

# DISCUSSION NOTES

CRW2601



UNISA



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# CRW2601

## GENERAL PRINCIPLES OF CRIMINAL LAW

### CHAPTERS: 1 - 14



- Theories of punishment



- The principle of legality

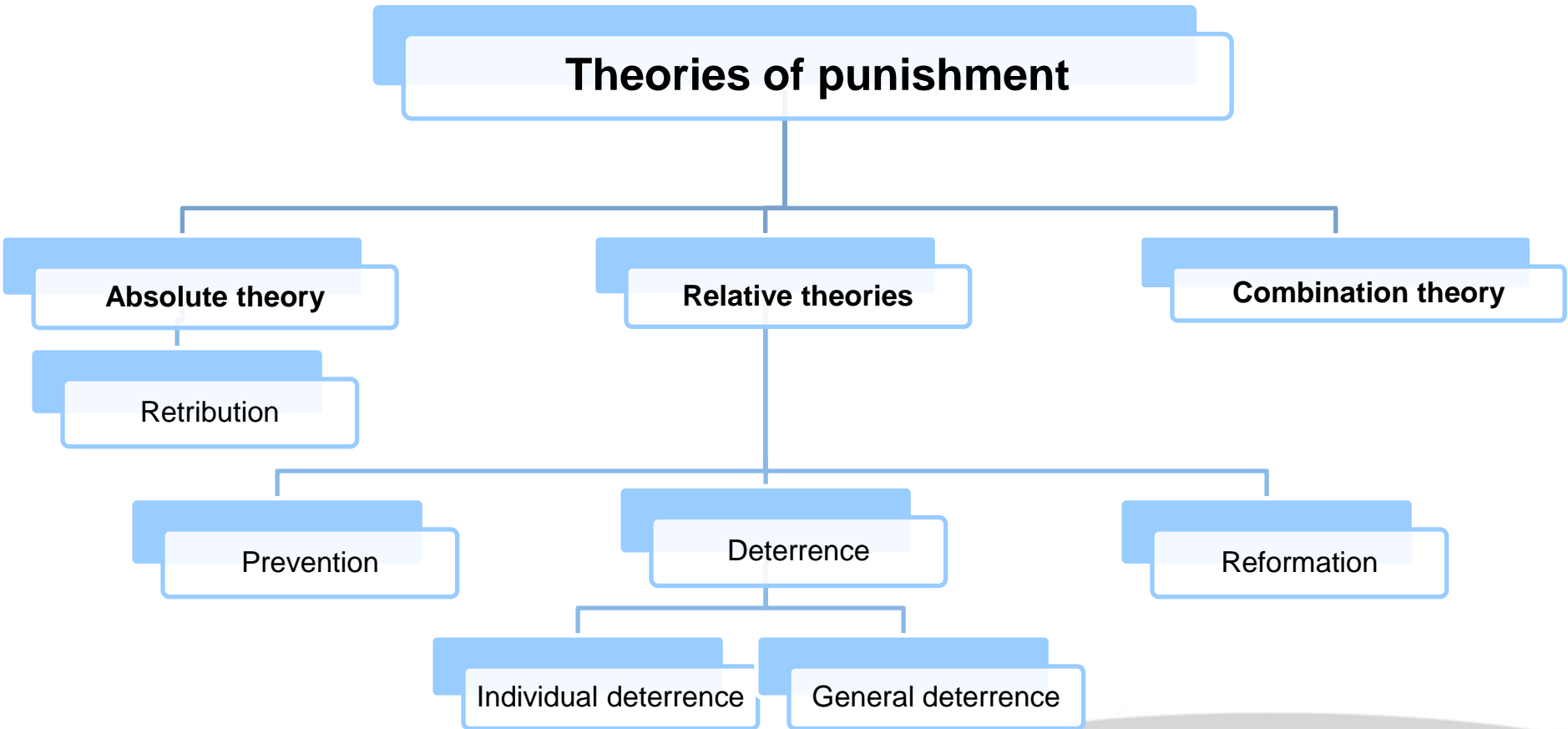


- Criminal liability

# STUDY UNIT 1

## INTRODUCTORY TOPICS

### SG: 1 - 19



# Retributive theory (Absolute theory)

- Punishment is an end in itself - “just desert”
- Retrospective
- Retribution does not mean vengeance
- **Equal proportion between degree of punishment and degree of harm**
- Punishment expresses society’s condemnation of the crime
- Not to punish crime is to condone it – can lead to taking law into their own hands
- Man has a free will – can be held responsible for voluntarily choices made

## **Preventive theory (Relative theory)**

- Punishment only a means to a secondary end or future purpose – preventing crime
- Can overlap with other relative theories
- Real possibility that offender will again commit a crime – look at previous convictions

## **Theory of deterrence (Relative theory)**

- Punishment a means to a secondary end / future purpose – deterring criminal/crime
- Individual – personal lesson – undermined by high % of repeat offenders
- General – deter society as a whole from committing crime
- Does not depend only upon severity of punishment – also include possibility that offender would be caught; convicted and serve out his sentence
- Criticism: (1) weighing? (2) proof? (3) punishment to harm done proportionate?

