TU 122 Law in Everyday Life

Criminal Law I

Pananya Larbprasertporn

Based on Aj Munin Pongsapan's handout

Classification of Thai Law

1. Private Law – Law governs relationships between individuals

    E.g. Contract and Tort under Thai Civil and Commercial Code (TCCC)

2. Public Law – Law governs relationships between individuals and the State, and those relationships between individuals which are of direct concern to the society.

    E.g. Constitution

    E.g. Criminal Law*

Outline

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3. Identification of criminal law
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Outline

9. Defenses

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(9.6) Self-defense / Defense of others

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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, e.g. Minerals Act BE 2560 (2017); Copyright Act BE 2537 (1994)

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/ capital punishment

(2) Imprisonment

(3) Confinement

(4) Fine

(5) Forfeiture of property

No crime no punishment without law

- Constitution, Section 29
- Crimes and punishments must be clearly prescribed;
- Local customs or analogy cannot be used to punish people;
- Strict interpretation;
- Non–retroactive enforcement

4. Elements of Crime

(1) Criminal act

(2) Criminal state of Mind (*mens rea*=guilty mind)

(3) Causation

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.

E.g. Aj. P wanted to kill Miss X. She noted down her intention on her mobile phone, so she did not forget.

4. Elements of Crime

(1) Criminal act

- Act (Affirmative physical Act)

- Omission/ Failure to act

Section 59 A person shall be criminally liable only when such person commits an act intentionally, except in case of the law provides that such person must be liable when such person commits an act by negligence, or except in case of the law clearly provides that such person must be liable even though such person commits an act unintentionally.

To commit an act intentionally is to do an act consciously and at the same time the doer desired or could have foreseen the effect of such doing.

If the doer does not know the facts constituting the elements of the offence, it cannot be deemed that the doer desired or could have foreseen the effect of such doing.

To commit an act by negligence is to commit an offence unintentionally but without exercising such care as might be expected from a person under such condition and circumstances, and the doer could exercise such care but did not do so sufficiently.

An act shall also include any consequence brought about by the omission to do an act which must be done in order to prevent such consequence.

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 lifeguard, 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.

4. Elements of Crime

Section 288 Whoever, murdering the other person, shall be punished with death, imprisoned by death, or imprisoned as from 15 to 20 years.

4. Elements of Crime

Section 374 Whoever sees the other person to be in the danger of life, which oneself may help so without the danger to oneself or the other person, but oneself does not assist, shall be imprisoned not out of one month or fined not out of ten thousand baht, or both.

(moral obligation)

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

4. Elements of Crime

(c) Strict liability

E.g. Section 377 Whoever, having in his care a ferocious or vicious animal, allows it to wander about alone in a manner likely to cause injury to a person or things, shall be punished with imprisonment not exceeding one month or fined not exceeding ten thousand Baht, or both.

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.

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.

Punishment: two-thirds of the punishment of that crime

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.

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.

Section 217 Whoever, firing to the things belonging to the other person, shall be imprisoned as from six months to seven years or fined as from one thousand Baht to fourteen thousand Baht.

Section 218 Whoever sets fire to:

1. A building, vessel or floating house in which a human being dwells;
2. A building, vessel or floating house used for storage or manufacture of goods;
3. A house of entertainment or meeting place;
4. A building which is domain public of State, public place or place for performing religious ceremonies;
5. A railway station, airport, or public parking or mooring place for cars or vessel;
6. A steam-boat or motor-boat of five tons upwards, airplane or train used for public transportation, shall be punished with death, imprisonment for life or imprisonment of five to twenty years.

Section 219 Whoever preparing for committing the offence as aforesaid by Section 217 or Section 218, shall be punished in the same manner as attempting to commit that offence.

6. Instigation (Solicitation)

Section 84 “Whoever cause another person to commit an offense, 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.”

6. Instigation (Solicitation)

Punishment

- Solicitation punishable to the same degree as is authorized for the offenses solicited.

- If offenses is not committed, the solicitor will receive one third of the punishment for such offence .

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.

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 "In case of any offence is accrued by commission of the person as from two persons upwards, such accomplices deemed to be principals (conspirator) shall be provided by the law for such offence."

Punishment

Same punishment imposed to crime committed by all other members

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

Two-thirds of the punishment prescribed for such offense

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.

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.

9. Defenses

Legal grounds for denying criminal liability

9.1 Infancy

Children under age 10 (Section 73) > no punishment

Children aged 10-15 (Section 74) > no punishment, but the court may impose other measures, e.g. warn the child and discharge him/her, and if appropriate, also warn the parents or guardian; send to a school, a place of training or instruction, etc.

9.1 Infancy

Children aged 15-18 (Section 75) > The court may impose measures under Section 74 or impose half of the punishment for such crime

Children aged 18-20 (Section 76) > The court may consider reducing punishment

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

9.2 Consent

Under normal circumstances, consent is not a ground for escaping from criminal liability.

Except for the case of customary law, such as medical treatment, playing sports according to the rules, haircut, etc., which are not regarded as violating the public order.

9.3 Insanity

A defendant is not punished 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. (Section 65)

Section 65 Whenever any person commits an offence at the time of not being able to appreciate the nature, or illegality of his act or not being able to control himself on account of defective mind, mental disease or mental infirmity, such person shall not be punished for such offence.

But, if the offender is still partially able to appreciate the nature or illegality of his act, or is still partially able to control himself, such person shall be punished for such offence, but the Court may inflict less punishment to any extent than that provided by the law for such offence.

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

Section 66 Intoxication on account of taking liquor or any other intoxicant may not be raised as an excuse under Section 65, except where such intoxication is caused without the knowledge or against the will of the offender, and such person has committed the offence at the time of not being able to appreciate the nature of illegality of his act or not being able to control himself, the offender shall then be exempted from the punishment for such offence. But, if such person is still partially able to appreciate the nature or illegality of his act, or is still partially able to control himself, the Court may inflict less punishment to any extent than that provided by the law for such offence.

9.4 Intoxication

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

9.5 Ignorance or Mistake of Law

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

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

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

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.

9.7 Necessity and Duress

Section 67 Any person shall not be punished for committing any offence on account of necessity:

1. When such person is under compulsion or under the influence of a force such that such person cannot avoid or resist; or
2. When such person acts in order to make himself or another person to escape from an imminent danger which could not be avoided by any other means, and which such person did not cause to exist through his own fault. Provided that no more is done than is reasonably necessary under the circumstances.

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.