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4th edition

CRIMINAL LAW

刑法学(第4版)

EMILY FINCH AND STEFAN FAFINSKI

王梓 注释 苏彩霞 审校



著名法学家江平教授、许章润教授联袂推荐

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法学初阶——西方法学经典教材系列・影印双语注释本

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著名法学家江平教授、许章润教授为 《西方法学经典教材系列》题词

教材所收皆为精品,精准阐释了英美法制的 专门领域,而篇幅适中,书写畅达,值得一读。

——中国政法大学终身教授 江 平

采撷异域法意,以接济和光弘本土法律精神, 助推中国转型,进而建政立制,本套教材正当时也!

——清华大学法学院教授 许章润

华中法学出版学术顾问

(按姓氏笔画为序)

方流芳 刘春田 张 军 郭寿康

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由英国 PEARSON 出版社授权华中科技大学出版社出版的《法学初阶——西方法学经典教材系列·影印双语注释本》已经与读者见面了。该系列涵盖了国内法学本科生必修的法学课程内容,是一套非常适合中国法学院校本科生系统了解与学习英美法系课程内容的经典教材,同时该教材兼顾法律英语的学习目的。

《法学初阶——西方法学经典教材系列·影印双语注释本》,通过中英文双语注释的方式,把原汁原味的英国各类部门法的内容介绍给读者,这是该系列教材与以往出版的影印版法学书籍最大的不同之处。注释者依据国内法学院校教授英美法系课程内容和法律英语教学的特点,在参考《布莱克法律字典》、《元照英美法词典》、《牛津法律大辞典》等多部权威字典基础上,采取中英文双语注释的方式,将教材中重要的法律词汇——作出解释。这样,便于大家学习英美法系课程内容,同时也能够更快地掌握法律英语。

《法学初阶——西方法学经典教材系列·影印双语注释本》的出版,旨在 将英美法系中(英国各部门法)的法律内容介绍给中国法学院校的老师与同学 们,大家可以借助中英文注释这一桥梁,便捷、准确地了解英国法律。

出版者希望采用该系列教材的法学院校师生们,喜欢我们这样的编排方式,并从中受益,也期待师生们对其提出宝贵意见!

下面是对这套法学经典教材之一《刑法学》的介绍。

刑法,是法学公法中最为重要的部门法之一,也是法学本科生必修课程。 在这本教材中,作者采用简明易懂的语言将其重点知识,如刑事责任的要素, 英美法中关于故意与过失的界定,各个重点罪名的详述等内容——作了介绍与 阐释。教材每一章节之始,作者为其内容的重点知识词汇编制了知识网络图,这种最为直观的方式,可以使学生在学习前就对其有一个完整及初步的了解。同时,每一章节还配有相关的案例以及分析,这样可以帮助学生理解相关知识并熟悉司法实践过程,提高运用能力。再有,每一章节还附有部分内容的知识图表,便于学生对所学的知识能够得到及时的总结和梳理。

《刑法学》这本教材语言简明易懂,便于老师和学生在短时间内,掌握刑法学的主要内容,并了解英国法是从怎样的角度和思路介绍刑法内容的。教材附录部分的重点词汇,可以使学生很快地理解重点词汇的含义,以扫清阅读和学习障碍。

为了保证本教材中英文注释的准确性, 出版社邀请了武汉大学法学院教授 法学博士苏彩霞担任专业审校, 确保该教材注释内容的专业精准和学术权威。

Acknowledgements

This book is dedicated to STG.

We are, as ever, grateful to all who have offered feedback on the last edition of *Law Express: Criminal Law,* particularly the anonymous academic reviewers who provided some suggestions for improvement. We have been pleased to incorporate these as best we could.

EF and SF Wokingham February 2012

Publisher's acknowledgements

Our thanks go to all reviewers who contributed to the development of this text, including students who participated in research and focus groups, which helped to shape the series format.

Introduction

Criminal law is one of the core subjects required for a qualifying law degree so is a compulsory component on most undergraduate law programmes. Aspects of criminal law also appear in other subjects such as environmental law, family law and company law, as well as relating more directly to the study of criminal justice, evidence and criminology. As such, a thorough understanding of criminal law is vital for law students.

