

# The Nature of Criminal Law

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## WHAT'S COVERED

In this lesson, you will learn about criminal law as an additional branch of law in the United States. Specifically, this lesson will cover:

1. Criminal Actions vs. Civil Actions
2. Evolution of Criminal Laws
3. Interpreting Criminal Laws

## 1. Criminal Actions vs. Civil Actions

Unlike civil actions, where plaintiffs seek compensation or other remedies for themselves, crimes involve “the state” (the federal government, a state government, or some subunit of a state government).

This is because crimes involve some “harm to society” and not just harm to certain individuals. But “harm to society” is not always evident in the act itself.

### IN CONTEXT

Imagine that two friends of yours at a party argue, take the argument outside, and blows are struck; one friend has a bloody nose and immediately goes home. The crimes of assault and battery have been committed, even though no one else knows about the fight and the friends later make up.

By contrast, suppose a major corporation publicly announces that it is closing operations in your community and moving operations to Southeast Asia. There is plenty of harm to society as the plant closes down and no new jobs take the place of the company’s jobs.

Although the effects on society are greater in the second example, only the first example is a crime.

Because a crime is an act that the legislature has defined as socially harmful, the parties involved cannot agree among themselves to forget a particular incident, such as a barroom brawl, if the authorities decide to prosecute.

This is one of the critical distinctions between criminal and civil law.

➦ **EXAMPLE** An assault is both a crime and a tort. The person who was assaulted may choose to forgive his assailant and not to sue him for damages, but he cannot stop the prosecutor from bringing an indictment against the assailant. (However, because of crowded dockets, a victim that declines to press charges may cause a busy prosecutor to choose not to bring an indictment.)

A crime consists of an act defined as criminal - **actus reus** (Latin for a guilty act) - and the requisite “criminal intent.” This criminal intent is referred to using the Latin phrase **mens rea**, which translates to “guilty mind.”

➦ **EXAMPLE** Someone who has a burning desire to kill a rival in business or romance but does not act on his desire has not committed a crime. He may have a “guilty mind,” but he is guilty of no crime.

➦ **EXAMPLE** A person who is forced to commit a crime at gunpoint is not guilty of a crime, because although there was an act defined as criminal - an *actus reus* - there was no *mens rea*, or criminal intent.



#### TERMS TO KNOW

##### **Actus Reus**

A Latin term in criminal law referring to one of the two requirements for criminal liability. Actus reus refers to the wrongful act, while mens rea refers to the criminal intent. Example: If you accidentally take someone’s purse because it appeared identical to your own, you have committed the act of stealing but lacked the requisite criminal intent, so there can be no criminal liability.

##### **Mens Rea**

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## 2. Evolution of Criminal Laws

What is considered a crime has varied from society to society and from time to time.

➦ **EXAMPLE** While cocaine use was legal in the United States at one time, it is now a controlled substance, and unauthorized use is now a crime. Medical marijuana was not legal fifty years ago when its use began to become widespread, and in some states its use or possession was a felony. Now, the majority of states make it legal to use or possess under at least some circumstances.

➦ **EXAMPLE** In the United States, you can criticize and make jokes about the President of the United States without committing a crime, but in many countries, it is a serious criminal act to criticize a public official.

Attitudes about appropriate punishment for crimes have also varied considerably from nation to nation.

➦ **EXAMPLE** Many countries, mostly in Africa and the Middle East, have decreed long prison sentences or the death penalty for homosexuals. In Saudi Arabia, punishments for crimes can be extreme, including public beheading, hanging, stoning, amputation, and public lashing. Limits on punishment are set in the United States through the Constitution’s Eighth Amendment prohibition on “cruel or unusual punishments.”

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## 3. Interpreting Criminal Laws

Crimes are generally defined by legislatures, in statutes; the statutes describe in general terms the nature of the conduct they wish to criminalize.

For government punishment to be fair, citizens must have clear notice of what is criminally prohibited. Therefore, **ex post facto laws** - laws created “after the fact” to punish an act that was legal at the time - are expressly prohibited by Article I, Section 10, Clause 1 the U.S. Constitution.

It is often said, “*Ignorantia juris non excusat*,” Latin for “Ignorance of the law is no excuse.” But there are far too many criminal laws for anyone to know them all, and because most people do not actually read statutes, the question of “criminal intent” comes up right away.

#### IN CONTEXT

If you don’t know that the legislature has made driving without a seatbelt fastened a misdemeanor, you cannot have intended to harm society. You might even argue that there is no harm to anyone but yourself.

The usual answer to this is that the phrase “Ignorance of the law is no excuse” means that society (through its elected representatives) gets to decide what is harmful to society, not you. Still, you may ask, “Isn’t it my choice whether to take the risk of failing to wear a seatbelt? Isn’t this a victimless crime? Where is the harm to society?”

A policymaker or social scientist may answer that your injuries, statistically, are generally going to be far greater if you don’t wear one and that your choice may actually impose costs on society. For instance, you might not have enough insurance, so that a public hospital will have to take care of your head injuries— injuries that would likely have been avoided by your use of a seatbelt.

Additionally, is hard to know the meaning of some criminal laws. Overly vague statutes can be struck down by courts under a constitutional doctrine known as **void for vagueness**. This doctrine has led the courts to overturn statutes that are not clear.

➡ **EXAMPLE** “Vagrancy” was long held to be a crime, but U.S. courts began some forty years ago to overturn vagrancy and “suspicious person” statutes on the grounds that they are too vague for people to know what they are being asked not to do.

This requirement that criminal statutes not be vague does not mean that the law always defines crimes in ways that can be easily and clearly understood. Many statutes use terminology developed by the common-law courts.

#### IN CONTEXT

California statute defines murder as “the unlawful killing of a human being, with malice aforethought.” If no history backed up these words, they would be unconstitutionally vague.

But there is a rich history of judicial decisions that provides meaning for much of the arcane language like “malice aforethought” strewn about in the statute books. Once a legal term is created

by a court, it becomes a legal term of art with an understood meaning, at least in legal circles.



## TERMS TO KNOW

### Ex Post Facto Law

A law passed after an act is completed, rendering the act retroactively subject to punishment that did not apply prior to passage of the law.

### Void for Vagueness

A constitutional defense against enforcement of a law that is so unclear or ambiguous that a reasonable person would not be able to understand what it requires or prohibits.



## SUMMARY

In this lesson, you learned about the **difference between criminal actions and civil actions**. Crimes constitute an offense against society and involve both a wrongful act and some degree of *mens rea* (criminal intent). **Criminal laws evolve** and vary over time and between societies. The job of **interpreting criminal laws** is given to the courts, who may strike down statutes that are too vague. Clarity in criminal law is essential to justice.

Best of luck in your learning!

Source: This content has been adapted from Lumen Learning's "The Nature of Criminal Law" tutorial.



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