

CRIMINAL LAW

Class activities*

Class 1 Introduction

Class 2: Crime inflation

Read the excerpt from the book *Three Felonies a Day* by Harvey Silverglate

The average professional in this country wakes up in the morning, goes to work, comes home, eats dinner, and then goes to sleep, unaware that he or she has likely committed several federal crimes that day. Why? The answer lies in the very nature of modern federal criminal laws, which have exploded in number but also become impossibly broad and vague. In *Three Felonies a Day*, Harvey A. Silverglate reveals how federal criminal laws have become dangerously disconnected from the English common law tradition and how prosecutors can pin arguable federal crimes on any one of us, for even the most seemingly innocuous behavior. The volume of federal crimes in recent decades has increased well beyond the statute books and into the morass of the Code of Federal Regulations, handing federal prosecutors an additional trove of vague and exceedingly complex and technical prohibitions to stick on their hapless targets.

- 1) What does the title mean?
- 2) Why do you think an average professional can commit three crimes a day?
- 3) Think of examples of some of the strategies the government uses to broaden the scope of the notion of crimes.

Classes 3 Sep. 16 Theories of criminal responsibility

Answer the following questions

- 1) What conducts can be criminalized? Are there any conducts that may not be criminalized?
- 2) For many scholars, conducts can only be criminalized if they cause harm. What is harm? Can 'harm' be defined as any immoral conduct?
- 3) Our existing laws criminalize not only conduct that immediately causes harm, but also kinds of conduct whose causal relationship to the harm is more remote—for instance conduct that enables or assists another's commission of a crime. How far should we extend the law's reach in this direction?
- 4) Laws also criminalize conduct that does not actually cause harm, but which threatens harm, or creates a danger of harm. Again, how far should the criminal law reach in this direction?
- 5) Are there any kinds of seriously harmful conducts that should not be criminalized?
- 6) Are there any other concepts that can explain better what conducts may and may not be criminalized?

Class 7 Sep. 30: Interpretation of criminal laws

Analyze the actus reus and mens rea of the following offences according to this example.

Definitional terms of the offence

Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of an indictable offence.

Analysis of the offence

Offence: Public incitement of hatred

Actus reus:

- **Voluntary act:** Incite hatred against any identifiable group by communicating statements in any public place. Not a clear physical element, it may raise Charter issues.
- **Causation:** The incitement is likely to cause a breach of peace, even if the incitement does not cause the breach of peace. Red flag: Charter issues.
- **Social harm:** likelihood of a breach of peace (definitional, result).

Mens rea:

No mens rea in the definitional terms. Problematic as someone may incite hatred intentionally, knowingly, recklessly, or negligently. See if the Supreme Court has determined the type of mens rea for the offence. If not, the general rule for silent mens rea applies.

1. Every one who permits a person whom he has in lawful custody to escape, by failing to perform a legal duty is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years (Section 146).
2. Every one who conveys or causes to be conveyed into a prison anything, with intent to facilitate the escape of a person imprisoned therein, is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.
3. Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year (Section 151).
4. Every person who, for a sexual purpose, invites, counsels or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of 16 years, is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year (Section 152).

5. Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it (Section 322.1).
6. Every one who (a) breaks and enters a place with intent to commit an indictable offence therein is guilty if the offence is committed in relation to a dwelling-house, of an indictable offence and liable to imprisonment for life (Section 348.1).



Class 8 Oct. 5: Theory of offence in action



Scenarios

1. Fred and his new wife, Betty, decide to go to Montreal on their honeymoon. Wilma, Fred's jealous ex-wife, finds out what train they are on and plants a bomb on the train with the intent of killing Fred and Betty. Wilma knows that there will be ninety-eight other passengers on the train and, though she feels bad that they will die too, her hatred of Fred and Betty is so strong that she decides to proceed with her plan anyway. Sure enough, the bomb explodes before the train gets to Montreal, and all one hundred people

on board are killed. Assume that homicide is defined as follows: “intentionally, knowingly, recklessly, or negligently causing death to another human being.”