Crime is an integral part of everyday life. It is a prominent feature in the news and is a popular subject for fictional portrayal. Most students commencing legal studies will have some experience of crime whether directly, as a victim of crime, or indirectly through exposure to media coverage. This means that most offences covered on the syllabus such as murder, theft and rape will be familiar terms. This tends to give students the impression that they know more about criminal law than they do about other subjects on the syllabus. This can be a real disadvantage in terms of the academic study of criminal law because it tends to lead students to rely on pre-conceived notions of the nature and scope of the offences and to reach instinctive, but often legally inaccurate, conclusions. It is absolutely essential to success in criminal law that you put aside any prior knowledge of the offences and focus on the principles of law derived from statutes and cases. By doing this, you will soon appreciate just how much difference there is between everyday conceptions of crime and its actuality.

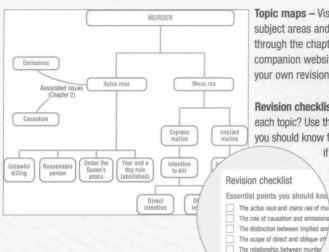
This revision guide will help you to identify and apply the law and it also provides frequent reminders of the importance of abandoning preconceptions about the offences. It is written to be used as a supplement to your course materials, lectures and textbooks. As a revision guide, it should do just that — guide you through revision; it should not be used to cut down on the amount of reading (or thinking) that you have to do in order to succeed. Criminal law is a vast and complex subject — you should realise this from looking at the size of your recommended textbook (which, incidentally, covers only a fraction of the criminal law that exists 'out there'). It follows that this revision guide could never be expected to cover the subject in the depth and detail required to succeed in exams and it does not set out to do so. Instead, it aims to provide a concise overall picture of the key areas for revision — reminding you of the headline points to enable you to focus your revision and identify the key points that you need to know.

REVISION NOTE

- Do not be misled by the familiarity of the offences; learn each topic afresh and focus on the legal meanings of the words that you encounter.
- Do rely on this book to guide you through the revision process.
- Do not rely on this book to tell you everything you need to know about criminal law.
- Make sure you consult your own syllabus frequently to check which topics are covered and in how much detail.
- Make use of your lecture notes, handouts, textbooks and other materials as you revise as these will ensure that you have sufficient depth of knowledge.
- Take every possible opportunity to practise your essay-writing and problem-solving techniques; get as much feedback as you can.
- Be aware that many questions in criminal law combine different topics. Selective revision could leave you unable to answer questions which include reference to material that you have excluded from your revision.

Before you begin, you can use the study plan available on the companion website to assess how well you know the material in this book and identify the areas where you may want to focus your revision.

Guided tour



Topic maps – Visual guides highlight key subject areas and facilitate easy navigation through the chapter. Download them from the companion website to pin to your wall or add to your own revision notes.

Revision checklists – How well do you know each topic? Use these to identify essential points you should know for your exams. But don't panic

if you don't know them all – the chapters will help you revise each point to ensure you are fully prepared for your exams. Print the checklists off the companion website and track your revision progress!

Sample questions with answer guidlines -

Practice makes perfect! Read the question at the start of each chapter and consider how you would answer it. Guidance on structuring strong answers is provided at the end of the chapter. Try out additional sample questions online.

Assessment advice – Not sure how best to tackle a problem or essay question? Wondering what you may be asked? Be prepared – use the assessment advice to identify the ways in which a subject may be examined and how to apply your knowledge effectively.

Key definitions – Make sure you understand essential legal terms. Use the flashcards online to test your recall!

Sample question

Could you answer this question? Below is a typical problem question that could arise on this topic. Guidelines on answering the question are included at the end of this chapter, whilst a sample essay question and guidance on tackling it can be found on the companion website.

ASSESSMENT ADVICE

Essay questions focusing on the relationship between the actus reus and mens rea are quite common and require the student to have a good grasp of basic principles as well as an ability to discuss the underlying rationale of the law. Questions on strict liability are also common and involve discussion of why such offences depart from the general principle that criminal liability requires a culpable state of mind.

Problem questions involving the coincidence of actus reus and mens rea are common and require an understanding of the various ways that the courts have dealt with lack of coincidence as well as the ability to tackle the substantive offences themselves (often murder or criminal damage). Knowledge of the elements of criminal liability and their operation is essential even if it does not arise directly in a question as it would be impossible to answer any problem without understanding how actus reus, mens rea and defences work in combination.