## Reformative theory (Relative theory)

- Punishment only a means to a secondary end – reforming criminal
- Rehabilitate person and personality of offender
- Criticism: (1) length of rehabilitation? (2) punishment to harm done proportionate? (3) only applicable to young persons (4) ideal, not reality (5) no commission of crime necessary (6) depersonalises offender – undermines culpability

## Combination theory

- Combination of above theories
- Retribution = indispensable - proportional relationship between harm and punishment
- Three sentencing factors (*Zinn*):
  - Crime – degree of harm or seriousness of violation (retributive theory)
  - Criminal – personal circumstances of criminal (reformative theory)
  - Interests of society – protection (preventive theory), deterrence (deterrence theory); retribution (retributive theory)

# Criminal liability

## Act / Conduct

- Act or omission
- Voluntary

## Compliance with the definitional elements of the crime

## Unlawfulness

- Contrary to law
- Seen against totality of the rules of law
- Grounds of justification

## Culpability

- Criminal capacity  
= the ability to appreciate wrongfulness of act + to act in accordance with such appreciation
- Intention / Negligence

- ***Sequence***

**ACT + Compliance with definitional elements + Unlawfulness + Culpability = Liability**

- ***Crimes and Delicts***

Crimes	Delicts
Public interests	Private interests
Public law	Private law
State prosecutes	Private party institutes action
Punishment by state	Damages to injured party
State prosecutes irrespective of individual's desires	Injured party chooses to claim damages or not
Criminal procedure	Civil procedure



# STUDY UNIT 2

## THE PRINCIPLE OF LEGALITY

### SG: 20 - 32

### *Definition and contents of principle*

- *Nullum crimen sine lege* - “no crime without a legal provision”

Section 35(3)(l) of Constitution:

An accused,

- (1) **may not be convicted** of a crime -
  - (a) unless the **type of conduct** with which he is charged has been **recognised by the law as a crime**
  - (b) in **clear terms**
  - (c) **before** the conduct took place
  - (d) without it being **necessary to interpret the words** in def. **broadly**; and
- (2) if **convicted**, not be **sentenced** unless the **sentence also complies** with the four requirements in 1(a) – (d)

# Rules

- (1) Court may not create a crime –  
*ius acceptum*
- (2) Court may only find accused guilty of a crime if act was recognised as a crime at the time of commission –  
*ius praevium*
- (3) Crimes must not be formulated vaguely –  
*ius certum*
- (4) Court must interpret definition of crime narrowly rather than broadly –  
*ius strictum*
- (5) Above rules must also apply to sentencing –  
*Nulla poena sine lege*

# *Ius Acceptum*

- **Common law crimes**

No provision in common law – no crime - a court has no legislative powers

- **Statutory crimes**

Parliament creates a crime – Act must declare (1) which type of conduct is a crime, and (2) what the punishment is.

Distinguish between a

1. **Legal norm** – Provision in Act creating a legal rule which does not create a crime
2. **Criminal norm** – Provision in Act making clear that certain conduct constitutes a crime
3. **Criminal sanction** – Provision in Act stipulating what punishment a court must impose after conviction.

*S v Francis case*

# *Ius Praevium*

- Creation of a crime with retrospective effect not legal
- Section 35(3) of Constitution

# *Ius Certum*

- Crimes must be formulated clearly, not vaguely

# *Ius Strictum*

- Provisions creating crimes must be interpreted strictly
- Where doubt exists concerning interpretation – accused must be given benefit of the doubt
- Court is not authorised to extend crime's field of application
- Court may extend field of application in exceptional circumstances; to promote the values enshrined in the Constitution (*Masiya*)
  - Extension of definition of rape

## • ***Principle of legality in punishment***

- *Nulla poena sine lege* - No penalty without a statutory provision or legal rules
- *Ius Acceptum* – Court can only impose punishment prescribed by statutory or common law
- *Ius Praevium* – If punishment is increased, may not be imposed to detriment of accused
- *Ius Certum* – Punishment ought to be defined clearly
- *Ius Strictum* – An ambiguous punishment must be interpreted strictly

