

Criminal Law

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CLASS 1 – CRIME, LAW AND MORALITY

General Concepts:

- Actus Reus – conduct element
 - Act, omission, cause
- Mens Rea – mental element
 - Intent, recklessness, negligence, strict liability
- What should be criminalised?
- What state of mind should accompany the act?
 - Actus non facit reum, nisi mens sit rea
 - Act must be accompanied by a guilty mind
- “golden thread”
 - burden of prosecution

	DETERMINING CRIMINAL LIABILITY
1	Did A have the capacity to make a rational choice to commit the crime? E.g. Age, mental illness
2	Have the elements of the offence been made out? <ul style="list-style-type: none"> 1) Proof that A brought about ‘bad event’: guilty act, <i>actus reus</i> 2) Proof that A realised what was happening – is A at fault? E.g. Did A act with intention; Was A reckless; Did A have knowledge; What if A ought to have been aware; guilty mind, <i>mens rea</i>
3	Did A have an excuse or justification (defence)

Choice and General Irrelevance of motive

- General position is that motive is irrelevant, i.e. mercy killing is still murder
 - Should it be relevant?
 - Link to social causes, i.e. motive=need
 - Sometimes it is, e.g. self-defence, necessity
- Criminalising conduct
 - Ethics, ‘greater good’, religious, etc.
 - If someone commits criminal behaviour but has a reason/excuse should they be held criminally liable?
- Individual and general deterrence to crimes
 - Individual deterrence is the punishment imposed on an individual in order to deter criminal behaviour
 - General deterrence is threat of punishment acting as the overall deterrence on society to prevent crime and other socially unacceptable behaviours
- Excusing conditions
 - 1) maximise the predictive power of sanctions 2) introducing individuals’ choice as an operative factor 3) pains of punishment = price of satisfaction obtained from breach
 - versus argument that people have no choice and their actions are a reflection of their social and genetic conditions

Subjective/Objective States

- Subjective = accused state of mind
- Objective = awareness (liable if lack of – if unreasonable)

Euthanasia (case study)

- Motive is irrelevant

S 31C(1)	A person who aids or abets suicide is liable for 10 years imprisonment OR murder under s 18
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- *Mathers* [2011]
 - Assisted OD of partner, and when it appeared she was not dying, suffocated her with a pillow: received a two-year suspended sentence
- *R v DPP* [2009]
 - Six factors against prosecution
 - Victim had reached a voluntary, clear, settled and informed decision to commit suicide
 - Suspect wholly motivated by compassion
 - Actions of suspect were of only minor encouragement or assistance
 - Suspect sought to dissuade the victim
 - Actions of the suspect may be characterised as reluctant encouragement or assistance in the face of a determined wish to commit suicide
 - The suspect reported the victim's suicide to the police and fully assisted them in their inquiries
- Slippery slope argument: *Justins* [2008]
- Medical Profession
 - *Airedale NHS Trust v Bland*
 - Distinguish between **active** and **passive** actions
 - *Rodriguez v British Colombia* (1993)
 - Canada – challenge based on human rights; that in not allowing to die it deprived an individual of the autonomy of living; but did not find a breach of s 7.
 - *Exit Australia* case
 - Dr. Nitschke failed to inform the medical board that he was counselling a man who was threatening/intending to commit suicide – Dr. counselled him through and he killed himself – man was not terminal but had depression
- **Dr. Jack Kevorkian**

CLASS 2 – THE SCOPE AND PRINCIPLES OF CRIMINAL LAW

Why do we criminalise

- Criminalisation has serious implications: punishment, negative label, long term consequences and there is generally a “right not to be punished” (Ashworth and Horder 2013)
- Principle of Individual Autonomy
 - Derived from assumption of free will, that A should be liable for only conduct that has been freely chosen. So the actus reus alone is not enough for liability, also require the requisite mens rea
- Principle of Welfare
 - Recognises State obligation to protect; collective and policy goals; competing social values, politics, etc.
 - Weighing the needs of the many versus the needs of the few

Ashworth and Horder approach to Criminalisation

- Collective liberty is at odds with individual autonomy – balance must be maintained to avoid harsh and intrusive policies against individuals
- Three conditions must be satisfied before conduct is to be held criminal
 1. Harm: in essence, actus reus; that the state is justified in criminalising if it causes harm. This does not include conduct which is merely immoral.
 2. Wrongfulness: in essence, mens rea; that the harm is accompanied by culpability
 3. Public Element in Wrongs: An act that commits no harm against an individual but harm to the community as a whole, e.g. criminalising taxation, SM
- Minimalist approach
 - Respect at Human Rights protections
 - Crim laws should respect particular freedoms but it is still possible for criminal law to curtail a right
 - Right not to be punished
 - Decision to criminalise different from other legislative powers as it deprives liberty
 - Criminalisation as a last resort
 - Morality, social norms also act as controls sometimes better left to these and criminalisation be left as a legislative technique of last resort
 - Not criminalising where counter productive
 - Where it may cause more social harm than good, or prohibition not effective

Should immoral acts be criminalised?

- Morality is often confused with intolerance – so whilst it may be argued that immoral acts should be criminalised as they affect the public at large and potentially relate to an erosion in public values etc. – who gets to decide what behaviour is immoral?

CASE	FACTS	RULING
<i>Brown</i> [1994]	5 men charged with performing sadomachinistic acts in the privacy of their own home. Very violent – blood etc.	Lord Tempelman (majority): Is consent a defence to inflicting bodily harm? Raises ban of duelling, bare knuckle boxing and expresses that there is a public interest in outlawing behaviour. Welfare v autonomy. Lord Mustill (minority): There is a difference between violence and the criminal law of violent sexual relations. Acts not done in animosity – in fact the opposite they were done for pleasure.