(EY DEFINITION: Factual causation

The defendant's act must be a *sine qua non* of the prohibited consequence. This means that the consequence would not have occurred without the defendant's actions. Factual causation is established using the 'but for' test.

Key cases and key statutes – Identify the important elements of the essential cases and statutes you will need to know for your exams.

KEY CASE

Fagan v. Metropolitan Police Commissioner [1969] 1 QB 439 (DC) Concerning: coincidence of actus reus and mens rea

Facts

The defendant accidentally stopped his car on a policeman's foot but then refused to move when he realised this. He appealed against his conviction for assaulting a police of in the execution of his duty on the basis that at the time of the actus reuse (when a decorated with the policeman's foot) he had no mens rea (because it was a down that the formed mens rea (refusing to move) there was no act

And by the time he formed *mens rea* (refusing to move) there was no act

Homicide Act 1957, s. 2 (ab) base liability (he merely refused to undo that which he had already done).

(1) A person (°D') who kills on

of murder If D was suffering

to instant if a was sometile (a) arrows from a recognisit to the actus reus of assault (in the sense of a battery) came into being subsection 1,0,3 and was first made between the car and the policeman's foot. This actus reus

(c) provides an explany the whole time that the car remained on the foot, only ending when the the killing. Seed. At the point in time that the defendant became aware of the contact seed to move, he developed the requisite mens rea and liability was complete.

Make your answer stand out – Illustrates sources of further thinking and debate where you can maximise your marks. Include these to really impress your examiners!

1

Make your answer stand out

It is common for students to focus on protection of the person aspect of self-defence but to overlook the prevention of crime and apprehension of offenders elements so make sure that you look out for these less common manifestations of the defence and deal with them appropriately. For instance, you could try to argue that Davina is acting to prevent an offender from escaping by kicking Vernon in the groin to incapacitate him.

A mistaken belief in the need to use force is a common area of confusion so make sure that you have a clear grasp of the issue and that you are able to apply Williams (Bladstone) in order to reach a reasoned conclusion about the availability of the defence.

Exam tips – Feeling the pressure? These boxes indicate how you can improve your exam performance and your chances of getting those top marks!

Revision notes – Highlight related points or areas of overlap in other topics, or areas where your course might adopt a particular approach that you should check with your course tutor.

Don't be tempted to ... Underline areas where students most often trip up in exams. Use them to avoid making common mistakes and losing marks.

Read to impress – Focus on these carefully selected sources to extend your knowledge, deepen your understanding, and earn better marks in coursework as well as in exams.

Glossary – Forgotten the meaning of a word? This quick reference covers key definitions and other useful terms. A EXAM TIP

It can be useful to scribble down a timeline of events to clarify when the actus reus and mens rea occurred as Figure 1.2 demonstrates in relation to Fagan. This is particularly useful when facing a problem question on coincidence as it can be difficult otherwise to determine "what happened when" from the mass of facts included in the question.

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Review 819

Individual defences, their operation and effect are considered in more detail in later chapters.

Don't be tempted to . .

The mens rea of attempted murder is a tricky area that offen gives rise to confusion in exams. The mens rate for murder is intention to kill or cause GBM (Chapter 6) but the mens rea for under is limited to intention to kill. This is because an attempted offence involves a failed outcome, i.e. the victim is not dead. If the victim is alive and the defendant only intended to cause GBM, he is failed for a non-fatal offence (Chapter 9); he cannot be liable for attempted murder unless he intended to

READ TO IMPRESS

Ashworth, A. 'The Scope of Criminal Liability for Omissions' (1989) 105 Law Quarterly Review 424 Ormerod, D. and Fortson, R. 'Drug Suppliers as Manslaughterers (Again)' 2005 Criminal Law

Stannard, J.E. 'Medical Treatment and the Chain of Causation' (1993) 75 Journal of Criminal Law 88

Glossary of terms

The glossary is divided into two parts: key definitions and other useful terms. The key definitions can be found within the chapter in which they occur as well as in the glossary below. These definitions are the essential terms that you must know and understand in