## Summary of the effect of the rules embodied in the principle of legality

<b>Principle</b>	<b>Effect on definition of the crime</b>	<b>Effect on punishment</b>
<i>Ius Acceptum</i>	<ul style="list-style-type: none"> <li>• Conduct should be recognised by law as crime</li> <li>• Courts may not create crimes</li> <li>• S 35(3) (1) of Constitution</li> </ul>	<ul style="list-style-type: none"> <li>• Punishment must be recognised and prescribed by law</li> <li>• Courts may not create punishment</li> <li>• Inferred from S 35(3)</li> </ul>
<i>Ius Praevium</i>	<ul style="list-style-type: none"> <li>• Act must be recognised as crime at commission</li> <li>• S 35(3) (1) of Constitution</li> </ul>	<ul style="list-style-type: none"> <li>• Punishment, increased after commission, may not be imposed to detriment of accused</li> <li>• S 35(3) (n) of Constitution</li> </ul>
<i>Ius Certum</i>	<ul style="list-style-type: none"> <li>• Crimes must be defined clearly</li> <li>• Inferred from S 35(3) of Constitution</li> </ul>	<ul style="list-style-type: none"> <li>• Punishment must be clear</li> <li>• Inferred from S 35(3) of Constitution</li> </ul>
<i>Ius Strictum</i>	<ul style="list-style-type: none"> <li>• Court should interpret definitions strictly</li> <li>• Inferred from S 35(3) of Constitution</li> </ul>	<ul style="list-style-type: none"> <li>• Courts should interpret description of punishment strictly</li> <li>• Inferred from S 35(3) of Constitution</li> </ul>

# STUDY UNIT 3

## THE ACT

### SG: 33 - 48

## THE ACT

### A. Description

- a. “Conduct”, “act” and “omission”
- b. Thoughts not punishable
- c. Voluntary human act or omission – if X is capable of subjecting his bodily movements to his will or intellect



## B. Factors which exclude the voluntariness of the act

- Absolute force (*vis absoluta*) vs. relative force (*vis compulsiva*):  
Absolute force – excludes X's ability to subject his bodily movements to his will or intellect.  
Relative force – ability is left intact (*Goliath* case)
- Natural forces
- Automatism – mechanical behaviour of an automaton

## Sane automatism

- Momentarily acted like an automaton
- Onus of proof that act was performed voluntary rests on the state
- Successful defence – X leaves court a free person
- *Dhlamini* case – Stabbed and killed another while having a nightmare
- *Henry* case – shoots wife and mother-in-law in rage – appeal fails, no reasonable possibility that accused in state of automatism

## Insane automatism

- Defence of mental illness (insanity)
- Onus of proof on X to prove his insanity
- Successful defence – X is committed to psychiatric hospital, loses freedom

## Antecedent liability

- X knows of risk, but still proceeds to act
- *Victor* - Knows effects of epileptic attacks, but still drives
- Performed voluntary conduct, even though risk of involuntary act, e.g. diabetes, epilepsy, low blood pressure, etc.
- Liable for crimes requiring culpability in the form of negligence

# OMISSIONS

## Description

- An omission is punishable only if there is a legal duty to act positively
- The **legal convictions of the community** require X to act positively  
(*Minister van Polisie v Ewels*)

## Legal duty: specific instances

- Statute
- Common law
- Agreement
- Responsibility for control of dangerous or potentially dangerous object
- Protective relationship
- Previous positive act
- Office
- Order of court

Legal duty	Example
Statute	Income tax – must submit tax forms
Common law	Treason – must report to police
Agreement	Railway crossing – <i>Pitwood</i>
Control of dangerous object	Baboon – <i>Fernandez</i>
Protective relationship	Parent or guardian – <i>B</i>
Previous positive act	Fire in veldt – go without extinguishing it
Office	Police – <i>Ewels</i>
Order of court	Omits to pay maintenance

**Does the State have a duty to protect citizens from violent crime?**

## The defence of impossibility

Omission must be voluntary - if it is possible to perform positive act

Requirements for defence of impossibility:

1. Legal provision which is infringed must require a positive duty (not mere prohibition)
2. Must be objectively impossible to comply with the legal provision – no person in that position must be able to comply. Inconvenience no impossibility (*Leeuw* case – drives without licence, could not do test in particular area)
3. Must not self be responsible for the situation of impossibility

# STUDY UNIT 4

## THE DEFINITIONAL ELEMENTS AND CAUSATION

### SG: 49 - 64

#### 1 *The definitional elements*

- Concise description of the requirements set by law for liability for a specific type of crime.
- Differentiates between different crimes re:
  - Kind of act prohibited
  - Circumstances
  - Characteristics of person
  - Nature of object
  - Particular place
  - Particular time
- “Definitional elements” vs “definition of a crime”