2. Fred and his new wife, Betty, decide to go to Montreal on their honeymoon. Wilma, Fred’s jealous ex-wife, finds out what airline they are taking and what day they are flying and what plane they will be flying on, and she plants a bomb on that plane. Wilma has no idea what time the flight takes off, but she sets the bomb to go off at 7:00 in the morning. Sure enough, the bomb goes off at 7:00 in the morning, killing a baggage handler who is loading luggage onto the plane. Assume that homicide is defined as follows: “intentionally, knowingly, recklessly, or negligently causing death to another human being.”
3. Fred breaks into Barney’s house to steal Barney’s bowling ball, which he does. Assume that breaking and entering is defined as follows: “intentionally breaking and entering into another’s property with the specific intent of committing a crime.”
4. Fred breaks into Barney’s house to feed Barney’s pet, which has been left alone for days as Barney and his wife are on vacation. After feeding the pet, Fred notices that there is some money on the table and steals it. Assume that breaking and entering is defined as follows: “intentionally breaking and entering into another’s property with the specific intent of committing a crime.”
5. Fred is a homeless person and breaks into Barney’s house on a cold night with the intent of simply warming up. Then, he sees a bowling ball and decides to steal it. Assume that breaking and entering is defined as follows: “intentionally breaking and entering into another’s property and intentionally committing a crime.”
6. Fred and his new wife, Betty, decide to go to Hawaii for their honeymoon. Wilma, Fred’s jealous ex-wife, finds out which plane Fred and Betty will be taking and she plants a bomb on the plane with the intention of killing Fred and Betty. Before the flight takes off, Wilma has a change of heart and tries to alert the airline that there is a bomb on the plane. She fails. The plane takes off, and the bomb explodes, killing Fred, Betty and everyone else on the plane. Assume that homicide is defined as follows: “intentionally, knowingly, recklessly, or negligently causing death to another human being.”
7. Fred and Wilma have been married for twenty years. Recently, Fred has begun to suspect that Wilma is having an affair with Barney. Enraged that his wife might be cheating on

him, Fred buys a gun and shoots Wilma to death. Assume that homicide is defined as follows: “recklessly or negligently causing death to another human being.”

8. Fred and Wilma have been married for fifty years. Recently, Wilma has been sentenced to a ten-year prison for robbery. Right before being incarcerated, Wilma begs Fred to put an end to her suffering. Fred loves Wilma and will do anything for her. So, he gets a gun, says his goodbye, and shoots her. Assume that homicide is defined as follows: “intentionally or knowingly causing death to another human being.”

Class 11, Oct. 21

Test



Class 12 Oct. 26

Feedback



Classes 9, 10 & 13 Oct. 7, 19 & 28

Criminal defences



Scenarios

Analyze whether the perpetrators have a defence or not. If so, discuss what defence they have. If not, discuss why there is no defence.

1. Rachel is taking an evening walk outside when an earthquake strikes New York City. She quickly breaks into Central Perk Cafe in order to protect herself.
2. After breaking up with Angela, Dwight goes to a bar to drink. He becomes very intoxicated and the bartender will no longer serve him alcohol. He throws a chair across the bar, smashing a window. He then punches the bartender in the face.
3. After being punched in the face by Dwight, the bartender grabs a knife and stabs him, fearing Dwight may punch him again.
4. Harry suffers from hallucinations and blackout episodes, where he cannot recall what he has done. During one such blackout episode, Harry steals Ron's Nimbus 2000 broomstick and breaks it.
5. An undercover police officer asks a suspect, Jimmy, to sell him cocaine. Jimmy says no. The police officer asks several more times until Jimmy finally agrees to sell him cocaine. The police officer immediately arrests Jimmy.
6. Jimmy is under investigation for being suspected of selling narcotics. An undercover police officer asks Jimmy if he can purchase drugs from him. Jimmy agrees to sell him drugs. The police officer immediately arrests Jimmy.

