

AMERICAN CRIMINAL LAW

**AN INTRODUCTION
FOR LAW STUDENTS OF ENGLISH**

ANCA MAGIRU

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**EDITURA UNIVERSITARĂ
BUCUREȘTI**

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Editura Universitară
Director: Vasile Muscalu
B-dul. N. Bălcescu nr.27-33,
Sector 1, București
Tel./Fax: 021 – 315.32.47 / 319.67.27
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EDITURĂ RECUNOSCUTĂ DE CONSILIUL NAȚIONAL AL CERCETĂRII
ȘTIINȚIFICE DIN ÎNVĂȚĂMÂNTUL SUPERIOR (C.N.C.S.I.S.)

Descrierea CIP a Bibliotecii Naționale a României
MAGIRU, ANCA

**American Criminal Law : An Introduction for Law Students
of English / Anca Magiru. - București : Editura Universitară, 2010**
ISBN 978-606-591-021-8

811.111:34

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Universitare.

Distribuție: tel./fax: 021-315.32.47
021-319.67.27
comenzi@editurauniversitara.ro

ISBN 978-606-591-021-8

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INTRODUCTION

This book is designed to be a succinct exposition of American criminal law. The brief text is intended primarily for use by both American and Romanian law students taking courses in the field of criminal law, and also by those interested in learning more about American criminal law. It can be a start in going deeply into the subject. It is also designed as a foundation for excellent exam performance for American students. Once they are familiar with the theory questions, answers and definitions, they can face their Criminal Law exam with the confidence of knowing and understanding every principle and being able to recognize issues in context.

American Criminal Law is the study of the elements which must be satisfied to find that a person has committed a crime. It deals with the four basic elements of all crimes: a voluntary act, a culpable intent, a confluence of act and intent, and causation.

The book is divided into eight chapters. Chapter 1 defines Criminal Law and makes us acquainted with what criminal law does. Chapter 2 is concerned with the ingredients of all crimes (*mens rea* and *actus reus*). Chapter 3 and chapter 4 discuss inchoate and group criminality, respectively. Chapter 5 discusses capacity, while Chapter 6 discusses

defenses. Chapters 7 and 8 develop those specific crimes which, in the opinion of the author, need developing. In addition, it analyzes causation and self-defense. Finally, the book concludes with a short perspective on the study of criminal law.

Within each chapter, there are two sections: A. Reading Section, containing theory questions, answers and/or definitions and, B. Practice Section, containing hypotheticals that teach you how to apply specific legal principles to the level of detail tested on American law school exams and the American Multistate Bar Examination.

‘Perspective’ wants to be a final word of encouragement for those interested in studying American criminal law and who must know that studying law is a never inauguration but also a continuous exploration of this field.

The English-Romanian Criminal Law Vocabulary Section, with which the volume continues, could be helpful and stimulating for our students of English making them understand faster and better the meanings of the words, sentences and phrases usually used in criminal law terminology.

‘References to Source Materials’ ends the volume.

REFERENCES, ABBREVIATIONS AND “NOTES”

References

The book contains references to source materials. The references usually appear at the very end of the answer to each question. The reference is to the most applicable source. If an answer or/and definition to a question does not have a specific reference, check the general source material discussed in the answers/definitions before and after it.

These are the abbreviations used for the primary sources in this book:

E/CL – Emanuel, *Emanuel Law Outline on Criminal Law*, Fifth Edition, ©2003, Aspen Publishers

LF/CL – LaFave, *Hornbook on Criminal Law*, Third Edition, © 2000, West Group

P/CL – Perkins and Boyce, *Criminal Law*, Third Edition, © 1982, Foundation Press

Every Theory Question, Answer, Definition set has been carefully checked against these and other primary sources. When sources conflict, as they usually do, the rule cited for

every Theory Question, Answer, Definition set, is the one followed by the majority of sources.

Abbreviations and “Notes”

Apart from source references, American Criminal Law answers frequently contain abbreviations and sub-headings. Some are straightforward. For instance, you will frequently find sub-headings like “MPC VIEW” and “MINORITY VIEW” and “COMMON LAW VIEW”, which are self-explanatory. (“MPC”, of course, stands for “Model Penal Code”.) There are three more sub-headings which appear in the book, Note, Related Issue, and N.B. A “note” highlights either a subsidiary issue, or a factor which otherwise would be lost in the answer. “Notes” most frequently appear in complex answers. A “Related Issue” involves facts slightly different from the facts given in the answers or/and definitions. “Related Issues” are included when a slight change in the fact pattern would change either your reasoning or the result, and the related facts could easily be confused with the facts given. “N.B.” is an abbreviation for the Latin term, “nota bene”, which means, “mark well, or “take note”. In this book, N.B., is used to highlight a particularly insidious trap, or a point more important than one indicated by a “note”.

ACKNOWLEDGMENTS

I wrote this book, unique in Romania, so far, because I thought I had something interesting to say, about American Criminal Law, to both American and Romanian law students of English. But as I worked through the various chapters, I realized that I also had a lot to learn about the subject in which I claimed expertise in my position as a Fulbright Senior Scholar at St. Mary's University School of Law, San Antonio, Texas, August, 2008-April, 2009. Even though I have been teaching English for law students for better than a decade, writing this book has been a learning experience for me, as well.