## 2 *Causation*

### – **Formally vs. materially defined crimes**

- Formally – Definitional elements **proscribe a certain conduct** irrespective of what the result of the conduct is; e.g. rape, perjury, possession of drugs
- Materially – Definitional elements **do not proscribe a certain conduct**, but any conduct which **causes** a specific condition; e.g. murder, culpable homicide, arson (Result or consequence crimes)

### – **The issue of causation**

- Materially defined crimes – Causal link between conduct and prohibited result
- NB with murder and culpable homicide
- “Cause of death”
  - Did act cause the death?
  - Did act precipitate (hasten) the death?

– **Principles**

– Basic principle

- First determine whether X's act was the factual cause of Y's death
- Then determine if act was also legal cause – policy considerations

– Factual causation (*Conditio sine qua non*)

- Condition without which the prohibited situation would not have materialised – (“*but for*”)
- If act cannot be thought away without the situation disappearing at the same time
- *Daniels* case – Two people shoot taxi driver – back & head



- Legal causation
  - Individualisation theory
  - Look for the most operative factual cause as the legal cause of prohibited situation
  - *Objection*: Two or more conditions are often operative in equal measure
  - Adequate causation theory
    - Act is a legal cause of a situation if:
      - according to human experience
      - in the normal course of events
      - the act has the tendency to bring about
      - that kind of situation
  - *Novus actus interveniens*
    - New intervening event – chain of causation broken
      - Unexpected, abnormal or unusual occurrence
      - Differs slightly from test of adequate causation

## Courts' approach to legal causation

- *Daniels & Mokgethi* cases
- Policy considerations – reasonable, fair and just
- May apply one or more theory, or none

## Court decisions

- *Grotjohn* – Assisted suicide – causal link between X's act and Y's death – Y's act thus not *novus actus interveniens*; but *condition sine quo non* (X planned or foresaw outcome)
- *Daniels* - X shoots Y in back – Y would die in 30 min. Latecomer Z shoots Y in head  
Majority – both acts cause of Y's death  
Minority – head shot – *novus actus interveniens*
- *Mokgethi* – Bank teller wounded in robbery – paraplegic, but do not follow doctor's orders – dies from septicaemia after 6 months. Wounding – *condition sine quo non*, but not legal cause. Policy considerations – X's act too remote from result

- *Tembani* – Accused shoots person twice. Admitted to hospital. Medical personnel negligent. Dies from wounds.

Can negligent medical care be regarded as a new, intervening cause that exempts the original assailant from liability?

The deliberate infliction of an intrinsically dangerous wound to Y from which Y was likely to die without medical intervention must generally lead to liability. Irrelevant whether wound was treatable or whether treatment was negligent or sub-standard.

**Only exception** – if Y had recovered to such an extent that the original injury no longer posed a danger to her life.

Approach justified because of two policy considerations:

1. A deliberate fatal wound conscious of death that might ensue – intervening persons do not diminish moral culpability of perpetrator
2. Legal liability cannot be imputed on supposition that efficient and reliable medical attention would be accessible, especially in our country