7. Peach was walking home one day, when Luigi spotted her and decided to kidnap her, knowing Mario would come to her rescue and pay a ransom to release her. Mario arrives at Luigi's home where Peach is being held captive. He does not have any money with him. Luigi is angry at Mario for not having the ransom money and holds a gun to Peach's head. Luigi tells Mario he has to steal the money within 24 hours or he will kill her. Mario robs a bank to pay Peach's ransom the next day.
8. Marlon suffers from a severe mental disorder. He hates his neighbor and wants to inflict harm to her. So, he goes to her house and while she is sleeping he penetrates her. Rape is defined as “intentionally penetrating someone without his/her consent.”

Classes 14 & 15 Nov. 2 & 4

Attempted crimes



Scenarios

Attempted crimes Scenarios

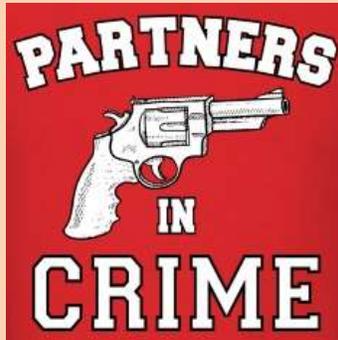
1. Daniel wanted to attack his former supervisor, Sam. The defendant drove into his former supervisor's neighborhood subdivision and brought with him a gun and some fire bombs. Before Daniel got to the former supervisor's house, he decided to abandon the effort by throwing the bombs and gun into some weeds on a nearby lot. The crimes of assault and homicide are defined as: “intentionally touching someone without their consent” and “intentionally, knowingly, or recklessly killing another human being”, respectively.

2. Fred wants to kill his friend Barney. He came up with what he thinks is a perfect murder. Barney has a deadly allergy to peanuts. Fred plans to put some peanut butter into Barney's sandwich when he is distracted. Fred tells his plan to Pablo, a mutual friend. Pablo, in turn, tells the police; and Fred is arrested for attempted murder. Murder is defined as "intentionally killing another human being."
3. Ian has been obsessed with Jane for a long time. He once decided to have sex with her, whether she wanted or not. On Saturday, they went to a party at a mutual friend's house. Ian took Jane to a bedroom, he threw her on the bed and began to undress her. Jane fought him off and managed to escape. Sexual assault is defined as "intentionally touching another person for sexual purposes without his/her consent".
4. Paul decided to rob a bank. He walked into the Canada Trust bank on Bay St. while armed. A security officer apprehended Paul before he demanded the teller's money. Robbery is defined as: "intentionally stealing and (a) intentionally using violence or (b) intentionally being armed with an offensive weapon."
5. At a coffee house, Fred tells his friend Barney that he wants to kill his wife. He tells him that he will buy a gun from a friend and kill her that night. A police officer hears Fred and arrests him for attempted murder. Murder is defined as "intentionally killing another human being."
6. Josh was fired from his job. As a consequence, he had no money and his car was repossessed. Josh was walking along Queen street, when he saw a car stopping at the traffic lights. Josh put a gun through the window of the car and demanded that the driver exit the vehicle. But he drove away before Josh could get in. Robbery is defined as: "intentionally stealing and (a) intentionally using violence or (b) intentionally being armed with an offensive weapon."
7. Yogi is a homeless man who lives on the streets of Jellystone. During one particularly cold winter night, Yogi decides to break into the basement of Mr. Ranger's house and spend the night there. Yogi approaches Mr. Ranger's house and begins to pry open a basement window but is arrested for breaking and entering as he is doing so. Breaking and entering is defined as "intentionally breaking and entering with intent to commit a crime therein."
8. Luckless, upset over the fact that he has just been laid off, closes his eyes and throws a knife onto a crowded sidewalk. Luckily, the knife misses all the people on the sidewalk

and lands harmlessly on the pavement. A police officer arrests Luckless for attempted murder and attempted assault. The crimes of murder and assault are defined as: “intentionally killing another human being” and “intentionally touching someone without their consent”, respectively.

