

Annex D.2

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Principles of Criminal Law

SIXTH EDITION



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Andrew Ashworth

PRINCIPLES OF CRIMINAL LAW

Sixth Edition

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CRIMINAL CONDUCT: ACTUS REUS, CAUSATION AND JUSTIFICATION

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4.1 THE GENERAL PART OF THE CRIMINAL LAW

This chapter and the following two chapters discuss what is usually known as the general part of the criminal law. It has been traditional for writers on English criminal law to approach the analysis of offences by means of two concepts with Latin names, *actus reus* and *mens rea*: the *actus reus* consists of the prohibited behaviour or conduct, including any specified consequences; the *mens rea* is usually described as the mental element—the intention, knowledge, or recklessness of the defendant in relation to the proscribed conduct. Whether this distinction is given Latin names or is expressed, as preferred here, in terms of conduct elements and fault elements, the distinction is nothing more than an analytical tool, and at that a rather ‘rough and ready’ one. It does have implications—for example, if the absence of lawful justification for conduct taken about the facts giving rise to the justification should not be criminally liable if the offence requires *mens rea* or fault.¹ It also has some manifest shortcomings: many of the accepted ‘defences’ to crime cannot be explained in terms of absence of fault or lack of *mens rea*—such defences as duress and even intoxication require a more complex account. Moreover, it can be strongly argued that what is often portrayed as ‘the

¹ See the further discussions of this principle in Ch 5.5(d) below.

general part' of English criminal law is no such thing: with thousands of strict liability offences² and many other variations of liability, what many writers refer to as the general part is no more than a set of aspirational principles—and others argue that we should even abandon the aspiration, and admit appropriate variations in liability according to the context.³

Recognition of the inadequacy of the traditional *mens rea/actus reus* distinction has led to a search for more helpful ways of constructing a framework for criminal law.⁴ German law has long adopted a threefold distinction between wrongdoing, absence of justification, and culpability,⁵ but a more elaborate structure is probably needed if it is to be faithful to the inevitable complexity of modern criminal law.⁶ There is no space here to examine these issues more extensively, and the classification adopted may be said to be less important than an enquiry into that which it might obscure, i.e. 'what the preconditions to criminal liability really are, and how far they really reflect the principles they are commonly supposed to encapsulate'.⁷ For convenience of exposition the conditions of criminal liability may be divided into four working groups:

- (i) act and causation requirements;
- (ii) absence of justification;
- (iii) capacity and fault requirements;
- (iv) excusatory defences.

Chapter 5 below has been expanded in this edition to deal with the requirements of criminal capacity (the doctrines of insanity, infancy and corporate liability) as well as traditional *mens rea* requirements, i.e. the range of possible fault elements which the prosecution has to establish in order to construct a case for the defence to answer. Chapter 6 will discuss excusatory defences, mostly based on the absence of fault elements which do not correspond with positive *mens rea* requirements and of which the defendant has to provide some evidence in order to raise them as live issues in a case. Although these positive and negative fault requirements fall into the general part of the criminal law, it should not be assumed that they apply invariably and to all offences. We will see that there are controversial issues about the propriety of the many strict liability offences, and about the unavailability of certain defences to those charged

² See Ch 5.5(a) below.

³ J. Gardner, 'On the General Part of the Criminal Law', in R. A. Duff (ed.), *Philosophy and the Criminal Law* (1998).

⁴ See the critical essay by P. H. Robinson, 'Should the Criminal Law Abandon the Actus Reus/Mens Rea Distinction?', in S. Shute, J. Gardner, and J. Horder, (eds.), *Action and Value in Criminal Law* (1993).

⁵ See G. P. Fletcher, *Rethinking Criminal Law* (1978).

⁶ P. H. Robinson, *Structure and Function in Criminal Law* (1997).

⁷ A. T. H. Smith, 'On Actus Reus and Mens Rea', in P. R. Glazebrook (ed.), *Reshaping the Criminal Law* (1978), 95.

Principles of Criminal Law

Principles of Criminal Law provides a refined analysis of the theoretical foundations which shape the statutory provisions and case law. Stimulating discussion of the topics crucial to criminal law courses ensures that you are treated to sophisticated insight into the core of the subject – essential for anyone wanting an in-depth and engaging exploration of criminal law.

Andrew Ashworth's discerning examination of the law is continued in this sixth edition which has been fully updated with developed coverage of the law relating to sexual offences, as well as detailed examination of all the latest developments including the Corporate Manslaughter and Corporate Homicide Act 2007, and the government's proposed reforms of homicide law.

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'This book will become a classic introduction for law students...coherent and accessible...its insight will stimulate all but the most cynical observer of the operation of criminal law in England and Wales'
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Nottingham Law Journal

'A valuable addition to the libraries of all criminal lawyers...a comprehensive, eloquent work on criminal law principles and their application'
The Criminal Law Quarterly

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