

The Basic Principles or Concepts of Criminal Law

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The fundamental characteristics of a crime is that it is an act that has been considered injurious and sufficient to warrant punishment by the society. In administering criminal justice, there are certain basic underlying principles that have to be followed. These principles are put in place in order to curb arbitrariness in the criminal justice system and to protect the criminal from being denied common benefits of natural justice.

The following are some of the important basic principles of criminal law:

No Act is A Crime Except it is so Stated

The first principle to be considered is the one that posits that no act would be regarded as a crime unless it has been pronounced so by a statute. This is encapsulated in two common law maxims:

- ***Nullum crimen sine lege***: This maxim interprets to mean that "no act is criminal except that defined to be so by the law".
- ***Nulla poene sine lege***: This maxim means that "no citizen can be made to suffer any punishment except in accordance with the law".

The above can be aligned with A.V Dicey's view that men are ruled by the law and the law alone. A man should be punished for the breach of the law and nothing else but the law.

The above is also supported by the provision of **S.36(12) of the 1999 Constitution**, which provides that no person should be convicted of a criminal offence except it is defined and the penalty is described in a written law. And a written law refers to an Act of the National Assembly, the law of a state, a subsidiary legislation or instrument under the provisions of a law.

Criminal Law Cannot be Retroactive

The second basic principle is that criminal statutes should not be retroactive. This means that laws should not go back in time to hold people liable for actions carried out before the law is put in place. This principle is encapsulated by provision of **S.36(8) of the 1999 Constitution**.

It provides that no person shall be held guilty for an act or omission that did not at the time constitute a crime, and no penalty should be given to an act except the penalty that was in force at the time.

The **Constitution** also clearly provides in **S.4(9)** that no legislature shall have the power to make a law that has a retrospective effect.

Presumption of Innocence

The third principle is the presumption of innocence. This is a very well established principle contained in both the laws of evidence and procedural law. It is contained the provision of **S.36(5) of the Constitution** which provides that every person that has been charged with an offence in a criminal case shall be presumed innocent until proven guilty.

Judicial Review

Another important principle is the power of an appellate court to quash the conviction of a lower court if it feels that there is a miscarriage of justice. This principle is well established in the doctrine of judicial precedence (*Stare decisis*), where decisions of courts of higher jurisdiction are binding on courts of lower jurisdictions. For example, it is provided in **S.240 of the Constitution** that the Court of Appeal has the right to hear appeal from the High Court and other courts of concurrent jurisdiction with the high court.

At the appeal, it should be established before the court that the trial court has erred in law or fact or in both law and fact. If this is sufficiently proved, the appellate court can quash the decision of the lower court.

SOURCES

1. Lecture delivered by Dr Mrs. M.A. Abdulraheem Mustapha on Criminal Law, Faculty of Law, University of Ilorin.
2. The Constitution of the Federal Republic of Nigeria 1999(as amended)