

Lecture Title: Criminal Liability

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Diploma in Law (Malta)



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- A person who commits a wrong is said to be liable or responsible for it.
- Liability or responsibility is the bond of necessity that exists between the wrong doer and the remedy of the wrong.
- A man's liability consists of those things, which he must do or suffer because he has already failed to do what he ought to have done. It is the ultimatum of the law.



- –The basic rule is commonly expressed in a Latin Maxim: –

‘Actus non facit reum nisi mens sit rea’

Conduct doesn't make a man guilty unless his mind
is also guilty



- Generally speaking therefore a crime will have two features or components, these are:-

1. Actus Reus –

The physical, material or external component

2. Mens Rea –

The formal, mental element



Material condition for liability (Actus Reus)

The sum of Material or physical circumstances, of which would amount to the fact prohibited by the law caused by an act of man.

Material Condition may be:-

- An Act
- An omission
- A state of affairs



Some Offences

Rape and Arson (common knowledge with violence): - these are described in our criminal code. Others are not but case law has defined them - e.g., theft

There are various categories of acts: -

- positive or negative acts, Acts of commission or acts of omission (A wrongdoer whether he does that which he ought not to have done or leaves undone that which he ought to have done)

- Secondly, acts can either be internal or external. The former are acts of the mind, while the latter are acts of the body.



A bare intent to commit a crime is not amenable to criminal justice –

“the imagination of the mind to do wrong without an act done is not punishable in our law” (Judge in the case of Hales Vs Petit Plwod)

The crime of conspiracy (section 57 and 58 of the criminal code) is an exception to this principle. But the exception is only apparent.

It is true that conspiracy itself is a purely mental state- but it would be impossible for two or more men to come to an agreement without communicating to each other their common intentions by speech or gesture, and thus even In conspiracy there is a physical external act



Every human act is made of 3 factors or constituent parts: -

1. The origin in some mental or bodily activity
2. Its circumstances
3. Its consequences

Example- In a bank robbery A shoots B dead. the material elements of A's acts are the following:-

- Its origin or primary stage, namely a series of muscular contractions, by which the rifle is raised and the trigger is pulled
- The circumstances, the chief of which are the facts that the rifle is loaded and in working order and B is in the line of fire
- The Consequence, the chief of which are the fall of the trigger, the explosion of the powder, the discharge of the bullet, the passage through the air and through the body of the man killed and the death

Criminal liability is sufficiently established by the proof of some act, which the law deems dangerous in its tendencies, even though the issue is in fact harmless, the formula of the law is usually:

- IF you do this you will be held liable in all events and not
- IF you do this you will be liable if any harm ensues



- **Formal condition for liability (Mens Rea)**

- As a general rule, criminal law doesn't apply to an individual who acted without mental fault. As said already the conditions of criminal liability are sufficiently indicated by the maxim: -
- “ Actus non facit reum nisi mens sit rea”
- A man is responsible not for his acts in themselves, but for his acts coupled with the mens rea or guilty mind with which he does the acts



- Before imposing punishment the law must be satisfied of 2 things: -
 1. That the act has been done which with by reason of its harmful tendencies or results, is fit to be repressed by way of penal discipline
 2. The mental attitude of the does towards his deed was such as to render punishment effective for the future and therefore just

The first is the material (actus reus), the second is the formal condition of liability (mens rea)

This formal condition or mens rea may assume 2 distinct forms namely,

1. Wrongful Intention (DOLUS)
2. Culpable Negligence (CULPA)



There are many exceptions in the law which sees fit to break through the rule as to Mens Rea. The law may hold a man responsible for his acts, independently altogether of any wrongful intention or culpable negligence.

Wrongs which are thus independent of Mens Rea are distinguished by Salmond as wrongs of absolute liability. It follows that in respect of the requirement of mens rea, offences may be of 3 kinds:-

1. Intentional or Willful offences, in which the mens rea amounts to the intention, purpose or design
2. Offences of Negligence, in which the mens rea assumes the less serious form of mere negligence as opposed to wrongful intent
3. Offences of absolute liability , in which the mens rea is not required, neither wrongful intent nor culpable negligence being recognized as a necessary condition of responsibility.