# STUDY UNIT 5

## UNLAWFULNESS SG: 65 - 77

Act



Definitional elements



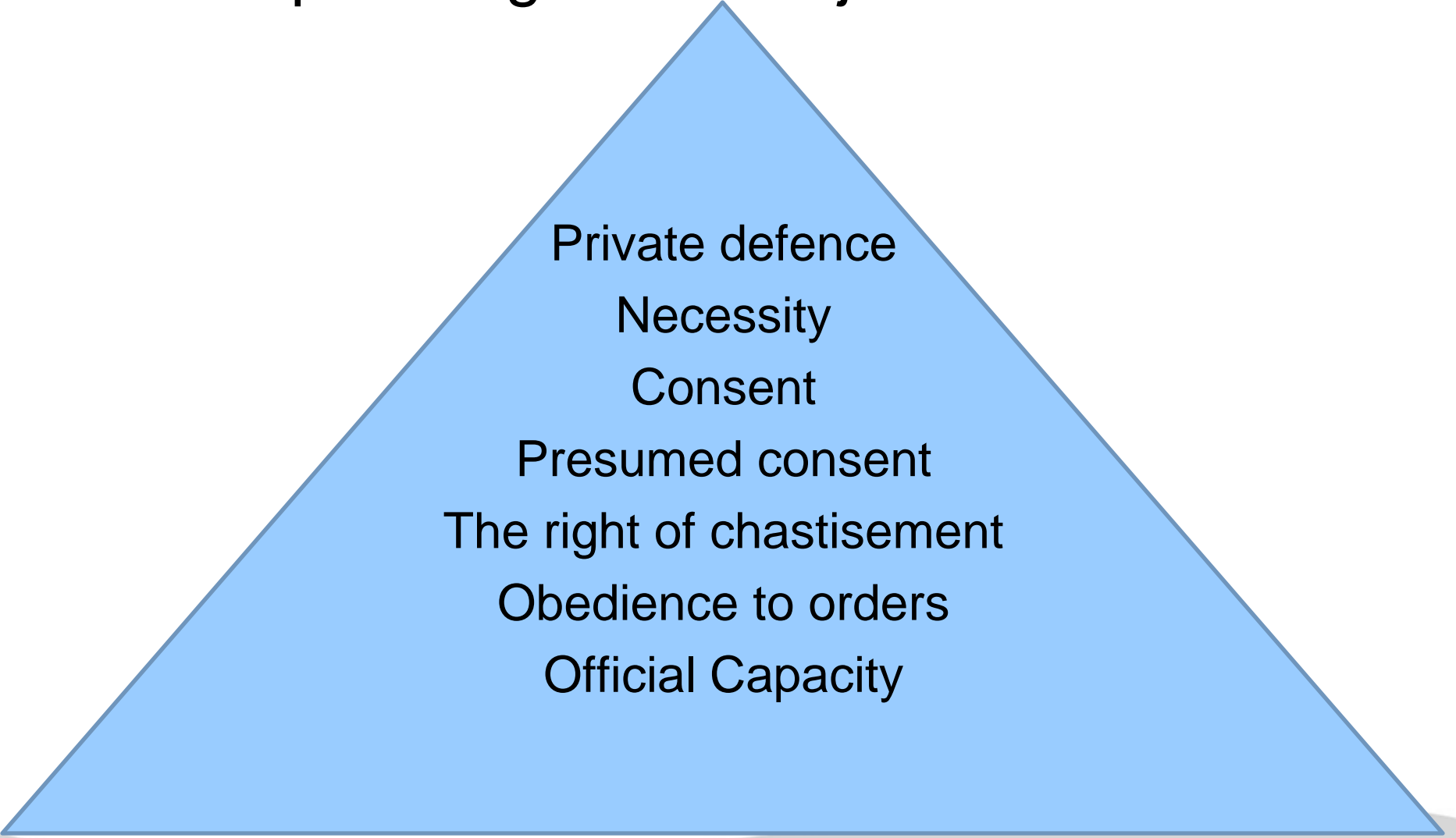
**Unlawfulness**



Culpability

- Unlawfulness (‘without justification’):
- **Conduct is unlawful if it conflicts with the *boni mores* (good morals) or legal convictions of society.**
- An act which complies with the definitional elements is provisionally (*prima facie*) unlawful.
- One must look at the grounds of justification (defence) as this may then exclude unlawfulness. If the defence fails then the conduct will be unlawful.

- Examples of grounds of justification:



Private defence  
Necessity  
Consent  
Presumed consent  
The right of chastisement  
Obedience to orders  
Official Capacity



# 1. PRIVATE DEFENCE:

- Test for PD = OBJECTIVE
- What about putative private defence? Not lawful but may escape liability as lack of culpability.

# Requirements for the attack

## 1. Must be unlawful

- need not be accompanied by culpability (can do PD against mentally ill; children; mistake)
- Not PD if against animals = necessity

- Attack need not be directed at the defender; may protect 3<sup>rd</sup> person.
- Attack need not only be positive act; can also be omission.

## 2. Directed against interests which should be protected

- *S v Van Wyk* - kill to protect property
- *Van Vuuren* – to protect dignity

## 3. Threatening but not yet complete

- *Mogohlwane* – although time elapsed, attack not yet completed.

# Requirements for the defence

1. Directed against the attacker

2. Must be necessary  
Snyman: Duty to flee:  
says no! (see p 109)

3. Reasonable relationship to the attack (*Patel* case)

- not be more harmful than necessary

- reasonable?

  - \*relative strength

  - \*sex; ages

  - \*means at disposal

  - \*nature of threat

  - \*value of interest

  - \*persistence of attack

4. The defender must be aware that he is acting in private defence

# Requirements for the defence

Reasonable relationship to the attack (cont.)

Need not be proportionality between:

1. Nature of interests threatened and impaired
2. The weapons or means used by the parties
3. The value or extent of the injuries between the parties

Example: Can you rely on PD if you shoot a burglar in your house in the middle of the night?