Classes 16 & 17 Nov. 9 & 11

Criminal Participation



Criminal Participation Scenarios

1. Mike is about to jump off his house roof. His friends cheer him on and shout “jump, jump, jump”. Mike jumps and breaks his leg.
2. Homer Simpson has an agreement with the Nuclear Plant Facility that he will get a Christmas bonus of 5% of the net profits of the company. Homer deliberately gives false information to the bookkeeper of the company for which he works, knowing that it would be entered into the accounts. As the bookkeeper had innocently entered the wrong information, Homer gets the Christmas bonus. Mr. Burns launches an internal investigation and finds out what happens. He accuses both Homer and the bookkeeper of fraud.
3. After work, Fred and Barney went to party where they knew there would be illegal drugs and prostitution. They drink a few beers and watch the prostitutes work with clients. The police raid the place and they arrest the prostitutes, their clients, and all those who were doing drugs. The police also arrest Fred and Barney for being accessories during the fact to the crime of procuring prostitution.

4. Fred and Barney are roommates at Bedrock University's first year residence. Barney does drugs. Fred is fully aware of Barney's addiction. On several occasions, Fred and Barney discuss Barney's problem. Barney is arrested for possession of drugs. Fred is also charged with possession of a controlled drug because he was living with Barney.
5. Fred and Barney are roommates at Bedrock University's first year residence. Barney does drugs. Fred is fully aware of Barney's addiction. On several occasions, Fred and Barney discuss Barney's problem. Last night, Barney had an overdose. Fred performed CPR on Barney. Seeing that his friend did not react, Fred took Barney to the hospital. Barney received medical treatment and got better. However, before being discharged from the hospital, Barney is arrested for possession of drugs. Fred is also charged with aiding and abetting Barney.
6. Homer asks his son Bart, aged 11, to take goods from the grocery store while Homer talks to the store clerk. Bart does not like his father to use him to steal, but he does not want to contradict him, so he reluctantly steals. When Homer and Bart come home with the stolen goods, Marge, Bart's mother, is upset. But she does not call the police.
7. Fred stole money from the bank. He knows the police will look for him at his house. So, he asks his friend Barney if he can stay at his place for a few days. He tells Barney that some contractors are changing the plumbing and he can't come back home for a few days. Barney agrees to let Fred stay.
8. Marge is driving along Queen Street when she sees an ex-boyfriend standing by the curb. She stops; and her ex tells her that he has just burgled IDS mart and wants to get away quickly. Marge gives him a ride.

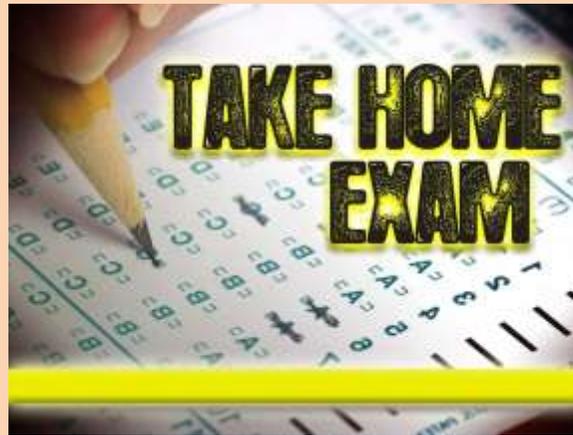
Classes 18 & 19 Nov. 16 & 18

Corporate Criminal Liability

Prepare a short PowerPoint presentation about corporate criminal liability in Canada and another country (except the USA).

Class 20 Nov. 23

Distribution of final take-home



Class 22 Nov. 30

Submission of final take-home



*** TRIGGER WARNINGS**

Some materials in this course may be sensitive. Course materials, including lectures, class activities, hypotheticals, scenarios, examples, court cases, and films shown in class, may have mature content, including violent, sexual, and strong language content. Except for newspaper articles and court cases, all class activities are hypothetical and fictitious. Any resemblance to actual persons, institutions, or events is purely coincidental. The views and opinions expressed in

the articles assigned for reading in this course are those of the authors and do not necessarily reflect the position of the course professor. Questions, follow-up questions, examples, and comments made within the context of class activities do not purport to reflect the opinions or views of the course professor. All such articles, comments, questions, examples, and activities are meant solely to facilitate the discussion and study of Law. They are not meant to advocate or promote any crime or unlawful action. Neither are they meant to advance any ideological perspective. Discretion advised before signing up for this course.