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Compounding Offenses

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COMPOUNDING OFFENSES

Compounding is agreeing for a consideration not to prosecute one who has committed a crime. In the very early days of the common law, when the offense of compounding was known as theftbote,[1] it made one an accessory after the fact, but in later times it was regarded as an independent offense and punishable as a misdemeanor.[2] The purpose of the law in punishing this wrong is to protect public justice. In the case of *Shaw* v. *Reed* it was pointed out:

> "If it be the duty of every man, it is more especially the duty of persons injured, who have caused criminal prosecutions to be commenced, to appear against offenders, and not to make bargains to allow them to escape conviction, if they or their friends will pay a sum of money to repair the injury. To decide that such bargains might be lawfully made, would be to lend a helping hand to make public justice venal."[3]

The nature and characteristics of the offense of compounding make it necessary to distinguish it from the crime of being an accessory after the fact and that of misprison. Compounding is readily distinguished from the crime of being an accessory after the fact by the nature of the assistance rendered the wrongdoer. Being an accessory implies some sheltering or concealment, while compounding is an abstaining from a prosecution. It is differentiated from misprison by the consideration. Misprison is a mere concealment of a crime; compounding is a concealment for a reward.[4]

The scope of the crime at common law was limited to felonies and to serious misdemeanors. The reason given for this was that the law favors rather than discourages the adjustment of controversies which do not affect the public. In most states this offense of compounding has become the subject of statutes. The appropriate Pennsylvania statute on this offense reads as follows:

> "Whoever, having a knowledge of the actual commission of any treason, misprison of treason, murder, manslaughter, rape, sodomy, arson, forgery, counterfeiting, or passing counterfeit money or notes, burglary, housebreaking, robbery, larceny, receiving stolen goods or other property by persons knowing them to be stolen, kidnapping, bribery, perjury or subornation of perjury, takes money, goods, chattels, lands or other reward, or promise thereof, to compound or conceal, or upon agreement to compound or conceal any of the crimes aforesaid, is guilty of compounding crime, a misdemeanor, and on conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars ($1,000), or to undergo an imprisonment not exceeding three (3) years, or both."[5]

The Code of 1939 punishes the compounding of only eighteen enumerated offenses. The punishment provided for compounding these crimes is three years

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1 Com. v. Pease, 16 Mass. 91 (1819); Forshner v. Whitcomb, 44 N. H. 14 (1862).
2 State v. Hodge, 142 N. C. 665, 55 S. E. 626, 7 L. R. A. (N. S.) 709 (1906).
3 Shaw v. Reed, 30 Me. 105 (1849).
4 1 HAWKINS P. C., c.59, § 5; 4 BLACKSTONE COMM. 133.
5 Act of June 24, 1939, P. L. 872, § 307; 18 P. S. 4307.

imprisonment or a fine of $1,000 or both. Since the first statute of this kind was passed in 1860, many new offenses have been added to our Code. These crimes are possibly as serious as those offenses enumerated; however, the statutes which created them did not provide for their compounding. For example, larceny and receiving stolen goods are among the enumerated crimes. These offenses are punished by the Code with five year's imprisonment. Incest, certainly an equally nefarious crime, and punishable by the same penalty, is not included in the list of offenses the concealing of which is punished. In addition, since the Code provides three year's penalty for the compounding of any of the named offenses, it results that it is as serious a crime to compound some of them as actually to commit them. Still more out of line is the inclusion of the compounding of bribery, for the penalty for bribery is only one year's imprisonment, while the penalty for concealing it is made three years. However, these inconsistencies are remedied by making the concealment of every crime punishable and by grading the punishment of compounding according to the seriousness of the offense compounded.