If objectively less harmful means, then no, BUT might be not guilty if lack intention (different requirement to unlawfulness). If negligent (reasonable person test applied) = culpable homicide

# STUDY UNIT 6

## UNLAWFULNESS II

### (SG: 78-94)

## NECESSITY

- Test for necessity: OBJECTIVE.
- What about putative necessity? Not lawful but may escape liability as lack of culpability.

Where a person acts in protection of her own or somebody else's life, physical integrity, property or other legally recognised interest which is endangered by a threat of harm which has already begun or is immediately threatening and which cannot be averted in any other way, provided that the person who relies on the necessity is not legally compelled to endure the danger, and the interest protected by the act of defence is not out of proportion to the interest threatened by such an act.

# ? What is the difference between necessity and private defence?

Necessity	Private defence
1. From any act	1. Human act
2. Directed at the interests of another third party or the violation of legal provisions	2. Directed at unlawful human attack

## Distinguish between absolute and relative compulsion:

- Absolute compulsion: no voluntary act

- Relative compulsion: is a voluntary act. Only this form qualifies as necessity

# REQUIREMENTS FOR NECESSITY

1. Legal interest threatened
2. May protect another
3. Emergency must have begun but not yet be terminated
4. May rely on necessity even if personally responsible for the emergency
5. Not legally compelled to endure the danger
6. Only way to avert danger
7. Conscious of the fact that emergency exists
8. Not cause more harm than necessary

? Can necessity serve as a defence to murder?

Yes: See *Goliath* case.



# CONSENT (Snyman pp 123 – 128)

## REQUIREMENTS FOR CONSENT:

1. Must be voluntary
2. By a person with certain minimum mental abilities
3. Based upon knowledge of the true and material facts  
[must not be an *error in negotio* (type of act) or *error in persona* (identity of person)]
4. Be either express or tacit
5. Be given before the commission of the act
6. Be given by the plaintiff himself

## ? What possible effects can consent have?

- In some crimes consent is not a defence but may form part of the definitional elements.
- Can you think of an example?
- In some crimes consent is never recognised as a defence.
- Can you think of an example?
- There are crimes where consent can operate as a ground of justification such as theft and malicious injury to property.
- There are crimes where consent can serve as a ground of justification and sometimes not, such as in the case of assault.

- To determine whether consent excludes unlawfulness, one should apply the *boni mores* of society (public policy) test / criterion.
- Can you think of examples where consent can justify an otherwise act of assault?
- What is presumed consent? See definition and info on 128 – 129!!!

# THE RIGHT OF CHASTISEMENT (Snyman pp 140 – 143)

- What is the general rule?

Parents have the right to punish their children with **moderate and reasonable** corporal punishment in order to maintain authority and in the interests of the child's education.

- Teachers may not use corporal punishment. S 10 of the SA Schools Act 84 of 1996 states it is a violation of constitutional rights.

# OBEDIENCE TO ORDERS (Snyman pp 138 – 140)

- No member of a security service may obey a manifestly illegal order.
- Usually applied to the military but not restricted to soldiers.

## Requirements:

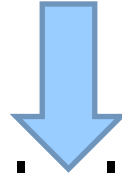
1. Order must emanate from a person in lawful authority over the accused.
2. The accused must have been under a duty to obey the order (Test: Was the order manifestly and palpably unlawful?)
3. The accused must have done no more harm than necessary to carry out the order.

# OFFICIAL CAPACITY (Snyman pp 129 – 130)

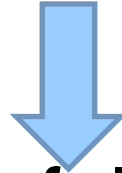
- An act which would otherwise be unlawful is justified if X by virtue of his holding a public office, is authorised to perform the act, provided the act is performed in the course of the exercise of his duties.
- Examples:
  - Security personnel doing searches
  - Police trying to arrest someone

**STUDY UNIT 7**  
**CULPABILITY AND**  
**CRIMINAL CAPACITY**  
**SG: 95 - 106**

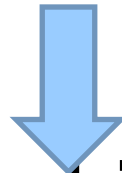
Act



Definitional elements



Unlawfulness



**Culpability**



# Culpability looks at:

The blameworthy state of mind of the person and whether there are grounds for which he can be blamed for his conduct

The particular person as an individual and his personal characteristics such as aptitudes, mental abilities and knowledge

- Culpability has 2 legs:

1. Criminal capacity  
+  
2. Intention/ negligence

- What is the principle of contemporaneity?
- Culpability + unlawful act = contemporaneous (occur at exactly the same time) – *Masilela* case.

