

## **PRINCIPLES OF CRIMINAL LIABILITY**

*"Law, with all its weaknesses, is all that stands between civilization and barbarism" (John Derbyshire)*

Criminal Liability is what unlocks the logical structure of the Criminal Law. Each element of a crime that the prosecutor needs to prove (beyond a reasonable doubt) is a principle of criminal liability. There are some crimes that only involve a subset of all the principles of liability, and these are called "crimes of criminal conduct". Burglary, for example, is such a crime because all you need to prove beyond a reasonable doubt is an actus reus concurring with a mens rea. On the other hand, there are crimes that involve all the principles of liability, and these are called "true crimes". Homicide, for example, is such a crime because you need to prove actus reus, mens rea, concurrence, causation, and harm. The requirement that the prosecutor must prove each element of criminal liability beyond a reasonable doubt is called the "corpus delicti rule".

Liability needs to be distinguished from the following concepts:

- culpability (purposely, knowingly, recklessly, negligently) - infers intent
- capacity (infancy, intoxication, insanity) - capacity defenses
- responsibility (volition, free will, competency) - presumptions

There are five principles of liability in Criminal Law:

- Principle of Actus Reus
- Principle of Mens Rea
- Principle of Concurrence
- Principle of Causation
- Principle of Resulting Harm

### **THE PRINCIPLE OF ACTUS REUS**

- involuntariness -- sleepwalking, hypnotic behavior, etc. are seen as examples of acting upon forces beyond individual control, and are therefore not normally included in the principle of actus reus. However, certain "voluntarily induced involuntary acts" such as drowsy driving might arguably be included if the prior voluntary act created the risk of a future involuntary act.
- manifest criminality -- caught red-handed, clear-cut case of actus reus proven beyond a reasonable doubt
- possession -- the law recognizes various degrees of this. Actual possession means physically on your person. Constructive possession means physically under your control. Knowing possession means you know what you are possessing. Mere possession means you don't know what you are possessing. Unwitting possession is when something has been planted on you. The only punishable types of possession are the ones that are conscious and knowable.
- procuring -- obtaining things with the intent of using them for criminal purposes; e.g., precursor chemicals for making narcotics, "pimping" for a

prostitute, and procuring another to commit a crime ("accessory before the fact")

- **status or condition** -- sometimes a chronic condition qualifies as action, e.g., drug addiction, alcoholism, on the assumption that first use is voluntary. Sometimes the condition, e.g. chronic alcoholism, is treated as a disease which exculpates an individual. Most often, it's the punishment aspect of criminal law in these kinds of cases that triggers an 8th Amendment issue. Equal Protection and other constitutional issues may be triggered.
- **thoughts** -- sometimes, not often, the expression of angry thoughts, e.g., "I'll kill you for that" is taken as expressing the resolution and will to commit a crime, but in general, thoughts are not part of the principle of actus reus. Daydreaming and fantasy are also not easily included in the principle of mens rea.
- **words** -- these are considered "verbal acts"; e.g. sexual harassment, solicitation, terroristic threats, assault, inciting to riot.

#### THE PRINCIPLE OF MENS REA

- **circumstantial** -- determination of mens rea through indirect evidence
- **confessions** -- clear-cut direct evidence of mens rea beyond a reasonable doubt
- **constructive intent** -- one has the constructive intent to kill if they are driving at high speeds on an icy road with lots of pedestrians around, e.g.
- **general intent** -- the intent to commit the actus reus of the crime one is charged with; e.g., rape and intent to penetrate
- **specific intent** -- the intent to do something beyond the actus reus of the crime one is charged with; e.g., breaking and entering with intent to burglarize
- **strict liability** -- crimes requiring no mens rea; liability without fault; corporate crime, environmental crime
- **transferred intent** -- the intent to harm one victim but instead harm another

#### THE PRINCIPLE OF CONCURRENCE

- **attendant circumstances** -- some crimes have additional elements that must accompany the criminal act and the criminal mind; e.g., rape, but not with your wife
- **enterprise liability** -- in corporate law, this is the idea that both the act and the agency (mens rea) for it can be imputed to the corporation; e.g., product safety
- **year-and-a-day rule** -- common law rule that the final result of an act must occur no later than a year and a day after the criminal state of mind. For example, if you struck someone on the head with intent to kill, but they didn't die until a year and two days later, you could not be prosecuted for murder. Many states have abolished this rule or extended the time limit. In California, it's three years.
- **vicarious liability** -- sometimes, under some rules, the guilty party would not be the person who committed the act but the person who intended the act; e.g., supervisors of employees

#### THE PRINCIPLE OF CAUSATION

- **actual cause** -- a necessary but not sufficient condition to prove causation beyond a reasonable doubt; prosecutor must also prove proximate cause

- **but for or sine qua non causation** -- setting in motion a chain of events that sooner or later lead to the harmful result; but for the actor's conduct, the result would not have occurred
- **intervening cause** -- unforeseen events that still hold the defendant accountable
- **legal causation** -- a prosecutor's logic of both actual and proximate cause
- **proximate cause** -- the fairness of how far back the prosecutor goes in the chain of events to hold a particular defendant accountable; literally means the next or closest cause
- **superceding cause** -- unforeseen events that exculpate a defendant

### PRINCIPLES OF RESULTING HARM

These are issues involving the law of accessories and attempts (later lecture).

### RESPONSIBILITY FOR CRIME: PRESUMPTIONS

Presumptions are court-ordered assumptions that the jury must take as true unless rebutted by evidence. Their purpose is to simplify and expedite the trial process. The judge, for example at some point in testimony, may remind the jury that it is OK to assume that *all* people form *some* kind of intent before or during their behavior. It is wrong, however, for the judge to order the jury to *assume* intent or a specific kind of intent in a case. Presumptions are not a substitute for evidence. Presumptions are supposed to be friendly reminders about safe, scientific assumptions about human nature or human behavior in general. The most common presumptions are:

- reminders that the accused is considered innocent until proven guilty
- reminders that the accused is to be considered sane, normal, and competent

It is important to understand that presumptions are not inferences. Presumptions *must* be accepted as true by the jury. Inferences *may* be accepted as true by the jury, but the trick is to get the jury to believe they thought of it first. Lawyers are not allowed to engage in the practice of "stacking of inferences", or basing an inference solely upon another inference. Lawyers are also prohibited by logic from making certain "impermissible inferences" and here's an example of how the logic goes:

Evidence admitted:	Inferences that can be drawn:
Witnesses testify that X repeatedly hit Y on the head with a club until stopped by passerbys	Intent to kill or seriously injure; Purposely or Knowingly using club as deadly weapon.
Witnesses testify that X repeatedly hit Y on the head with a rolled-up newspaper	Intent to kill cannot be inferred; newspaper cannot be construed as a deadly weapon