Contents

| Introduction Guided tour | | i i |
|------------------------------|--------------------------------|--------|
| Chantar 1. | Florente of eximinal liability | |
| | Elements of criminal liability | 1 |
| Chapter 2: | | 15 |
| Chapter 3: | | 33 |
| | Inchoate offences | 49 |
| Chapter 5: | Accessorial liability | 65 |
| Chapter 6: | | 83 |
| | Voluntary manslaughter | 93 |
| | Involuntary manslaughter | 113 |
| | Non-fatal offences | 131 |
| Chapter 10: | Sexual offences | 159 |
| Chapter 11: | Criminal damage | 177 |
| Chapter 12: | Theft | 193 |
| Chapter 13: | Theft-related offences | 211 |
| Chapter 14: | Fraud | 225 |
| Chapter 15: | Insanity and automatism | 243 |
| Chapter 16: | Intoxication | 257 |
| Chapter 17: | Self-defence | 269 |
| Chapter 18: | Duress | 283 |
| And finally, before the exam | | |
| Glossary of t | erms | 307 |

Elements of criminal liability

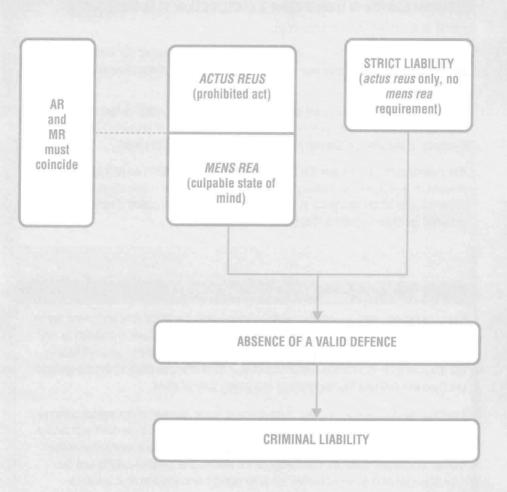
Revision checklist Essential points you should know: The relationship between actus reus and mens rea The problems surrounding the need for coincidence of actus reus and mens rea The nature of strict liability

The role and operation of defences

第一章注释

| 序号 | 页 | 表格 | 行 | 词汇 | 中文注释 | English |
|----|----|------|----|---|-------------------------|---|
| 1 | 4 | | 4 | Actus non facit reum nisi mens sit res | 无犯意则无 犯罪 | |
| 2 | | 2 | 2 | Actus reus | 犯罪行为 | [Law Latin "guilty act"] The wroongful deed that comprises the physical components of a crime and that generally must be coupled with mens rea to establish criminal liability |
| 3 | | | 3 | Mens rea | 犯罪意图 | [Law Latin "guilty mind"] The state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime. |
| 4 | | اعدا | 19 | Culpable | 应受责备的; 难辞其咎的 | Guilty; blameworthy |
| 5 | 5 | | 11 | GBH (grievous bodily harm) | 重大身体伤害; 重伤 | Criminal law. Serious physical impairment of the human body |
| 6 | 11 | | 19 | Deterrent | 威慑因素 | Something that impedes; something that prevents . |
| 7 | 12 | 1 | | Duress | 胁迫;强迫 | Strictly, the physical confinement of a person of the detention of a contracting party's property; broadly, the threat of confinement or detention, or other threat of harm, used to compel a person to do something against his or her will or judgment. |
| 8 | | | 17 | Automatism | 无意识行为, 不自觉动作; 自动症 | Action or conduct occurring without will, purpose, or reasoned intention; the state of a person who, though capable of action, is not conscious of his or her actions. |

Topic map



Introduction

Criminal liability is based upon a combination of actions (actus reus) and thoughts (mens rea).

This is expressed by the maxim <u>actus non facit reum nisi mens sit rea</u> which means that an act alone will not give rise to criminal liability unless it was done with a guilty state of mind.

If *actus reus* and *mens rea* are established and there is no valid defence, the defendant is guilty. The onus is on the prosecution (burden of proof) to establish the elements of the offence beyond reasonable doubt (standard of proof).

It is important not to overlook the foundations of criminal liability as part of the revision process as a grasp of this material provides an essential foundation upon which an understanding of the operation of the substantive offences is based. There is also potential for exam questions that tackle these basic issues.

ASSESSMENT ADVICE

Essay questions focusing on the relationship between the *actus reus* and *mens rea* are quite common and require the student to have a good grasp of basic principles as well as an ability to discuss the underlying rationale of the law. Questions on strict liability are also common and involve discussion of why such offences depart from the general principle that criminal liability requires a culpable state of mind.

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