# What is criminal capacity?

- Must have the ability to:
- Appreciate the wrongfulness of his act or omission (cognitive) and
- Act in accordance with such an appreciation of the wrongfulness of his act/ omission (conative)

# What are the defences which exclude criminal capacity?

- Mental illness
- Youth (*Pietersen case*)
- Non-pathological criminal incapacity
  - need not prove any mental illness
  - linked rather to an emotional collapse e.g. shock, fear, stress, concussion
  - if raise this defence the state has onus to prove you did have criminal capacity

## Distinguish between the position before and after 2002 and *Eadie* case

- In *Eadie* says that there is no distinction between non-pathological criminal incapacity and sane automatism
- What are the 3 interpretations of Eadie?  
See SG 104-105!!!
- **Summary:**
- *Eadie* cases of provocation and emotional stress = sane automatism
- Other cases such as intoxication or other factors = non-pathological criminal incapacity

**STUDY UNIT 8**  
**CRIMINAL CAPACITY: MENTAL ILLNESS**  
**AND YOUTH**  
**SG: 107 - 116**

- Mental illness (defence previously known as insanity)
- 2 legged test in terms of section 78(1) CPA:

1. Pathological ('sick / diseased' test):

- **A person who commits an act or makes an omission which constitutes an offence and who at the time of such commission or omission suffers from a mental illness or mental defect:**

*Note -*

- Expert evidence must prove it
- Permanent or temporary nature
- Mental or organic origin
- Intoxication not mental illness but exception: *delirium tremens*
- Mental defect is different - low intellect, permanent, evident early on

## 2. Psychological test:

**Which:**

- **makes him or her incapable:**
  - (a) of appreciating the wrongfulness of his or her act or omission (cognitive); or**
  - (b) of acting in accordance with an appreciation of the wrongfulness of his or her omission (conative)**
- **Shall not be criminally responsible for such act or omission.**



- Onus of proof: S78(1A) of the Criminal Procedure Act 51 of 1977: every person is presumed not to suffer from a mental illness or mental defect until the contrary is proved on a balance of probabilities.
- Verdict: if a defence of mental illness is successful, the court must find X not guilty and then apply one of the following orders:

1. Admit and detain in an institution
2. Release based on conditions
3. Unconditional release
4. Detainment in a psychiatric hospital

- Go and have a look at what is:
- Diminished responsibility?
- Mental abnormality at the time of the trial?
- The impact of youth on criminal capacity?

**STUDY UNIT 9**  
**INTENTION**  
**SG: 117 -126**

What are the 3 forms of intention?

1. *Dolus directus* (causing result = aim)
2. *Dolus indirectus* (result = not main aim but in doing main aim, it will cause the result)
3. *Dolus eventualis* (result = not main aim but foresees that conduct will cause the result and reconciles)

!See definitions: 119 -120!

What are the 2 elements of intention?

1. Knowledge (awareness/ foresight)
2. Will (direct will towards a certain result)

- Test for intention = subjective i.e. did X foresee the result as fact?
- Proof of intention can be direct or indirect
- Knowledge as an element of intention must cover all the requirements of the crime

**STUDY UNIT 10**  
**INTENTION**  
**SG: 127 - 143**

# MISTAKE

- Mistake can relate to the act, the circumstances of the definitional elements and the unlawfulness of the conduct
  - Effect:
    1. Mistake nullifies intention
    2. Mistake need not be reasonable because test is subjective
    3. Mistake must be material:
      - what happens if it is an *error in objecto*?
- See SG 129 - 130

## 4. Mistake relating to the chain of causation:

- may exclude intention if actual causal chain of events differed materially/ substantially from that foreseen by X (*Goosen, Lungile*)
- Does *aberratio ictus* constitute a mistake? No! e.g. aims at Y and hit Z with a bullet.
- Know the transferred culpability and concrete figure approaches.
- Latter approach preferred (*dolus eventualis*)
- *Mtshiza* case



- 5. Mistake relating to unlawfulness

- 2 subdivisions of knowledge relating to unlawfulness:

1. Must know conduct not covered by ground of justification

2. Know that conduct is punishable as crime

- What happens if it relates to a ground of justification?

See examples SG 139 e.g. shoot randomly if think burglars in yard and someone is killed that not a burglar (*De Oliviera*)

- What happens if it is a mistake of law?