My Fulbright research project, "American Criminal Law, Literature and Journalism: A Recent Interdisciplinary Approach", helped me a lot. I have also been blessed with wonderful American colleagues, professors of law who supervised my project. I'd like to mention here, Dr. Charles Cantú, Professor of Law and Dean of the School of Law, who provided me with a research carrel in the Law Library, Dr. Robert Hu, Assistant Professor, Director of the Law Library, who helped me with documentation, Dr. Bonita K. Roberts, Professor of Law and Literature, who gave me precious advice while studying the influence of law in literature and its importance, Dr. Robert Summers, Professor of Law who invited me to sit in his classes. These American colleagues also read individual chapters and made useful additions and corrections for which I was deeply obliged.

However, the last but not the least important, was Dr. Vincent R. Johnson, Professor of Law, Fulbright Senior Scholar in Bucharest, Spring 2005, and the supervisor of my Fulbright research project. It is with affection and appreciation that I especially acknowledge my indebtedness to Dr. Vincent R. Johnson, Professor of Law at St. Mary's University School of Law in San Antonio, Texas, U.S.A., elected member of the American Law Institute (1995-present), Peer Reviewer of the Romanian Fulbright Commission, Bucharest (2008-present), member of the Law Casebook Series Advisory Board, Carolina Academic Press, Durham, NC. (1995-present), who initiated me into American criminal law and the art of writing a book on it for law students of English. I'd like to thank him for his insights and guidance in seeing this edition of the manuscript through to publication.

I am also grateful to my mother, Viorica Leonte, for her enthusiastic encouragement during the preparation of the manuscript, and to my husband, Ionel Magiru, for the love, support, and confidence that I gained from our relationship. My husband and my mother deserve more than thanks for tolerating a person who thinks of little else but English for Romanian law students, American law and legal system, and who runs the household like a classroom. I dedicate the book to them both because it was them who encouraged me to face the challenge of such a project which impact was sustained by the creation of this book, and I love them dearly.

CHAPTER 1

GENERAL PRINCIPLES

11 THEORY QUESTIONS, ANSWERS, DEFINITIONS

- 1. What are the elements of a crime?**
- 2. What is the difference between a crime and a tort?**
- 3. What is the distinction between felonies and misdemeanors?**
- 4. What is a “bill of attainder”?**
- 5. What is an “ex post facto law”?**
- 6. What is “lesser-included offense”?**
- 7. What is the difference between a crime that is “malum in se” and one that is “malum prohibitum”?**
- 8. If a court feels a statute is undesirable, even though the statute’s meaning is clear, can the court refuse to uphold it?**
- 9. Under what circumstances is one said “to intend” the results of his acts?**
- 10. Are the general tort principles of causation, cause-in-fact and legal (proximate) cause, applicable to criminal law as well?**
- 11. What is the meaning of “superseding cause” in determining a break in the chain of proximate causation?**

A. READING SECTION:

11 Theory Questions, Answers, Definitions

1. What are the elements of a crime?

The elements of a crime are: act, mental state, concurrence and causation.

Act (Latin phrase – actus reus) – can be omission where there is a duty to act;

Mental state (Latin phrase – mens rea) – varies from crime to crime and sometimes from element to element of a single crime (strict liability – a crime or element of a crime not requiring a corresponding mental state);

Concurrence between act and required mental state;

Causation – Factual and proximate cause of result.

E/CL Ch.1; LF/CL §§ 1.1 & 1.2 (b).

2. What is the difference between a crime and a tort?

A *tort* is a civil wrong committed against an individual.

A *crime* is a public wrong committed against the state.

Note 1: In the absence of a statute specifically providing otherwise, the violation of a municipal ordinance may not technically be a “crime”, since punishment is not meted out by the state. The modern trend however, is to treat ordinance violations as criminal, not civil, especially if imprisonment is authorized. Moreover, successive municipal and state prosecutions of the same act are

impermissible since the city is a political subdivision of the state for double jeopardy purposes.

LF/CL §§ 1.3(b) & 1.7 (c).

Note 2: Tort defenses are generally not applicable in criminal actions, since the wrong is a public rather than a private wrong.

3. What is the distinction between felonies and misdemeanors?

Felony – crime punishable by either imprisonment exceeding one year or by death.

Misdemeanor – crime punishable by a fine or imprisonment of one year or less.

Common felonies: murder, manslaughter, mayhem, rape, robbery, sodomy, larceny, arson, burglary.

Battery and assault are generally misdemeanors although *aggravated battery* and *aggravated assault* are generally felonies.

LF/CL § 1.6 (a).

4. What is a “bill of attainder”?

A “bill of attainder” is a statute that mandates punishment, or denies a privilege, without a judicial trial. Bills of attainder are prohibited by the Constitution.

LF/CL §2.4 (d).