The essential elements of the crime of compounding consist of (1) an agreement not to prosecute the perpetrator, (2) for a consideration to compound a crime, (3) which has actually been committed. The court said in *Fountain* v. *Bigham*:

> "The essential ingredients of the crime, it will be observed are: that a forgery was committed, that the obligee in the bond had knowledge of the actual commission of the offense at the time he took the bond, and that in consideration of being given the bond to secure his indebtedness, he agreed 'to compound or conceal the crime' . . . The gist of the offense is the agreement not to prosecute the crime, known by the injured party to have been committed, in consideration of his receiving the obligation."[6]

(1) An agreement to forbear from a prosecution or to withhold evidence of the crime is essential. The bare receiving back of one's stolen or embezzled goods or the acceptance of security therefor is not unlawful unless there be some agreement to compound the crime.[7] This is true even though the owner after such return of the property or taking of the security abstains from prosecuting.[8]

The agreement may be expressed or implied. Threats of prosecution, however, unless a certain security is given, will not justify an inference that if the security is given the agreement is that no prosecution will follow.[9]

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[6] Fountain v. Bigham, 235 Pa. 35, 84 A. 131 (1912).
[7] 1 HAWKINS P. C., c.59, § 7.
[8] Flower v. Sadler, 10 Q. B. D. 572.
[9] Swope v. Jefferson Ins. Co., 93 Pa. 251 (1880).

It is immaterial whether the agreement is performed or not. The offense of compounding is complete on the making of the agreement, and the fact that the wrongdoer is later prosecuted does not affect it.[10]

(2) The second essential element of the offense is that there must be a consideration for the agreement. The character of the consideration is immaterial. This may be anything of value, even a promise.[11] It has even been held that the settlement of a felony charge against one person is a sufficient consideration for the settlement of a felony charge against another person. Provided the other essential ingredients of the crime are present, the latter agreement is punishable as compounding a felony.[12]

The consideration need not be given by the person whose wrong is compounded. It is not required that the defendant be benefited by the consideration. It is sufficient if he takes it for the benefit of another or the public.[13]

(3) The third ingredient of the offense is the actual commission of a crime. There is a conflict of opinion here as to whether this element is required. In the majority of jurisdictions, including Pennsylvania, this element is required. The Pennsylvania statute expressly states that knowledge of the actual commission of the crime is required. The reasons given for this are: first, the public is not injured by the refusal of a private person to present or prosecute a crime, if in fact no crime has been committed[14] and second, there can be no compounding of a crime unless there is a crime to compound.[15]

The perpetrator of the original crime need not be first tried and convicted.[16] The later conviction or acquittal of the wrongdoer of the original offense is not a defense.

The mental element required by the Pennsylvania statute is a knowledge of the actual commission of the offense, and not a knowledge of the person who committed it.

Persons who may be liable for concealing an offense are usually not limited to those directly injured thereby. However, there is some authority to the contrary. There is authority that the crime may be committed by:

(1) The person injured by the crime. The authorities of the early years of the common law, when the crime was still known as theftbote, stated that the offense could be committed only by the owner of the goods, and by analogy

10 State v. Dunhammel, 2 Del. 532 (1836); State v. Ash, 33 Or. 86, 54 p. 184 (1898).
11 Com. v. Pease, 16 Mass. 91 (1819).
12 Hays v. State, 15 Ga. A. 386, 83 S. E. 502 (1914).
13 Windhill Local Bd. of Health v. Vint, 45 Ch. D. 351.
14 State v. Leeds, 68 N. J. L. 210, 52 A. 288 (1902).
15 Hays v. State, 142 Ga. 592, 83 S. E. 236 (1914).
16 Watt v. State, 97 Ala. 72, 11 S. 901 (1892); State v. Guthrie, 150 Iowa 149, 129 N. W. 804 (1911).

some of the courts have held that concealing can be committed only by the persons directly injured by the crime.[17]

(2) Some third person. Since the law permits not only the person injured by a crime, but also all other members of the community to prosecute, it is criminal for any one to make such a composition even though he suffered no injury and has no concern in the crime.[18]

(3) At common law the wrongdoer, or the person who pays the consideration, seems not to have been guilty. Some statutes, however, are so worded as to include such persons.

The Pennsylvania statute expressly states who may be liable. Whoever, having a knowledge of the actual commission of any of the enumerated crimes, takes some reward or promise thereof, to compound any of the listed crimes is guilty of concealing a crime.

