his conviction was upheld. The court held that after *Morgan* it was necessary to distinguish between the *mens rea* required for the basic elements of the offence and the mental element required for a defence. In the former an honest but unreasonable mistake may negative the *mens rea*, in the latter only an honestly and reasonably held mistake suffices. In rape the issue of consent is a basic element of the offence and thus an honest mistake suffices. In an assault charge, however, whereas a mistake that his victim was consenting would relate to a basic element of the offence, a mistake that his victim had no right to detain him would not. It would be more in the nature of a defence and would thus need to be reasonable.

**p. 86.** In *Sheppard and Sheppard*, *The Times*, December 3, 1980 the House of Lords held that the offence of wilfully neglecting a child in a manner likely to cause him unnecessary suffering or injury to health (section 11 of the Children and Young Persons Act 1938) was not an offence of strict liability, thus overruling long standing precedents. Lord Diplock said that although the House was always hesitant about overruling long standing precedents, it had noted that the climate of both Parliamentary and judicial opinion had been growing less favourable to the recognition of strict or absolute offences over the last few decades.

**p. 122.** In *Garlick*, *The Times*, December 2, 1980 the Court of Appeal made it clear that where drunkenness is raised as an issue in a murder trial, the question for the jury to consider is whether the accused actually formed the necessary *mens rea* and not whether the drunkenness

removed his capacity to form it. In the present case there was no doubt that the accused was capable of forming the necessary intent and since the jury may have convicted him on this basis the conviction had to be quashed, and one for manslaughter substituted.

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## Chapter 1

# INTRODUCTION

Most people have heard of the saying that "ignorance of the law is no defence" which is the result of another well-known phrase or saying that "everyone is presumed to know the law." Unlike many maxims which have no basis in reality, these do represent the very harsh rule in criminal law that it is no defence to a criminal charge that the person charged was unaware that the act he was performing was a criminal offence. Nor would it make any difference to his guilt or innocence that he had consulted a lawyer who had told him that there was no such offence.

This gives rise to several questions. For instance what is a crime and how do you know whether given conduct is or is not a crime? What such questions are not unreasonably looking for is a definition of crime which will at the same time act as an infallible test by which to determine whether given conduct is a crime. Unfortunately no such definition has ever, or is ever, likely to be found. The best that can be offered is to say that a criminal offence is conduct which may be followed by criminal proceedings and sentence. This is very little help to the man in the street who wants to know whether it is a criminal offence to drive a car without properly working windscreen wipers, but given that you can find out whether or not certain conduct can or cannot be followed by criminal proceedings, it is a watertight definition of a crime. Thus in this country adultery cannot be followed by criminal proceedings so therefore it is not a crime. Intercourse with a woman without her consent can be followed by criminal proceedings and is therefore a crime.

Before we go any further we should stop for a moment to say something about the term criminal proceedings. In this country we tend to divide lawsuits into criminal and civil proceedings. The basic difference is that criminal proceedings are normally handled by the police acting on behalf of the state with the ultimate aim that a court shall, if it finds him guilty, impose a criminal sentence on the offender. This sentence may take many forms including imprisonment, fine, probation, and absolute discharge. Where the person is ordered to pay a fine he pays it to the state and not to the victim, though the criminal courts have the power to order that a guilty party pays compensation to the victim. Civil proceedings on the other hand take many forms, but the general pattern is of an action brought by one individual against



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