

# What does crime stand for?

## An introduction to Criminal Law

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What is crime? At a glance this seems like a very simple question. We are unfortunate enough to be exposed to various kinds of crime, both in the newspapers and on television everyday. The sad thing is, because of this we have become insensitive to crime.

Laws have been provided to protect our human rights. Laws and rules have been put in place not only for individual human rights, but also for public welfare. However, they have been abused from time to time.

In the world of the judicial system, crime should be properly defined. Crime and punishment should be controlled by means of what is important. If laws are not enacted in advance, even a bad deed is accepted legally, however immoral it may be.

There are three important elements within crime: act, intention to commit and violation. Without even one of these three basic conditions, a crime cannot be committed.

### 1. Act (行為)

There are two kinds of crime. One is a crime of commission (作為犯). The other is a crime of omission (不作為犯).

### 2. Criminal intent (犯意)

It is quite different as to whether one commits a crime intentionally or makes a mistake accidentally.

### 3. Violation (違法)

When law is violated, the act results in what is known as a crime. Besides the three basic elements, there are some important, exceptional rules. Examples of these are: legal self-defense (正当防衛); act for emergent refuge (緊急避難) and so forth.

### A. Preface

It is in the world of law that the matter must not be left as it is, saying, "I didn't know such a thing myself." Some day you may be arrested on the suspicion of fraud or theft. Therefore, you should learn beforehand common sense in criminal law.

There is a famous Latin phrase that states "Ignorantus Juris Non Exusat" or in English, "Ignorance of the law is no excuse." This is the premise that all members of society must have knowledge of the law and that ignorance of the law is not a permissible defense.

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In the near future Japan will adopt the jury system in which their peers will judge people facing trial. This is known as the jury system, and in many countries if you are chosen for "jury duty" you must by law attend. Japan is planning to adopt a new jury system similar to the United States and European countries.

In these respects it is also meaningful to refer to the theme "What does crime stand for?" The subject "What does crime stand for?" sounds very simple, but as a matter of fact it is a broad theme.

## **B. Introduction**

### **1. What is law? Why is it necessary in the world?**

When you run wild individually, the community will be in chaos. The same is true with sports without any rules. It is law that will give order to the community and bring peace and development to it. It may safely be said that law means common rules, standards, and regulations in the community.

Through them you can make good use of your fundamental human rights in everyday life. It is, however, important that you secure not only your own rights but also the rights of others.

### **2. Difference between morals and laws**

Morals are very important, because we can live a happy life under common morals. However under morals alone, the law won't punish you, even if you are socially blamed. Morals are the basis of law, but they have no national sanction against individual immorality, while law has the power to regulate based on national authority.

### **3. What kinds of laws are there?**

In a narrow sense, law means the laws which were enacted in the Diet such as the Constitution, Civil Law, Commercial Law, Criminal Law, the Code of Legal Procedure (訴訟法) and so forth, which are called statutory laws (制定法).

In a broad sense, law includes government ordinance (政令) which Cabinet enacts, ministerial ordinance (省令) which Ministers enact. It also includes common law (慣習法) which is formed on the basis of custom and case law (判例法) as a precedent which the Supreme Court decides.

### **4. What laws are there in the book of six major laws?**

The book of six major laws (六法全書) lexically means the Constitution (憲法), Civil Law (民法), Commercial Law (商法), Criminal Law (刑法), Code of Civil Procedure (民事訴訟法) and Code of Criminal Procedure (刑事訴訟法). However, it contains more than 800 laws included within the six major laws.

### 5. What is crime?

According to some Japanese dictionaries, crime means: (1) An act to commit a crime against law (現代国語辞典, 三省堂) (2) To break law, act to violate law (国語辞典, 旺文社) (3) An act to be made an object of crime (日本語大辞典, 講談社).

What then is crime? We can simply say that it is an act to commit a crime against a provided law. Punishment is given under national authority. The philosophy of law, however, aims at social justice and the purpose of law consists in the conservation of social order and realization of social justice.

### 6. What is criminal law?

There are two kinds of laws. One is civil law and the other is criminal law. Civil law is one concerning the regulations of human daily life and is the part of basic concepts in private law (私法). It is more often related to corporate, financial and business matters.

On the contrary, criminal law is one concerning the regulations of crime and punishment. That is to say, severe acts that cause harm, loss of property, and includes crimes such as robbery, assault, rape and so forth. In a narrow sense, modern Criminal Law was introduced to Japan in 1907. In a broad sense, besides this Criminal Law it includes minor offense law (軽犯罪法), Anti-Prostitution Law (売春防止法), Anti-subversive Activities Law (破壊活動防止法), Explosive Control Law (爆発物取締罰則), etc.

