

Lecture Title: The Classification of Offences

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Diploma in Law (Malta)



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- There are many important distinctions made in the law itself. The most important divisions brought out by continental jurists and text – writers are the following:



OFFENCES OF COMMISSION AND OFFENCES OF OMISSION



- These offences can be related in particular to the conduct of the person.
 - A wrongdoer either does that which he ought not to do – the offender does what the law prohibits him from doing
 - the offender fails to do what the law prescribes or commands him to do –



There are some cases where you can have an offence of commission being committed by acts of omission.

Example a prison guard has the obligation to feed the prison inmates and if he omits to do this, and kills someone as a result, it is the commission of a crime by an act of omission.



FORMAL (FORMALI) AND MATERIAL (MATERJALI) OFFENCES

A formal offence is one, which is completed by the mere act or omission which constitutes the violation of the law: such act or omission is sufficient in itself to complete the offence.

“whosoever, with intent to harm any person, shall accuse such person before a competent authority with an offence of which he knows such person to be innocent, shall, for the mere fact of having made the accusation....”

Section 101 of criminal code



FORMAL (FORMALI) AND MATERIAL (MATERJALI) OFFENCES

This type of offence is completed as soon as a person lays some incriminatory information about another person before a competent authority – this is referred to in English Law, as a CONDUCT CRIME, because the offence is completed without any physical action

Other instances of formal offences are :

defamation (Section 252),
the forgery of public instruments (Section 179),
perjury (lying under oath, false testimony)



FORMAL (FORMALI) AND MATERIAL (MATERJALI) OFFENCES

- The completion of the event requires the accident of the event which, though the offender may have done all that he could to bring it about, may not materialize in consequence of circumstances independent of his will.
- Thus, a homicide is a material offence because it cannot be said to have been perpetrated unless a man has in fact been killed, *rape*



FORMAL (FORMALI) AND MATERIAL (MATERJALI) OFFENCES

- other examples are *bodily harm* (Section 214, *carnal knowledge with violence* (Section 198),
- willful damage to *property*



SIMPLE AND COMPLEX OFFENCES

- An offence is said to be simple when it violates one single right,
 - e.g., theft, unlawful arrest.
- It is complex when it violates more than one right, for example when the same act or omission constitutes an offence under two or more different laws, or when acts constituting in themselves criminal offences are considered by the law as ingredients or aggravating circumstances of another offence.



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INSTANTANEOUS (ISTANTANEI) VS. CONTINUING (PERMANENTI):

- The Maltese criminal Code does NOT give a definition of either an ‘instantaneous’ or a ‘continuing’ offence’.
- However, a criminal action is time – barred and the prescription period/statute of limitations depends on the punishment laid down for the offence, the more serious the punishment, the longer the prescription period
- e.g., for homicide, the prescription pd. is of 20 years, therefore, an action brought after those 20 years, releases the offender from immutability.



INSTANTANEOUS (ISTANTANEI) VS. CONTINUING (PERMANENTI):

- 691. (1) With regard to a completed offence, the period of prescription shall run from the day on which the offence was completed;
- with regard to an attempted offence, from the day on which the last act of execution was committed;
- with regard to a continuous offence, from the day on which the last violation took place;
- and with regard to a continuing offence from the day on which the continuance ceased.



INSTANTANEOUS (ISTANTANEI) VS. CONTINUING (PERMANENTI):

- 691. (2) Suspension of prescription.
- Where the criminal action cannot be instituted or proceeded with except on a special authorization, or after the determination of any issue upon separate proceedings, the period of prescription shall be suspended, and shall continue
- Therefore, in a continuing offence
- e.g., building without a permit, if the building was built on 1/1/2002 and demolished on 1/1/2003, then the prescription period starts running from the day the building was demolished – when the continuing ceases.



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INSTANTANEOUS (ISTANTANEI) VS. CONTINUING (PERMANENTI):

All offences of *Possession* are continuing offences, for example, a person is in the possession of a drug – the mere notion of possession is a criminal offence therefore, you commit the offence for the whole period that you are in possession – it is not only when you come into possession,

It is for every second that you are in possession that you are punished – not an instant but a period of time and this is why it is a continuing offence.

A continuing offence is only one criminal offence – there is only one fact in contravention of the law.



INSTANTANEOUS (ISTANTANEI) VS. CONTINUING (PERMANENTI):

- There is also a great difference between a ‘continuous’ (reato continuato) and a ‘continuing’ offence. A ‘continuing’ offence is not defined in the Criminal code, but there is a definition of a ‘continuous’ offence in Section 18:
- “Where the several acts committed by the offender, even if at different times, constitute violations of the same provision of the law, and are committed in pursuance of the same design, such acts shall be deemed to be a single offence, called a continuous offence, but the punishment may be increased by one or two degrees.”



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INSTANTANEOUS (ISTANTANEI) VS. CONTINUING (PERMANENTI):

- Therefore, whereas a continuing offence presupposes an interrupted state of things which prolongs, over a more or less protracted period of time, the original violation of the law, a continuous offence postulates two or more violations of the same provision of the law, committed at the same time or at different times.



INSTANTANEOUS (ISTANTANEI) VS. CONTINUING (PERMANENTI):

- An offence is Instantaneous if the violation of the right or interest protected by the law is entirely completed as soon as all the elements actually constituting the offence actually concur.
- *e.g., bodily harm, rape, theft, willful damage*
- On the other hand a ‘continuing’ offence takes place when you have all the elements of the law, and the violation begins – there is no need for the completion of the offence – it continues for as long as the action against the law subsists.



INSTANTANEOUS (ISTANTANEI) VS. CONTINUING (PERMANENTI):

Thus the ingredients of a continuing offence are 2:

- ❖ a wrongful conduct in violation of the law, protracted uninterruptedly and without a change in its constituent elements for a length of time.
- ❖ A state of things contrary to law, which arises from the wrongful conduct, in violation of the law or of a right or duty, also protracted over a period of time uninterruptedly and without change, co-extensively with the continuance of the wrongful conduct.

Instances – illegal arrest, unlawful detention (Section 86) – , wrongful conduct because over a period of time under lock and key – state of affairs, violation of the rights to liberty and freedom of the individual.



INSTANTANEOUS (ISTANTANEI) VS. CONTINUING (PERMANENTI):

❖ Police vs. George Zammit

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”.



INSTANTANEOUS (ISTANTANEI) VS. CONTINUING (PERMANENTI):

- 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!!!!
court of Appeal 27th May 1939



INSTANTANEOUS (ISTANTANEI) VS. CONTINUING (PERMANENTI):

Police vs. Albert Bartoli:

- 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



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*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***



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