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Statutory victims: The lessons of the late MR and MRS LAMB

As we all know, the law is constantly evolving and changing. The courts and the legislatures are forever modifying the laws of our nation and our state. And, whether you sleep through your Continuing Legal Education classes or not, every attorney must stay abreast of these perpetual changes.

Often, however, attorneys lose touch with the way that the study of law changes. Did you know that midterm examinations and periodic quizzes are now common in law schools? Or that many law schools require practical experience in order to graduate?

And did you know that the vast majority of current students have no idea who MR & MRS LAMB are?

To be fair, many young attorneys also are unfamiliar with MR & MRS LAMB. Odds are that if you know that austere couple, you graduated many years ago.

For those who did not learn about MR & MRS LAMB in law school, or those who graduated long enough ago to forget, MR & MRS LAMB is a mnemonic device to remember the common-law felonies: murder, rape, mayhem, robbery, sodomy, larceny, arson, manslaughter and burglary.

So why are the names MR & MRS LAMB no longer on the lips of every first-year law student?

One reason is that the common law is not all that common any more. Mayhem is a particularly

uncommon common-law crime. According to Black's Law Dictionary, mayhem is "unlawfully and violently depriving another of the use of such of his members as may render him less able, in fighting, either to defend himself or annoy his adversary."

In Illinois, somebody accused of common-law mayhem would probably be charged with aggravated battery for committing a battery that "causes great bodily harm or permanent disability or disfigurement" (720 ILCS 5/12-3.05).

No matter how imposing mayhem sounds in comparison, statutory aggravated battery has totally taken its place.

Even the more common of common-law felonies are not as they once were. At common law, rape was the "unlawful carnal knowledge of a woman, by a man" who is not her husband, by force or threat and without her consent.

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But here in Illinois, accused rapists are charged with criminal sexual assault (720 ILCS 5/11-1.20).

Although the word "rape" is still used constantly, the common-law notion of rape is nearly as

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archaic as that of mayhem, and statute has totally replaced the outdated common law.

Likewise, murder (720 ILCS 5/9-1), robbery (720 ILCS 5/9-1), larceny (720 ILCS 5/16-1), arson (720 ILCS 5/20-1), manslaughter (720 ILCS 5/9-3) and burglary (720 ILCS 5/19-1) have all been modified and codified by the legislature. In a practical sense, their common-law definitions simply are no longer relevant.

Another reason that the common-law felonies get less attention in law school is that they are dwarfed in number by statutory felonies. By statute, felonies are

are more 20 different sex-related felonies (to say nothing of misdemeanors and petty offenses that are elevated to the status of felonies for repeat offenders.)

Among the sex-related felonies in this state are criminal transmission of HIV (720 ILCS 5/12-5.01) and posting of identifying or graphic information on a pornographic Internet site (720 ILCS 5/11-23). Obviously, those offenses could not even have been imagined by the courts that first described the common-law felonies.

As a result of the ballooning statutory regimes, a careful study of statutory construction is more important than knowing the common-law definitions for a handful of felonies. According to at least one professor, the first three steps of legal writing are "1. Read the statute. 2. Read the statute. 3. Read the statute."

But the legislature is not the only body contributing to the disappearance of MR & MRS LAMB. The greatest (and most delightfully ironic) blow to the traditional common-law felonies came from the U.S. Supreme Court when it ruled in *Lawrence v. Texas* that sodomy is protected under the implicit privacy rights in the Constitution.

Now that sodomy is no longer a common-law felony, (and gay marriage is a recognized constitutional right under the court's ruling in *Obergefell v. Hodges*), I would like to reintroduce you to MR & MRS LAMB!