### 7. Why is a penalty given to an offender?

The answers are these: (1) because a crime was committed. (2) in order to prevent further crimes being committed. These two answers have been disputed since Greek days. They are developed into a penalty for retribution (応報刑) which is known as "an eye for an eye, a tooth for a tooth" and a penalty for education (教育刑) which is designed for prisoners to return to society.

What is more important is the prevention of crime (予防主義) which has two aims; one is not to let prisoners commit a crime again, and the other is not to let the general public commit crimes. Punishment therefore is shown as an example to others.

### 8. Seven kinds of punishments

There are 7 kinds of punishments: death penalty (死刑), imprisonment at hard labor (懲役), imprisonment (禁錮), custody (拘留), fine (罰金), penalty (科料) and confiscation (没収).

The harshest penalty is the death penalty which takes away life from an offender; then there is imprisonment with hard labor, imprisonment, and custody to take away freedom; fine and penalty to take away property; confiscation to take away the things with which a crime is committed and the things which were gained by criminal acts.

#### 9. Joint offender (共同正犯)

When more than two persons commit a crime in cooperation, they are equally regarded as offenders. (Criminal Law, Article 60) For example, after they talk it over, one actually steals money and goods from someone's house and the other stands guard outside the house. In this case both of them are regarded as the principals. (正犯)

#### 10. An attempted crime (未遂犯) and an accomplished crime (既遂犯)

There are two kinds of crimes: an attempted crime and an accomplished crime. For example, a thief runs away from the house without taking anything after being seen by the family. In this situation the thief is charged with trespass and the stealing is regarded as an attempted crime. An attempted crime is regarded as "not guilty" in most cases.

#### 11. Surrender (自首) and confession (自白)

Surrender is when a criminal spontaneously reports his or her crime to a prosecutor and requests punishment before actually being found by the authorities. Punishment is commuted to those who surrender. (Code of Criminal Procedure, Article 42, section 1)

Confession is when a criminal confesses his or her crime to a prosecutor. According to Code of Criminal Procedure, when confession is the only evidence, one cannot be prosecuted. And the confession by enforcement, torture, threat, or the confession after long restraint is not admissible evidence. (the Constitution, Article 38 and Code of Criminal Procedure, Article 319)

#### 12. Organization of court

There are five kinds of courts in Japan. It is possible to appeal a case three times if necessary in Japan. You have the right to put a case on trial to protect yourself. By means of trial there are three possible suits: a civil suit, a criminal suit, and an administrative suit.

(1) A summary court There are more than 500 summary courts in Japan. They deal with small criminal and civil cases.

(2) A family court This is a court that deals with cases concerning both families and juveniles.

(3) A district court They are located in each prefecture (46) besides 4 courts in Hokkaido. (50 courts in all)

(4) A high court They are located in Tokyo, Osaka, Nagoya, Fukuoka, Sendai, Hiroshima, Sapporo and Takamatsu. Each of them covers several prefectures.

(5) The Supreme Court This is the only court that is located in Tokyo and it gives final decision on a case. It is one of the divisions of the three powers. And it has power to determine the constitutionality.

## C. Main subject

### 1. Components of crime (犯罪構成要件)

As a matter of fact, crime is more complicated and hard to define than we imagine. Let's follow it up. There are five elements that are necessary in order to be defined as a crime.

- (1) A crime must be a human act, neither a prayer nor wish. (行為)
- (2) A crime must be a crime in the eyes of law. (罪刑法定主義)
- (3) The crime is an act defined as a crime by the law. (違法性)
- (4) A crime must include criminal intent. (犯意)
- (5) A crime must be an act by those who can distinguish right from wrong. (責任能力)

In short, crime is an act for which you can be responsible and is illegal based upon law.

### 2. Act (行為)

A crime must be a human act, neither a prayer nor a wish. There are two kinds of acts as follows.

#### (1) A crime of commission (作為犯)

It is an action or behavior, such as theft, injury, murder, trespassing on someone's property, violence with arms and so forth.

#### (2) A crime of omission (不作為犯)

It is a passive action or behavior, such as not nursing a patient in spite of the legal regulation (真正不作為) and leaving a baby starving, death through neglect (不真正不作為), etc.

### 3. Principle of legality (罪刑法定主義)

#### (1) Meaning

A crime must be an act against the eyes of the law. "No punishment without law." This is a fundamental principle of criminal law. There is no penalty if a crime is not written as a law in advance. For example, even if it may be immoral, criminal conversation (姦通罪) and lese majesty (不敬罪) never come into force because they do not exist in Criminal Law.