Under some state statutes, the parties may compound certain offenses with the consent, and within the discretion, of the court or designated officials. Pennsylvania has such a statute, which reads as follows:

> "In all cases where a person shall, on the complaint of another, be bound by recognizance to appear or shall, for want of security, be committed, or shall be indicted for larceny or fraudulent conversion, where the value of the goods and chattels alleged to have been stolen or the property alleged to have been fraudulently converted is less than two hundred dollars, or for an assault and battery, or other misdemeanor, to the injury and damage of the party complaining, and not charged to have been done with intent to commit a felony, or not being an infamous crime, and for which there shall also be a remedy by action, if the party complaining shall appear before the magistrate, who may have taken recognizance or made the commitment, or before the court in which the indictment shall be, and acknowledge to have received satisfaction for such injury and damage, it shall be lawful for the magistrate, in his discretion, to discharge the recognizance which may have been taken for the appearance of the defendant, or, in case of committal, to discharge the prisoner, or for the court also, where such proceeding has been returned to the court, in their discretion, to order a nolle prosequi to be entered on the indictment, as the case may require, upon payment of costs: Provided, That this act shall not extend to any assault and battery, or other misdemeanor, committed by or on any officer or minister of justice."[19]

In order that a crime may be settled under this act it must be: (1) a misdemeanor, (2) to the injury and damage of the party complaining, (3) not charged to have been done with intent to commit a felony, (4) not an infamous crime,

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17 1 Hale P. C. 546; 1 Hawkins P. C., c.59, § 6.
18 Watt v. State, 97 Ala. 72, 11 S. 901 (1892); Peo. v. Byron, 103 Cal. 675, 37 p. 754 (1894); State v. Ash, 33 Or. 86, 54 p. 184 (1898).
19 Act of March 31, 1860, P. L. 427, § 9; Act of April 11, 1929, P. L. 514, § 1 as amended Act of May 26, 1949, P. L. 1816, § 1; 19 P. S. § 491.

(5) one for which there is a remedy by action, and (6) not committed by or on any officer or minister of justice. All these conditions must be present for the act to allow a settlement. And settlements must be made in the manner set forth in the statute.[20] The court said in *Commonwealth* v. *Carr*:

> "It is essential to such a settlement that the complainant shall acknowledge to have received satisfaction for such injury and damages, and until that is done there is no settlement, and neither partial settlement by the defendant, nor an agreement falling short of an acknowledgement of satisfaction in the manner provided by the act, bars a prosecution for the criminal offense."[21]

Assault and battery, libel, seduction, false pretenses, and the fraudulent removal of goods are offenses which may be settled under this statute. Larceny where the value of the goods is greater than two hundred dollars, because it is a felony,[22] and forgery because it is an infamous crime,[23] and embezzlement by a bank officer[24] may not be settled. The court stated in *Pearce* v. *Wilson*:

> "It is very evident, from the phraseology of the act, that it was not intended to apply to misdemeanors of so grave a character . . ., but only to such as are to the personal injury and damage of the prosecutor, and do not specially affect the public."[25]

The effect of the settlement, as stated in the statute, is that the recognizance is discharged or the prisoner is discharged by the magistrate, or the indictment is *nolle prossed* by the court, as the case may require. However, as a matter of fact, a settlement effected in the manner prescribed by the statute has a four-fold effect: (1) it relieves the defendant from criminal liability for the offense settled;[26] (2) it renders valid and enforceable contracts given in effecting the settlement;[27] (3) it relieves the defendant from civil liability for the damage or injury;[28] and (4) it relieves the defendant from criminal liability for compounding crime.

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20 Com. v. Heckman, 113 Pa. Super. 70 (1934); Com. v. Scott, 7 Pa. Super. 590 (1898).
21 Com. v. Carr, 28 Pa. Super. 122 (1905).
22 Conmey v. McFarlane, 97 Pa. 361 (1881).
23 Bredins Ap., 92 Pa. 241 (1879).
24 Pearce v. Wilson, 11 Pa. 14 (1885).
25 *Ibid.*
26 Com. v. Carr, 28 Pa. Super. 122 (1905); Com. v. Scott, 7 Pa. Super. 590 (1898).
27 Geier v. Shade, 109 Pa. 180 (1885).
28 *Ibid.*