

CRIME / CRIMINAL LIABILITY

① Act / conduct — human act / omission
 — Voluntary (excl. absolute force, natural forces, automatism)
 — re. Omissions — only valid if legal duty to act (connections of community)
 — only voluntary if possible

② Core elements — law: where does X commit a crime. X is def element — formally defined crimes — conduct (possession) — materially defined crimes — cause (murder). Is there a causal link?

③ Causations — causal link — ^{extensive} factual causation + legal causation
 — which not condition sine qua non
 — ground of duplication
 — legal convictions of search
 — no reference to X's state of mind
 general

④ Unlawfulness — ^{extensive} objective
 — origin, object
 — goal, intent
 — Similar but: — Compulsion / coercion — absolute coercion (vis major) — directed at intensifying impact 3rd or violation of legal good
 — objective test, but miratation — relative coercion — grab hand (no act: no need for necessity of G.O.J)
 — legal interest threatened / protect self or another emergency begun, not finished, may be responsible for emergency
 — not legally compelled to endure, only way to avert danger, aware that emergency exists to harm more than self
 — consent — sometimes not G.O.J, but part of def elements (rape). Sometimes not a defence (murder), sometimes is, sometimes maybe presumed consent
 — right of chastisement: Parents & moderate & reasonable. No longer teachers.
 — obedience to orders: 2 opposing approaches. Middle ground preferred: may not obey a manifestly illegal order
 — official capacity: authorised by public office if in course of duties.
 — triviality

⑤ Reflex / muscular movements, fits, diabetes (can lose a limb the risk but continue enjoying (antecedent fact) negligence)

Scar poop
 — Statute
 — Common law
 — agreement
 — protecting dangerous obj.
 — protective relationship
 — prev. positive act
 — office
 — court order

Individualisation theories (must generate factor)
 adequate causation theory (ordinary person generalisation) ← similar
 various acts interventions (the new event, the there is causation)

— is interests that should be protected
 — threatening but not complete
 — necessary
 — reasonable to attack
 — must be aware
 — unlawful human act or chance circumst (vis major)
 — directed at intensifying impact 3rd or violation of legal good
 — absolute coercion — absolute coercion (vis major)
 — miratation — relative coercion — grab hand (no act: no need for necessity of G.O.J)
 — legal interest threatened / protect self or another emergency begun, not finished, may be responsible for emergency
 — not legally compelled to endure, only way to avert danger, aware that emergency exists to harm more than self
 — consent — sometimes not G.O.J, but part of def elements (rape). Sometimes not a defence (murder), sometimes is, sometimes maybe presumed consent
 — right of chastisement: Parents & moderate & reasonable. No longer teachers.
 — obedience to orders: 2 opposing approaches. Middle ground preferred: may not obey a manifestly illegal order
 — official capacity: authorised by public office if in course of duties.
 — triviality

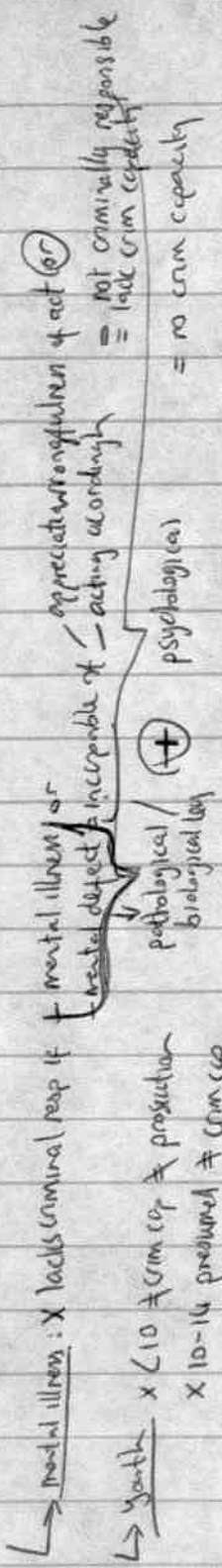
mens rea
 liability
 extensive

④ Culpability - Can X be blamed? Was act committed @ blame-worthy state of mind. Act after involuntary, "mens rea", "fault"

- Excluded by lack of criminal capacity, or other ground excluding culpability like mistake.
- = needs criminal capacity + intentional negligence
- mental ability
- 2 forms of culpability
- Culpability & act at same time
- CRIMINAL CAPACITY: if - mental ability to appreciate wrongfulness & act in accordance with such appreciation of wrongfulness