- Prior to 1977 – no defence

- De Blom Case*

- Criticism – must be unavoidable mistake or reasonable

- Currently: Ignorance of the law excludes intention = complete defence

**STUDY UNIT 11**  
**NEGLIGENCE**  
**SG: 144 - 156**

# Negligence

Culpability  
=  
Criminal capacity  
+  
Intention OR NEGLIGENCE

- Test for negligence: usually objective (exceptions in SG 151)

### Definition:

A person's conduct is negligent if:

1. A reasonable person in the same circumstances would have foreseen the possibility
  - (a) that the particular circumstances might exist or
  - (b) that his conduct might bring about the particular result
2. A reasonable person would have taken steps to guard against such a possibility; and
3. The conduct of the person whose negligence has to be determined differed from the conduct expected of the reasonable person

# What is a reasonable person?

- Fictitious person
- *Bonus Paterfamilias*
- Ordinary/ normal/ average person
- Objective
- Need not be perfect/ robot – reactions are subject to limitations of human nature

# Reasonable foreseeability

- Assessed from perspective of a reasonable person
- Foreseeability relates to a possibility and not a probability (likelihood)
- Test of the reasonable person in the same circumstances applied
- Negligence must relate to the act/definitional elements and unlawfulness

- Can negligence and intention overlap? See *Ngubane* and SG 11.7
- What is the difference between conscious and unconscious negligence? SG 11.8
- What happens if one exceeds the bounds of private defence?
  - could be found guilty of assault/ murder/ culpable homicide depending on the act
  - *Ntuli* – old woman killed with 2 blows to the head

### Principles:

1. If victim dies = murder/ culpable homicide/ or not guilty if no culpability (see detail 11.9.3)
2. Ordinary principles of intention/ negligence applied

**STUDY UNIT 12**  
**THE EFFECT OF**  
**INTOXICATION ON**  
**LIABILITY**  
**SG: 158 - 171**



# Intoxication

## Involuntary

- *Actio libera in causa*  
– drink for courage

## Voluntary

- Intoxication leading to mental illness -  
*delirium tremens*

- **Remaining instances of voluntary intoxication**

# Defence of voluntary intoxication

- Prior to 1981:
  - was never a complete defence
  - lenient / unyielding approach
  - specific intent theory applied e.g. if commit murder could be found guilty of lesser charge of culpable homicide.
- After 1981:
  - Position changed because of *Chretien* case

# *Chretien case*

1. If muscular movements involuntary – no act (not guilty)
2. If lack criminal capacity – not criminally liable
3. Specific intent theory rejected
4. Intoxication not lightly inferred

# 3 effects of Chretien

1. It can mean the voluntary requirement of an act is not complied with
2. It can exclude criminal capacity
3. It can exclude intention

Result: intoxication could result in a complete defence!

# Section 1 of Act 1 of 1988 (after *Chretien* due to criticism)

- Aimed at a lack of criminal capacity
- Effect: if intoxicated = might be not guilty of a crime but could then be found guilty under this section.
- See detail under 12.5.3. – 12.7!
- 7 elements of statutory crime NB!

# Summary of Intoxication

1. If so intoxicated that incapable of committing a voluntary act	1. Not guilty of the crime charged ( <i>Chretien</i> ) BUT guilty i.t.o. section 1 of Act 1 of 1988
2. If so intoxicated that lack criminal capacity	2. As above
3. If so intoxicated that lack intention	3. Not guilty of the crime charged NOR section 1 BUT can be found guilty on an alternate charge e.g. culpable homicide to murder
4. If charged with negligence	4. Intoxication does not exclude negligence
5. If complies with all the requirements including intention	5. Guilty of the crime but can effect punishment

**STUDY UNIT 13  
THE EFFECT OF  
PROVOCATION  
ON LIABILITY**

**SG: 172 - 173**

**Study summary on p 172!**

**STUDY UNIT 14  
DISREGARDING  
CULPABILITY AND  
LIABILITY OF CORPORATE  
BODIES  
SG: 174 – 183**



# Strict liability

- In some statutory crimes culpability is not required e.g. Sea Fisheries Act
- To know whether culpability is required look at:
  1. Language and context of provision
  2. Object and scope
  3. Nature and extent of punishment
  4. Ease which provision can be evaded if culpability is required
  5. The reasonableness in not holding culpability as a requirement

Is strict liability unconstitutional?

What about the right to a fair trial and the right to be presumed innocent?

# Vicarious liability

- The *versari* doctrine has been rejected

Definition of this doctrine:

If a person engages in unlawful (or merely immoral) conduct, she is criminally liable for all the consequences flowing from such conduct, irrespective of whether there was in fact any culpability on her part in respect of such consequences

# Corporate criminal liability

- An example of a corporate body is a company which can have rights and duties
- S332 (1) of the Criminal Procedure Act provides that an act by a director (servant) of a company will be deemed to be the act of the company itself if the act was performed by the director exercising his powers or while furthering the interests of the company

**THANK YOU FOR YOUR ATTENDING THIS  
CLASS.**

**GOOD LUCK WITH YOUR EXAMS!**