#### (2) History

Many countries adopted this great principle after the French Revolution (1789). In Japan it was adopted in 1882 in Japanese old criminal law. Therefore, this principle of law has been developed to this day.

In the early days a king or a lord in a country sometimes made an arbitrary decision as a criminal judge. In this case it is possible that he brought injustice, unfairness, or made a violation of the human rights of the people. This is a violation of human rights.

### (3) Laws

The present Japanese Constitution, Article 31 says: No person shall be deprived of life or liberty, nor shall any other criminal penalty be impressed, except according to procedure established by law. (罪刑法定主義)

And the Constitution, Article 39 says: No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy. (不遡及の原則)

### 4. Illegality (違法性)

Illegality is when an act is determined to be illegal in the eyes of the law. Many factors are taken into account to determine illegality. For example, murder is illegal, but murder by means of self-defense is not illegal. (Criminal Law, Article 36) And capture without any due reason is illegal, but arrest on the spot by police or an individual is not illegal. (Criminal Procedure Law, Article 213)

### 5. Criminal intent (犯意)

A crime is committed under two possible circumstances, either by design or by accident. When we punish an offender, it is an important point whether he or she had criminal intent or not in committing the crime.

Criminal Law, Article 38: We should not punish any act without any intention to commit a crime. Present Criminal Law basically means, "to punish intentional crime." Accidental crime is dealt with differently.

#### (1) Criminal intent (犯意)

Criminal intent means to commit a crime with the full knowledge that it is against the law. For example, theft, assault, arson, etc.

#### (2) Negligence (過失)

Negligence is when a person's actions, or lack thereof, cause harm or damage. If one does nothing in a dangerous situation then you may be charged. Punishment is limited to a serious crime, such as accidental fire, accidental homicide (過失致死), injury and so forth.

#### (3) Willful negligence (未必の故意)

Willful negligence is a more serious crime to negligence because it states that a person deliberately failed to act in a situation that required action. Therefore through your negligence you cause harm, loss of property or suffering.

Though the result is uncertain, you can recognize the possibility of your actions resulting in injury, suffering of property damage. For example, you drive your car recklessly, with full knowledge that you may kill or hurt others.

(4) "Liberal action in cause" (原因において自由なる行為)

This is when an individual engages, with full knowledge in dangerous behavior. For example, you get dead drunk with full knowledge that you are in a danger to society under the influence of alcohol. Often in these cases there is a previous medical or psychiatric case history.

6. Responsibility (責任能力)

Responsibility is determined when many factors are taken into account, for example, the age or state of mind at the time of the crime. A mentally ill person cannot undertake responsibility for his or her actions. (Criminal Law, Article 39) A child under 14 years of age is also a person who has no such responsibility. (Criminal Law, Article 40)

D. Examples

1. Crime of murder (殺人罪) as a crime against life and body (Criminal Law, Article 199)

The crime of murder is the one when murder is committed deliberately. It is said, "a person's life is heavier than the whole globe." Life is more important than any other things for human beings.

Criminal Law, Article 199 says that one who murdered a person is liable to the death penalty or life imprisonment or a minimum of 3 year's imprisonment at hard labor. And one who attempted to commit murder is also given severe penalty, for life is sacred. According to Criminal Law, a person with human rights includes even an unborn baby (胎児) who is partially exposed, while according to Civil Law a person includes an unborn baby who is completely exposed.

In case of euthanasia (安楽死) it is regarded as a crime of murder at present. It is however a contentious issue, some regard it as murder while others see it as an extension of care. Although illegal it is in one of those gray areas of the law, and is often debated.

Patricide (尊属殺人) (Criminal Law, Article 200) was cut in 1995 on the ground that everyone is equal in law. (Constitution, Article 14)

Involuntary manslaughter (過失致死罪) provided at Criminal Law, Article 210 is much milder than crime of murder (殺人罪).

2. Crime of robbery (強盜) as a crime against fortune (Criminal Law, Article 236)

Those who robbed him of his fortune with violence or threat shall serve a more than five-year term in prison for the crime of robbery. This crime is much greater than that of theft, due to the fact that violence or the threat of violence is used to commit the robbery.

**3. Crime of rape (強姦罪) as a crime against manners (Criminal Law, Article 177)**

Those who fornicated with anyone over the age of 13 with violence, or threat, shall serve a minimum of two-years in prison as a crime of rape. And much the same is true on those who fornicated with someone less than 13 years old even if they don't use violence or the threat of violence. This is called "statutory rape".

