

## LS 101 — Chapter 8: Principles of Criminal Law

### 1 The Criminal Law and the *Criminal Code Of Canada*

- The Criminal Code is a federal statute and applied throughout Canada.
- Other criminal statutes include the Youth Criminal Justice Act and the Controlled Drugs and Substances Act.
- Most categories have to be done within Canada to be considered, though some can be done outside of Canada (though they're shit like conspiracy and genocide).
- There are two categories of criminal offences:
  - Indictable Conviction (more serious, sentences from maximum of two years to life)
  - Summary Conviction (minor sentences, maximum sentence of up to six months)
- In an indictable offence, there may be a preliminary hearing. The Crown has to show the court that there is enough evidence to proceed with a trial.
- The defence don't have to raise any evidence at all during this hearing. They can just see what the Crown's case is.
- In essence, it's a trial before a trial.
- Comparing to the US, the US has much harsher punishments, with many *minimum* sentences compared to Canada, which only has them for a certain few crimes.

### 2 Offences

- Offences against the state include:
  - Treason (incredibly serious, must be reported if knowledge is known about it, used to be capital; this shit is like trying to kill the Queen or waging war against Canada)
  - Terrorism (newer, after 9/11. Serious, up to life imprisonment)
  - Perjury (lying under oath, can be punished for up to 10 years)
  - Fabricating evidence
- Offences against public order include:
  - Committing indecent acts
  - Causing a disturbance
  - Mischief
- Public mischief includes (a summary offence):
  - Bomb scares
  - Misleading authorities
- Offences against the person include:
  - Assault
  - Manslaughter
  - Murder

- Offences against property include:
  - Theft
  - Arson
  - Breaking and entering
  - Embezzlement
- Attempts to commit a criminal act, or being accessories to a criminal offence, can lead to being charged.

### 3 Actus Reus and Mens Rea

- As mentioned before, this stands for the act and the intent.
- Note that an act can count as an omission (ie: having a legal duty to act).
- A person can only be committed if they have both the act and intent simultaneously.
- The Crown wants to prove guilt beyond a reasonable doubt, and show both the act and the intent to the act.
- That is, the Crown has to prove the person did the act and the defendant's behaviour caused the consequences coming from the act.
- Criminal acts must also be voluntary in order to be guilty — if a person is forced to kill someone else they aren't guilty.
- The act has to be something they're physically capable of doing and that they wanted to do. For example, if you accidentally had a spasm, or you accidentally pushed someone, these are considered as involuntary.
- The courts will presume that people intend the natural consequences of their actions — for example, if you "shoot someone to just wound them, not kill them", the courts would not accept that.
- Intentionality refers to a high degree of malice and premeditation.
- Recklessness is a lesser form of intent and refers to total indifference to the consequences of an act.
- Reckless actions causing death are likely to lead to a charge of second degree murder.
- Criminal negligence is when the accused wasn't thinking when their duty compelled them to. It implies inattention.

#### 3.1 Offences of Absolute and Strict Liability

- Administrative/regulatory statutes often consist of offences of absolute or strict liability.
- Offences of absolute or strict liability only require that the Crown prove that the person committed the act.
- There are no defences to offences of absolute liability.
- There are restricted defences to offences of strict liability such as due diligence.
- These types of offences relate to public welfare statutes and allow for expediency in terms of enforcement as most people will plead guilty.
- These are created for public welfare.
- Usually little stigma and penalties are usually fine.