

# COM6655 Professional Issues

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### Introduction to legal concepts (part 2)

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## Key legal concepts

## Aims of this lecture

- The aim of this lecture is to introduce key legal concepts.
- We introduce the principles underlying three key areas of law:
  - Criminal law
  - Contract law
  - Tort
- Again, this is foundational material needed to understand later lectures on computer crime and liability for defective software.

## Persons and things

- Who or what does the law apply to?
- A **person** in law is an entity which is capable of having rights and undertaking duties.
- A **thing** is the subject of rights and duties.
- Persons may be either natural or artificial. A **natural person** is a human being. An **artificial person** is a corporation created under the law.

## Rights, duties, obligations, liability

- A **right** is some liberty relating to a person that is protected by the law.
  - Example: the possession of property.
- Where a person exercises a right, he does so by virtue of another person owing a **duty** towards him.
  - Seller has a **right** to sell property for an agreed price
  - Buyer has a **duty** to pay the agreed price
  - The buyer has an **obligation** to pay the seller
- A person is under a **liability** (or is liable) when he owes a duty or an obligation to another.

## Property and ownership

- Legal **property** is that which is the subject of rights (land and other things that can be owned by a person)
- **Real property** is land.
- **Personal property** (chattels) is all other kinds of physical property and also includes contract rights, company shares, patents and copyrights.
- **Ownership** is the concept that relates a person to property over which he has exclusive control.

## Possession

- To possess property, a person must:
  - Have physical control of the property;
  - Have the intention to exercise control; and
  - Ensure that there are visible signs of their possession.
- The person in possession is protected by the law except against another party that has a stronger claim for possession.
- 'possession is nine tenths of the law'

## Ownership vs. possession

- **Example: sale of goods**

# Criminal law

COM6655 PROFESSIONAL ISSUES

SLIDE 9

## What is a crime?

- The definition of **crime** adopted by the House of Lords is:
- *A crime is an unlawful act or default which is an offence against the public and renders the person guilty of the act liable to legal punishment.*
- Criminal law aims to:
  - Define each crime
  - Set up procedures for finding the guilt or innocence of the accused
  - Establish punishments for the guilty.

COM6655 PROFESSIONAL ISSUES

SLIDE 10

## Principles of criminal law

- A criminal act does not constitute guilt unless the mind is guilty.
- The criminal act is called the **actus reus**
  - Latin: guilty act
- The mental element of a crime is called the **mens rea**
  - Latin: guilty mind

COM6655 PROFESSIONAL ISSUES

SLIDE 11

## Mens rea (guilty mind)

- The *mens rea* involves an intention or recklessness in carrying out a criminal act.
- *"It is a general principle of our criminal system that there must be as an essential ingredient in a criminal offence some blameworthy condition of mind. Sometimes it is negligence, sometimes malice, sometimes guilty knowledge, but as a general rule there must be something of that kind which is designated by the expression mens rea."*

(statement from a Judge in 1829)

COM6655 PROFESSIONAL ISSUES

SLIDE 12

## Examples

- Shoplifting
  - actus reus. Leaving the shop without paying
  - mens rea. Doing this deliberately and dishonestly.
- Murder
  - actus reus. Wielding the axe etc.
  - mens rea. Doing so 'with malice aforethought'
- **Q. Why does the question of intent matter?**

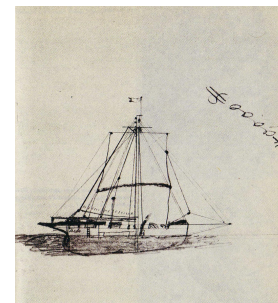
## Criminal defences

- A defence is available if the defendant can show that there was no intent when the act took place.
- **Mistake**
  - The accused may be able to show that he was under a mistake such as to negate intention or recklessness.
  - Ignorance of the law is not an excuse.
- **Insanity**
  - Insanity may be proven if the accused was 'labouring under a defect of reason, from disease of the mind'
  - The accused didn't know the nature of what he was doing.

## Criminal defences

- **Intoxication**
  - A type of legal insanity. May negate mens rea with regard to particular offences.
  - May be taken into account when pleading mistake.
- **Compulsion**
  - Involuntarily act due to duress by threats, necessity, obedience to higher authority, etc.

## Case sketch: R v Dudley and Stephens (1884)



## Prosecution of criminal offences

- When a criminal offence has been committed, the normal procedure is for the police to be informed.
- If the police suspect a certain person of having committed the crime, they **charge** them and then pass the case to the Crown Prosecution Service (CPS).
- The CPS decides whether to **prosecute** and what charges to bring.
- The accused will appear before a Magistrate's Court.
- Either his case will be heard by the Magistrate (summary trial) or he will be committed for trial in the Crown Court (trial on indictment).
- Some offences can be tried 'either way', i.e. summarily or on indictment depending on the choice of the defendant.
- If the CPS declines to act, it is still possible to bring a **private prosecution**.

## Theft

### Definition

- *'...a person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it...'* (Theft Act 1968)

### Questions

- What are the actus reus and the mens rea in this definition?
- If someone steals a computer disk, copies the information on it and returns the disk to the owner, has a theft been committed?

## Fraud

- *'...fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false...'* (Lord Heschell, 1889)
- The 1968 Theft Act defines a number of fraud offences, as follows:
  - Dishonestly **obtaining property by** deception, with the intention of permanently depriving another of it.
  - Dishonestly **obtaining a pecuniary advantage** by deception.
  - Destroying, defacing, falsifying or concealing any record or document required for an accounting purpose, or producing an account which is misleading, false or deceptive (**false accounting**).

## Contract law

## Contract law

- A contract is a legally enforceable agreement.
- A contract is enforceable since there is legal action available in case one party should fail to comply with his promise under the agreement.
- The usual remedy is money compensation, known as **damages**.
- When a party does not comply with terms of a contract, a **breach of contract** is said to have occurred.
- An important doctrine of English Law is **privity of contract**: third parties are unable to sue on a contract that does not concern them.

## Tort

## Law of Tort

- The word 'tort' is Norman French, meaning 'wrong'.
- A tort is a wrong which can be resolved by civil courts.
- The purpose of the law of torts is to compensate those suffering loss or injury caused by another's actions.
- Usually an action for **damages** (money compensation).
- If damages are not available, an **injunction** (restraint order) may be made.

## Tort and criminal law

- Most crimes which cause injury or damage to persons or property are also torts. So, a wrongdoer may be both
  - Punished by the criminal courts
  - Sued in tort for compensation by the person who suffered the injury or loss.
- **Example: A car accident**

## Negligence

- Negligence involves a **duty of care**, and the damage which is suffered as a result of a **breach** of that duty.
- To succeed in a claim for negligence, the plaintiff must show that the damage or injury suffered was caused by the defendant's breach of duty.

## Case sketch: Donoghue v. Stevenson (1932)



## Establishing negligence

- Two questions arise:
  - Did the breach of duty cause the damage? (factual).
  - Is any part of the damage too remote? (legal).
- The test of remoteness asks whether a reasonable person, at the time of the breach of duty, would have foreseen the damage which has occurred.
- If the damage is reasonably foreseeable, the defendant is liable for it.
- **Question:** What are the answers to these questions in the case of Donoghue v. Stevenson (1932)?

## Summary

- We have explained basic legal concepts, such as rights, duties, persons, liability, property, ownership, etc.
- Criminal law and the prosecution of criminal offences.
- Contract law (breach, privity)
- Tort and negligence.