- **Nature of Criminal Intention**

- Intention, in general, is the purpose or design with which an act is done. It is the fore knowledge of an act; coupled with the desire to do it; such foreknowledge and desire being the cause of the act in as much as they fulfill themselves through the operation of the will

Carrara's distinction with regards intent;

it can be Direct or Indirect



Kinds of criminal Intent

- Generic and specific:

the intent is said to be generic (dolus genericus) when it consists simply in intending to do an act which is known to be illegal.

- Determinate and Indeterminate:

the first refers to when the issue falls completely within the boundaries of the intent.

- Good faith: -

from the notion of wrongful intent the concept of its opposite good faith emerges clear.



Negligence



- What constitutes criminal negligence is a total indifference to and disregard for the safety of the public.

The test for establishing Negligence is essentially an objective one. Maltese law, doesn't require that the accused has actually and subjectively realized the risk attendant upon his conduct before it can be categorized as criminally reckless. An individual who has given no thought to a Risk may be Negligent.

The argument would be that the very thoughtlessness is blameworthy; the accused really ought to have given thought to the risks.



- Carrara defined negligence as the
- “Voluntary failure to take care in estimating the probable and foreseeable consequences of one’s acts”

We may conclude by saying that the liability by mere negligence arises not where the harmful consequences of one’s act have been foreseen, but only where such consequences have not been foreseen although they could have been foreseen



*Negligence under our
criminal code*



The words negligence, imprudence and carelessness are not defined, but it is clear that by them the law means generally the absence of such care and precautions as it was the duty of the defendant to take in the circumstances

Our provisions dealing with crimes of negligence above outlined a modeled upon the corresponding provision of the Italian Code. Our Criminal code is based on the subject theory; in that the event should have been foreseeable by the ordinary man in the road. Whatever the form the negligence takes, if the ensuing harm was not only unforeseen but also unforeseeable, there cannot be any question of criminal liability in respect of such harm, saving of course, any liability contracted by reason of the fact itself constituting the negligence (e.g. the non-observance of a regulation).

So far as such a fact constitutes an offence known to the law (e.g. driving a car without a license). When we say that the event was absolutely unforeseeable we mean only that it was unforeseeable by the standard of care, which the law requires every man to use in his actions.



Standard of Care



Negligence is not a ground of criminal liability except in the cases expressly laid down by law, for crimes are wilful wrongs. Mere negligence is deemed an insufficient ground for the rigor of criminal justice. In as much as the carrying of firearms and the driving of horses or cars – are known to be the occasion of frequent harm.

Extreme care and the most scrupulous anxiety as to the interests of others would prompt a man to abstain from these dangerous forms of actions. Yet it is expedient in the public interest that these activities should go on, the law doesn't insist on any standard of care which would include them, as such within the limits of culpable negligence

The amount of prudence or care which the law actually demands is that which is reasonable in the circumstances of the particular case. Thus, it has been said negligence is the omitting to do something that a reasonable man would do or doing something that a reasonable man wouldn't do.



Degrees of Negligence



Writers, who found their conception of negligence on the criterion of the foreseeability of the event, distinguish between: -

- 1) Gross Negligence (Cupla Lata) – acts foreseen by all man
- 2) Ordinary Negligence (Culpa Levis) – acts foreseen by the reasonable prudent man
- 3) Slight Negligence (Culpa Levissima) – could not have been foreseen except by the use of some extra ordinary and uncommon care



Contributory Negligence



Criminal liability in respect of negligence offences arises where there is an efficient causal connection between the negligence and the event complained of.

If the particular negligence imputed to the defendant was not efficient cause of the event, he can't be convicted. It is however no defence that the mischief was caused by the negligence of others as well as of the defendants.

If the mischief occurred by negligent act or default of several persons they are all guilty.

The fact that other persons besides the defendant were also negligent doesn't avail him because were this not so each negligent party would raise the same defence and no one would be responsible.

Similarly contributory negligence on the part of the victim is not a ground of defence.

The fact that the deceased was himself negligent and so contributed to the accident or other circumstances by which the death was occasioned, doesn't afford defence to an indictment for manslaughter.

Contributory Negligence on the part of the deceased may perhaps be a ground for a lighter sentence.



Vicarious Liability

(Third party responsibility in respect of
Contraventions)



Normally and naturally the person who is liable for a wrong is the person who does it. However both ancient and modern law admit instances of vicarious liability in which one man is made answerable for the acts of another.



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