



TU 122 Law in Everyday Life

Criminal Law I

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Outline

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2. Sources of criminal law
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4. Elements of crime
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Outline

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1. Definition of Criminal Law

Division of law which treats of crimes and their punishments (Black Law's Dictionary)

2. Sources of criminal law

- (1) Penal Code
- (2) Statutes

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3. Identification of Criminal Law

The violation of criminal law results in punishment.

Forms of Punishment

(s 18 of the Thai Penal Code)

- (1) Death penalty
- (2) Imprisonment
- (3) Confinement
- (4) Fine
- (5) Forfeiture of property

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4. Elements of Crime

- (1) Criminal act
- (2) Criminal state of Mind (*mens rea*)
- (3) Causation

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4. Elements of Crime

General rule: A crime is defined in terms of act.
Intent alone poses an insufficient danger to society
to justify criminal liability.

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4. Elements of Crime

(1) Criminal act

- Act (Affirmative physical Act)

- Omission/ Failure to act

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No Crime No Punishment Without Law

Section 2 A person shall only be sentenced when the
alleged act committed is proven to be a criminal
offence and any sentence imposed upon the offender
shall only be that provided by the law in force at the
time of any alleged offence.

Criminal law cannot retrospectively allege or punish
anyone. But it can retrospectively be applied to
benefit offenders.

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4. Elements of Crime

Example 1: A posted on his Facebook that he was considering to kill B.

Example 2: A drove recklessly and crashed B; B died afterwards.

Example 3: A, a life guard, did not rescue B, who was drowning in a pool while A was on duty, because he wanted to kill him. As a consequence B died.

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4. Elements of Crime

(2) Criminal state of mind – *Mens Rea*

Modern classifications of state of mind

(a) Intent

- Knowledge
- Purpose

(b) Recklessness / negligence

(c) Strict liability

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4. Elements of Crime

Example 1: A intends to shoot B.

- A consciously knows he is shooting B
- A aims for the death of B

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4. Elements of Crime

Example 2: A intends to shoot B by a toy pistol.

- A consciously knows he is shooting B
- A aims for teasing B.

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4. Elements of Crime

Example 3: A intends to shoot B.

- A consciously knows he is killing B
- A aims for the death of B

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4. Elements of Crime

(3) Causation

Causation is a relation between the cause and the result: the conduct was the cause of the result.

Example 1: A set fire on B who was badly injured. B died two weeks later because of infection.

Example 2: C intentionally broke D's nose. While D was being treated at a hospital he fell off his bed. He died shortly after the accident.

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5. Attempt

Thai Penal Code

Section 80 A person who commences to commit an offence

- does not carry it through; OR
- carry it through but does not achieve its end is said to attempt to commit an offence.

Dika 4938/2554 A unlawfully entered the building and was searching for valuable things. A was arrested before he touched anything.

Dika 5725/2554 B wanted to steal a motorcycle. He tried to unlock every vehicle he passed by. He was arrested before could successfully unlock a motorcycle.

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5. Attempt

Attempt to murder

Dikas: A pointed a gun at B and was preparing to pull the trigger. He was arrested before he could kill B.

Attempt to rape

Dika 11065/2554: A punched B's face and abdomen and torn off her skirt. B shouted for help. A was arrested before he could rape A.

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6. Instigation (Solicitation)

Section 84 "Whoever cause another person to commit an offence, whether by employment, compulsion, threat, hire, asking as favour or instigation is said to be an instigator.

If the employed person commit a crime, an instigator shall receive the punishment as principal. If the offence is not committed, an instigator shall receive one third of the punishment provided for such offence."

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6. Instigation (Solicitation)

Punishment

- Solicitation punishable to the same degree as is authorized for the offenses solicited.
- If offenses is not committed, solicitor is liable for the crime of solicitation.

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6. Instigation (Solicitation)

Example: A hired B to kill C.

- A hired B to kill C.
- B was preparing to pull a trigger to kill C.
- B killed C.

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7. Conspiracy

A conspiracy is an agreement by two or more persons to commit a criminal act or series of criminal acts, or to accomplish an act by unlawful means.

Section 83 "Two persons participating in the commission of the offence are principals. (Conspirator)"

Punishment

Same punishment imposed to crime committed by all other members that were reasonably foreseeable result of the conspiracy.

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8. Complicity

An accomplice in the commission of an offense is a person who intentionally assists another to engage in the conduct that constitutes the crime. Accomplice activity may include aiding, abetting, encouraging, soliciting, advising, and procuring the commission of the offense.

Section 86 – act to assist or facilitate the commission of the offense regardless of the offender's knowledge of such assistance.

Punishment

One third of the punishment prescribed for such offense

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Examples of 7. Conspiracy and 8. Complicity

Example 1: A and B conspired together to kill C. At the time of occurrence, B was killing C alone without any assistance of A.