5. What is an “ex post facto law”?

It is one which operates retroactively to: 1. to make an act criminal which was not criminal when it took place; 2. “aggravate” a crime, or make its punishment more severe, or 3. change the rules of evidence against criminal

defendants, as a class, or 4.change criminal procedure to deprive criminal defendants of any substantive right.

Note: Ex post facto laws are prohibited by the Constitution.

6. What is a “lesser-included offense”?

A “lesser-included offense” is one which requires proof of some but not all of the elements of another offense, and no other elements.

Examples: Larceny is included in robbery; voluntary manslaughter is included in *murder* (*provocation* is not considered an additional element); *attempted crimes* are included in *completed crimes*.

Significance: One cannot be *convicted* of both a lesser-included *offense* and the greater offense; neither can *an accused be tried* for one, and later for the other, since this would constitute double jeopardy.

Note: *Conspiracy* is not *covered* if more than the “required” number of parties take part (e.g., in *bribery*, if more than two take part, the conspiracy will not *merge into* the bribery *charge*. If there are only two, the conspiracy charge will fail, since bribery requires at least two parties – a giver and a taker).

7. What is the difference between a crime that is “malum in se” and one that is “malum prohibitum”?

A crime that is *malum in se* is one that is *inherently evil*, e.g., murder, battery, or robbery.

A crime that is *malum prohibitum* is one that is only wrong because the law prohibits it, e.g., speeding, carrying a concealed weapon, and other *regulatory* offences.

LF/CL §1.6(b)

8. If a court feels a statute is undesirable, even though the statute's meaning is clear, can the court refuse to uphold it?

No. If the language and meaning of a statute is clear, the court *must* apply it.

Exception: Where the statute is clear, but applying it will lead to *oppression*, injustice, or an absurd result, the court need not apply it literally.

LF/CL § 2.2.(b)

9. Under what circumstances is one said to *intend* the results of his acts?

1.*Desire*: When he desires the results *regardless* of the *likelihood* it will come about, and

2.*Knowledge*: When he knows the result is *substantially* certain to occur, regardless of his desire to *bring it about*.

Note: Some statutes use the word “intent” to mean “purpose”.

LF/CL § 3.5(b) &(f)

10. Are the general tort principles of causation, cause-in fact and legal (proximate) cause, applicable to criminal law as well?

Yes. Thus, the defendant's act (or omission in the face of a duty to act) must be the actual (cause-in-fact) and legal (proximate) cause of the victim's death or injury.

E/CL Ch. 2-II-III; LF/CL §3.12

11. What is the meaning of “superseding cause” in determining a break in the chain of proximate causation?

A *superseding cause* is one which is independent, intervening and unforeseeable.

LF/CL §3.12 (f) (3)-(7) & (g) (2); P/CL pp. 812-818

B. PRACTICE SECTION: WHAT IS THE VERDICT?

11 Hypothetical Cases

1. Facts: Harry is a man interested in hunting, fishing, drinking, and football. On one of his forays into the wilds he is arrested for hunting without a license. Is Harry's crime malum in se or malum prohibitum?

Decision: It is malum prohibitum. Acts that are criminal only because they are prohibited by statute are considered malum prohibitum rather than malum in se. Malum in se refers to crimes that are wrong in and of themselves (e.g., murder, larceny, arson).

LF/CL § 1.6 (b)

2. Facts: The Sisters of Our Lady of 115th Street Convent want to hold a "Casino Night Club" to benefit the local Church-sponsored halfway house. The relevant state statutes include one that prohibits any kind of gambling, and a statute that allows gambling-related activities if they are designed to aid charity. Is the "Casino Night Club" permissible?

Decision: Yes, under the rule of interpreting criminal statutes that mandates "the special controls the general". Here, with two statutes addressing the same subject, the more specific rule will control, and "Casino Night Club" is thus legal.

LF/CL § 2.2 (j)

3. Facts: A certain State has a criminal code which provides that there are no crimes except those acts declared to be crimes by statute. In an action by the state for burglary, can the state look to the common law to define the elements of burglary?

Decision: Yes. The meaning of a particular statutory crime may be determined by looking to common law for guidance in interpreting statutory elements or defining terms not defined by the statute.

E/CL Ch. 1-II.C, Ch. 9-VII.A-F; LF/CL § 2.1 (c) & (d)

4. Facts: A criminal statute in a certain state mandates that remarriage by a person who has a living spouse will constitute bigamy, unless the spouse has been inexplicably missing for at least seven years. Judge Carter’s wife, Emma Carter, remarries three years after the Judge disappears, under the good faith belief that the judge is dead. Is she guilty of bigamy, according to the majority rule?

Decision: Yes, under the principle “*expressio unius, exclusio alterius*”, inclusion of one implies the intention to exclude others.

Under the statute here, an exception to bigamy is provided by the “seven years missing” provision. Since the legislature did not include a “good faith” exception as well, most courts would decide that the legislature did not intend for there to be a “good faith” exception to the statute.

LF/CL§2.2(i)

5. Facts: John is serving a two-year jail sentence for serving alcohol to a person under 21. While he is imprisoned, the statute is repealed in part, such that the offense only covers