

<<刑法>>

图书基本信息

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### 内容概要

本书用平实的语言深入地阐述了英国刑法的基本原理，在主题论证思路的选择方面可以说充分体现了“普通法的精神”。

首先，它没有泛泛地讨论刑法理论问题，而是将其分散到具体的犯罪分析之中。

这种避免宏大叙事的空洞和植理论的种子坚实的司法实务之中的“化整为零”的论述策力中值得关注。

同时，这种策略也防止了单纯分析判例所可能导致的弊端，其次，在具体犯罪的讨论中，充分地结合了刑事实体规则与程序法的规定两方面的内容。

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## 章节摘录

7.13.1 Harassment Under section 1 of the Protection from Harassment Act 1997: (1) A person must not pursue a course of conduct - (a) which amounts to harassment of another; and (b) which he knows or ought to know amounts to harassment. (2) For the purposes of this section the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other. (3) Subsection (1) does not apply to a course of conduct if the person who pursued it shows it was (a) pursued for the purpose of preventing or detecting crime; (b) that it was pursued under enactment or rule of law or to comply with any condition or requirement imposed by any person, under any enactment; or (c) in the particular circumstances, the pursuit of the course of conduct was reasonable. The offence can be broken down into the following four elements. 1. A course of conduct There must be at least two incidents to establish a course of conduct. A single incident, however unpleasant, will not constitute the offence. Sometimes it can be difficult to tell whether there have been two incidents or one. In *Wass v. Director of Public Prosecutions*, the defendant followed the victim and tried to stop her entering a shop. He then confronted her when she left the shop a short time later. This was held capable of amounting to be two separate pieces of conduct and hence a course of conduct. In order to amount to a course of conduct, the two incidents must be linked. The larger the number of incidents, the easier it will be to establish a course of conduct. The fewer there are, the harder. It would be wrong to say that there must be a campaign against the victim, but there must be some connection between the pieces of conduct. In *Lau v. DPP*, the defendant slapped the victim and then four months later he threatened the victim's new boyfriend with violence. This did not constitute a course of conduct because of a combination of two factors: the length of time in-between the two incidents and the different nature of the events. The Divisional Court stressed that there could be a course of conduct if there was a lengthy gap of time between the events, but in that case there needed to be a close connection between the incidents. They gave the example of the same harassing conduct being performed each year on the victim's birthday. In *Hills*, the prosecution relied on two incidents of violence six months apart. Again there was no course of conduct, although much weight was placed on the fact that in-between the two incidents, the defendant and victim had had consensual sexual relations. This meant that the two were not sufficiently linked to indicate a course of conduct. Conduct is defined widely in s.7(3) to include speech. It would therefore cover silent phone calls of the kind that were discussed in *Ireland*. 2. The course of conduct must amount to harassment In s.7(2) it is explained that references to harassing a person include alarming the person or causing the person distress. In *Director Of Public Prosecutions v. Ramsdale* it was stressed that this reference is inclusive, not exhaustive; in other words, harassment includes alarming or distressing the victim, but there could be other ways of harassing someone. A wide range of conduct can amount to harassment and the courts have been unwilling to restrict the meaning of the word. The Home Office Circular 28/2001 stated that Harassment in any form is anti-social behaviour, which needs to be tackled. This is not legally binding on the courts, but it is a remarkably wide definition. The following points have been established by the courts: (a) A person can be harassed by words communicated to a third party. In *DPP v. KeUett* the defendant contacted the victim's employer, complaining that the victim was not at work when she should have been and was defrauding her employer. These allegations were in fact untrue. It was held that the complaints could amount to harassment. The key finding was that it was foreseeable that the employer would ask the employee about the allegations and this would cause the victim distress. This was so even though the defendant had specifically requested that the victim be not informed of the allegations. (b) The courts have been careful to distinguish acts where the defendant was essentially asking the victim whether she would be interested in a relationship and which do not amount to harassment, and acts which go beyond this (see Hot Topic below). In *King v. DPP* it was explained that offering a plant to the victim as a gift and writing one letter to the victim asking her whether she would be interested in a relationship would not amount to harassment. However such conduct could play an important part as the background against which other conduct could amount to harassment. In that case, the defendant subsequently

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searched through the victims dustbins and removed some underwear. This could constitute harassment.

## 媒体关注与评论

Preface to the First Edition      This book is intended as an introduction to the basic principles of criminal liability and some of the most important criminal offences. The offences have been chosen (from among the vast range of criminal offences) to illustrate clearly the principles underlying the criminal law; they also feature in most courses on substantive criminal law. There is a fundamental need for the law (and especially the criminal law) to be clear, and its content easily understood by the lay person, but first-time students of the subject often find its key concepts difficult to grasp and the major textbooks somewhat formidable. The Mastering Law series should provide a comprehensible account of major areas of the law and an introduction to the controversy and debate that is inseparable from any serious study of the law. This book was commissioned by the late Lady Oliver, who gave me much encouragement, and who was a firm believer in the need for accessible student texts as an adjunct to large-scale scholarly and reference works. Certain features of the book have therefore been designed to help those who are studying criminal law for the first time. There is a Case Notes section at the end of each chapter which gives, in respect of the key cases mentioned in the text, a short account of the facts and decision. Cases that are noted in this way are marked with an asterisk when they are first mentioned in the text, and the page on which the Case Notes appears is printed in bold type in the Table of Cases. In addition there is a selective bibliography (giving references to works mentioned in the text) and list of further reading for each chapter. Of the books listed, two are worth special mention; all students of English criminal law will come to know well Glanville Williams Textbook of Criminal Law and Smith and Hogan's Criminal Law. The section of Exercises at the end of each chapter is designed both to test the readers' understanding and to stimulate further thought on the topics covered. The Workshop section gives an opportunity to practise the practical application of the rules and principles discussed. The book endeavours to state the law as at the end of March 1988.      MARISE CREMONA

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编辑推荐

麦克米伦法学精要丛书是英国麦克米伦出版公司重点推出的一套法学教材，风格明晰简约，内容深浅适中，既适用于专业课程的初学，也有助于职业技能的改进，受到学生与教师的广泛欢迎，对我们非英语国家的学生和研究者来说，这样一套教材恰好是学习英语国家法学和提高法律英语水平的好读物。

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