**4. Arson (放火罪) as a crime against manners (Criminal Law, Article 108)**

Those who burned buildings, train, ships and tunnels in which people stay, are liable to the death penalty or life imprisonment or more than 5 year's imprisonment with hard labor. And more than 5 year's imprisonment with hard labor is given to those who burned buildings, trains, ships and tunnels without people. (Criminal Law, Article 109)

**5. Treason (内乱罪) as an offense against the safety of a State (Criminal Law, Article 77)**

The ringleader who mutinied against the safety of a State shall be given a sentence of death or life imprisonment. The mutiny is conducted for the purpose of disturbing the fundamental order of the government. Those guilty of conspiring against the state can be charged with "treason".

**E. Exception**

**1. Reasons of exemption for illegality (違法阻却事由)**

This concept is an important exception for illegality. Even if an act is illegal, the crime is not exceptionally chargeable in view of public order and standards of decency (公序良俗).

Also another example of reason for exemption is if evidence gathered to prosecute an individual for a crime is gathered by police in an illegal manner, then the defendant may become exempt from prosecution.

Another exemption is if a person can prove that they were insane, or "not of right mind" when they committed a crime.

Criminal law shows these things in the Article 35-37.

**(1) Legal act based upon law (法令による行為) Criminal law, Article 35**

An act based upon law is not punished because the acts are legal. For example, they are government official's execution of functions (death penalty executioner, arrest, disciplinary action, etc.), arrest on the spot (現行犯逮捕), disciplinary action by teachers, etc.

**(2) Legal act as a right of service (正当業務による行為) Criminal law, Article 35**

An act based upon law is not punished because the acts are a right of services. For example, they are cosmetic surgeries by doctors, needle therapy, sumo, boxing, etc.

**(3) Legal self-defense (正当防衛行為) Criminal law, Article 36**

This concept is based on the human instinct of self-defense. For example, when a lady escaped from rape, she injured the man who tried to rape her.

Requirements:



- a. Urgent and illegal violation
- b. To defend the human rights of self or others
- c. No means of escape
- d. Act of counterattack

(4) Act for urgent refuge (緊急避難) Criminal law, Article 37

This concept is also based on human instinct of self-defense. For example, when a car made a dash at him, he jumped away and he broke the show window.

Requirements:

- a. To be in peril
- b. Present peril
- c. Peril against life, body and property of self and others
- d. Urgent act to escape from them
- e. Damage made by urgent refuge does not exceed damage made by it

2. Others

(1) Crime by reporting (親告罪) Criminal Law, Article 232

This is a crime that is formed only when a victim finishes reporting. For example, they are criminal assault (強姦罪), libel (名誉毀損罪), accidental injury (過失傷害罪), leakage (秘密漏えい) without right reason by a doctor, a pharmacist, a lawyer, mutual stealing among relatives (近親間相盜). Some people don't like to prosecute these because their case will be in public.

(2) Prescription (時効)

Being sentenced, a penalty prescribes when a certain time passed. (Code of Criminal Procedure, Article 250 and below) For example, death penalty: 30 years after, life imprisonment: 20 years after, more than 10 years: 15 years after, more than 3 years: 10 years after, under 3 years: 5 years after, a fine: 3 years after, etc.

F. Conclusion

Law exists for the purpose of social order and social justice in the present structure. But societies are changing at all times. Therefore, law will change in accordance with the concept of values and social justice. Crime itself is also changing.

(1) In the past a certain act was not a crime, however now it is considered a crime. For example, prostitution was once accepted, but now it is prohibited by an Anti-Prostitution Law (売春防止法).

(2) Crime is not always wrong. For example, the great South African leader, Nelson Mandela fought for many years to abolish "Apartheid" laws in South Africa, which he considered unjust and against the human rights of the South African people. This was after he spent more than 20 years in prison.

(3) Justice which law secures is no more than one adapted to the days and the social structure. For example, justice in Japanese wartime is quite different from that at present.

This has been a brief introduction to criminal law. I hope that through this short essay I have sparked a small interest in law for you. Law is constantly changing with the times. Which laws would you change?

#### G. Bibliography

法学概論	我妻栄	有斐閣	2001
法学入門	遠藤浩, 久保田きぬ子	有斐閣新書	1998
刑法	Wセミナー	早稲田経営出版	2004
刑法総論	大越義久	有斐閣Sシリーズ	1991
刑法綱要総論	団藤重光	創文社	1971
刑法各論	受験新報編	法学書院	1965
犯罪学	瀬川晃	成文社	1998
英辞郎	道端英樹 (監修)	株式会社アルク	2002
An Introduction to the Philosophy of Law	Pound, Roscoe	Lawbook Exchange	2003
Encyclopedia of the Science of Law	Dooyeweerd, Herman	Edwin Mellen	2002
Basic Criminal Law	Davenport, Anniken	Prentice Hall	2004
Definition in the Criminal Law	Halpin, Andrew	Hart Pub	2004

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