

FORMAL (FORMALI) AND MATERIAL (MATERJALI) OFFENCES

Police vs. Said (23.1.1939)

It is a fact that for the constitution of an attempt, you require the acts of execution – you either have the conduct prohibited by law or not!!! But on this, not all authors agree because they say that you can have certain offences, e.g., theft which can be understood as a formal offence – a conduct crime, because the action is the taking of a particular thing.

INSTANTANEOUS (ISTANTANEI) VS. CONTINUING (PERMANENTI):

❖ Police vs. George Zammit ¹

The court held that in order to decide whether the offence was continuing or not, one had to examine the fact which the law had intended to prohibit – if the fact was of an instantaneous nature, then the offence was an instantaneous one, and if the fact was of a permanent nature, then the offence was a continuing one. The case was about building without a permit. The court held that:

“if the right violated is of a permanent character in such a way that the offender is at all times in contravention of the law for the whole period of duration of the fact created by the violation of the law, then the fact is a continuing offence”.

The fact in issue which the law wanted to ensure was that the building be in permanently in conformity with sanitary regulations. The case concerned the roofing – over of a yard annexed to a residence, it was supposed to remain uncovered to allow the circulation of air and light, for a sanitary reason, therefore, until for as long as the roof existed, the accused was in violation/breach of the law – not only the building of the roof but for as long as the roof existed – thus a CONTINUING OFFENCE!!!!

¹ court of Appeal 27th May 1939

*Police vs. Albert Bartoli:*²

The charge against the accused said that the person had **commenced** the construction of a building abutting/projecting onto a new street before the street had been leveled to the satisfaction of the Director of Works!! The Court held that the charge as formulated in the summons wasn't a continuing one, therefore, they declared the proceedings time – barred. Therefore, the accused was acquitted because there was no prescription and the offence should have rechecked the definition of the offence in the summons – this was because “to commence” alludes to a particular moment in time, once you commence to do something, if you do it, it is complete – not a permanent fact, he had completed the violation of the law, thus every moment after is not the commencement, so the offence was an instantaneous one not a continuing one.!!!, therefore, an INSTANTANEOUS OFFENCE.

*Police vs. Emmanuel Spiteri:*³

This dealt with an offence of omission. The Court consulted certain Italian authors and they came up with:

“Where the violation of the law consists of an omission/where you fail to do what the law prescribes, and a time limit is laid down within which to conform to the law, before one can determine whether the offence is instantaneous or continuing, one must first examine whether the time limit is an essential one or only indicative of the commencement of the criminal omission”.

In the case of a continuing offence, the violation of the law is commenced but not completed, therefore, it is **Indicative**. If, on the other hand, the time limit is **essential** and results in definite prejudice if not observed, the offence is an instantaneous one – there is complete, exhaustive consummation.

The court held that if you fail to file an income tax return within a month, you are in violation of the law – there is an indication of the commencement of the violation, for as long as you fail to file the tax return, you are still in violation of the law – the violation is thus protracted in time beyond the first commencement of violation. Thus, for an offence to be continuing, it must be within the power of the offender to bring to an end, the state of affairs which are contrary to the law.

² Court of Criminal Appeal, 4th June, 1938

³ Court of Criminal Appeal, 28th March, 1960

*Police vs. Joseph Mugliett sive Mugliett(e):*⁴

The accused was guilty of erecting a building abutting on a government street before paying the Director of Works the share due by way of road contribution. The Court analysed the situation in the following way:

- It was an offence of omission – not so much the building was the crime but the failing to pay the road contribution – because this was the right that the law wanted to protect.
- They referred to the “Emmanuel Spiteri” case – the obligation consisted in making the payment by erecting the building, therefore the right protected by law was definitely prejudiced – if he had paid the contribution afterwards, it still would have not been valid. Therefore, it was an **instantaneous** offence because the accused could not revert the unlawful state of affairs – he had been required to pay before, so this could not be revoked.
- The situation of the violation of the law protracted itself from the will of the violator – nothing he could do would bring him back in conformity to the law
- For an offence to be continuing, it must be in the power of the offender to revoke the action of his own will.
- The offence took place on the 1st January; the prescription period for this particular offence was 3 months.

*Police vs. John Saliba;*⁵

At the time, National Insurance (NI) was paid by means of stamps, by putting them in a booklet – therefore, the payment of NI= sticking the stamps in a booklet.

The Court held that with regard to the material; and intentional element of the offence, the Court had to decide whether to hold the person guilty – the accused had fixed his NI stamps as required by the law, but the stamps were false!!, when the employer bought them, he wasn't aware that they were false – the court held that during this period he could not be held criminally responsible, because the intention wasn't there.

But, since this offence is a continuing one, as soon as he became aware that those stamps were false, he was criminally responsible – if it were an instantaneous offence, he would never have been held criminally liable - but the violation continued for as long as he failed to pay his contribution according to the law, he failed to purchase genuine stamps, so responsible for the offence.

IN THIS WAY WE CAN SEE HOW MPORTANT THE CLASSIFICATION OF OFFENCES IS TO DETERMINE THE CRIMINAL RESPONSIBILITY OF A PERSON.

⁴ Court of Criminal Appeal 13th January, 1977

⁵ Court of Criminal Appeal 18th April, 1985

Police vs. Francis Mallia: ⁶

The court pointed out that in making the assessment whether the offence is a continuing one or not, one should look at the ANTI – JURIDICAL effects and not at the PHYSICAL effects – therefore, one has to consider the juridical nature of the fact – for example, in the case of permanent disfigurement (sfregju permanenenti), it is an instantaneous offence with permanent effects.

⁶ Court of Criminal Appeal 14th March, 1991