Example 2: A and B conspired together to kill C. At the time of occurrence, B was killing C while A was looking put for others who might intervene the commission.

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Examples of 6. Instigation 7. Conspiracy and 8. Complicity

Example 3: B planned to kill C. A knew the plan and bought a pistol for B to kill C. B killed C.

Example 4: A planned to kill C. A bought a pistol for B to kill C. B killed C.

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9. Defenses

Legal grounds for denying criminal liability

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9.1 Infancy

Under age 7 is conclusively presumed unable to form a criminal intent and therefore cannot be convicted of a crime.

Children aged 7-14 are presumed incapable of forming criminal intent. Presumption rebuttable.

Age 14 and older are treated as adult – no presumption of incompetency.

Look at the age at the time of commission of the crime

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9.2 Consent

Under normal circumstances, consent is not a ground for escaping from criminal liability. Unlike tort, consent of the injured person exempt the debtor from liability for compensation.

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9.3 Insanity

A defendant is entitled to an acquittal if, at the time of the crime, he was so impaired by mental illness or retardation as to be “insane” within the meaning of the law e.g. does not understand what he’s doing.

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9.4 Intoxication

- **Voluntary intoxicated** – never a defense
- **Involuntary intoxicated** – a complete defense/
proof of lack of *mens rea*
 - Did not know substance ingested was intoxicating
 - Know but consume under duress

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9.4 Intoxication

- **Example1:** A voluntarily drank alcohol. He negligently drove his car and crashed B causing B’s death.

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9.5 Ignorance or Mistake of Law

Section 64 No person shall be excused from criminal liability due to ignorance of the law.

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9.6 Self- defense / Defense of Others

Section 68 A person who reasonably commits an act for the defense of his right or right of another person so as to escape from a danger arising from an act of violence which violates the law and such danger is imminent shall not be guilty.

Conditions

- (1) a danger arising from an act of violence which violates the law
- (2) such danger is imminent
- (3) defends his right or right of another person
- (4) proportionally commit against the person who caused danger

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9.6 Self- defense / Defense of Others

The courts specifically sets forth the situations in which deadly force is justifiable: when the defendant believes that such force is immediately necessary to protect himself on the present occasion against:

- (1) death
- (2) serious bodily injury;
- (3) forcible rape; or
- (4) kidnapping.

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9.6 Self- defense / Defense of Others

Protection of property

A person in possession of personal property is justified in using non-deadly force against a would-be dispossessor if he reasonably believes that such force is necessary to prevent imminent and unlawful dispossession of the property.

Under no circumstances may a person use deadly force to prevent dispossession.

Rationale : Interest in security of property does not justify jeopardizing the lives of others (i.e. society places a much higher premium on the preservation of human life)

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9.6 Self- defense / Defense of Others

Protection of dwelling

Deadly force could be used in defense of one's dwelling if it reasonably appeared necessary to prevent a forcible entry of the dwelling, and a warning had first been given the intruder to desist and not enter.

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9.6 Self- defense / Defense of Others

Example 1: A was stealing B's mobile. B saw what A was doing. B killed A

Example 2: If B hit A by a stick

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9.6 Self- defense / Defense of Others

Example 3: A intrudingly entered B's house at night. B saw A and shot him with his firearm.

Example 4: A intrudingly entered B's house at night. B saw A and told B to desist and not to enter immediately. A did not obey B's warning. Consequent, B killed A with his firearm.

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9.7 Necessity

Section 67 (2) When a person acts reasonably in order to make himself/herself or another person escape from an imminent danger (which such person did not cause to exist through his own fault), he/she shall not be punished for committing any offence on account of necessity.

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9.7 Necessity

The defense of necessity is available where the accused acted in the reasonable belief that perpetration of the offense would prevent the occurrence of a greater harm or evil.

Conditions

- (1) Objectively reasonably belief
- (2) Greater harm threatened
- (3) Threatened harm "imminent"
- (4) No fault on the defender's part

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9.8 Duress

Section 67 (1) A person shall not be punished for committing any offence on account of necessity when he/ she is under compulsion or under the influence of a force which he/she cannot avoid or resist, provided that no more is done than is reasonably necessary.

Conditions

- (1) Objectively reasonable belief
- (2) Threat must be of sufficiently serious harm
- (3) Subject of threat – can be anybody
- (4) Immediate harm

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Examples of Necessity and Duress

Example 1: Manoj forced Manit by directing his gun to Manit to hit Manee by a stick.

Example 2: A was escaping B's assault. While A was running, C obstructed A's path, A pushed C. As a result, C fell down and injured.

Example 3: A fought with B and then A was escaping B's assault. While A was running, C obstructed A's path, A pushed C. As a result, C fell down and injured.

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