Excluded by - insanity, youth, non-pathological criminal incapacity

↳ NPCI - general defence, all not insanity youth. (ambrose)



INTENTION - cognitive: X's knowledge/awareness of - existence of def elements

to know & will on act result

- cognitive element: X directing his will

- direct intention (dolus directus): causing of forbidden result is aim (minds)

- indirect intention (dolus indirectus): forbidden result \neq main goal, but realising it will necessarily cause it, but forbidden result may occur

- dolus eventualis: forbidden result not main aim, but subjectively foresees the possibility that forbidden result may occur

- subjective test, direct (admission) or indirect (limit infer)

- intention @ circumst of def elements: X must know circumstances (know he's carrying drug/thing belongs to another)

- intention re involuntary: even foreseeing possibility that act is unlawful & reckless

MISTAKE - no intention if not aware of act, all circumst set out in def elements & involuntary = mistake

sub test - nullifies intention. Need not be reasonable, a question of fact. Mistake must be material. Non-material mistake doesn't relate to

- q. erroratio idis: going astray of blow \neq mistake. Aim at X, kill Z - transferred culpability approach: intention transferred to other person - involuntary

- re involuntary: X knows not covered by goal of intention (putative priv defence)

subjective test

act

act

act

act

act

act

act

act

act

act

knowledge & will

- cognitive: X's knowledge/awareness of - existence of def elements

- Unlawfulness

- subjective test, direct (admission) or indirect (limit infer)

- intention @ circumst of def elements: X must know circumstances (know he's carrying drug/thing belongs to another)

- intention re involuntary: even foreseeing possibility that act is unlawful & reckless

MISTAKE - no intention if not aware of act, all circumst set out in def elements & involuntary = mistake

sub test - nullifies intention. Need not be reasonable, a question of fact. Mistake must be material. Non-material mistake doesn't relate to

- q. erroratio idis: going astray of blow \neq mistake. Aim at X, kill Z - transferred culpability approach: intention transferred to other person - involuntary

- re involuntary: X knows not covered by goal of intention (putative priv defence)

- Objective test (what a reasonable person would know/foresee)

- conduct neg if: reasonable person in same circumst would foresee possibility that circumst might exist

- Reasonable person: fiction, objective standard, butus patiens = objective, reasonable, armis

- Reasonable foreseeability = possibility in same circumst

9

involuntary — against will, without knowledge. = complete defense. Cont. prevent intox so cont. be blamed.
 voluntary — actio libera in causa: drink to get courage to commit crime = No defence - culpable while sober already
 remaining: voluntarily, no mental illness, no duress, no duress, ordinary rules re mental illness (no crim cap = institutionalise)
 - common law unyielding, 1981 Chretien = lowest, 1988 Act middle
 - impair about person's sober person crime

Chretien case: Intox may exclude voluntary act (Rox), Criminal Cap (not readily, without experts) or intention (or mitigation)
 Intox = complete defence

CANADA Act 1988-5

- = diff degrees of intoxication
- 1) excludes intention, leaves voluntary act & criminal capacity
 - 2) excludes crim capacity. Leaves voluntary act
 - 3) excludes voluntary act

crim capacity = 2 above

- If someone is drunk, cont appreciate wrongfulness while knowing that effect & not crim liable because of it shall be guilty of an offence & penalty same as act's. & deals with 2. 3 - no crim capacity as no voluntary.

- Chretien: Intox excludes intention (1). Chretien acted voluntarily & had crim cap but no intention ≠ contravenes s(1)

- 1) no stat offence, no precedent offence. s(1) = 1) not punishes, intoxic is still a defence as in Chretien for any crime needing intention

- Elements of Crime + contrav s(1) Act 1 of 1988 - consumption: consumption, any subst, impairs perceptual excl crim cap, know the effect

Circumstances: acted prohibited under penalty while lacking crim cap, is not crim liable

- only crime prosecutor must prove lack of crim cap

- Intox & culp homicide X charged @ murder. ito Chretien can be acquitted if of intox, but may be guilty of culp form of cont crime that X had crim cap & also negligent (test for negl is objective = reasonable person)

- Intox on punishment: Intox can lead to a more lenient punishment. Not in intox is element of crime (B&F) (Keller case) can also lead to heavier punishment (eg drink even tho you know it makes you aggressive (Mollon))

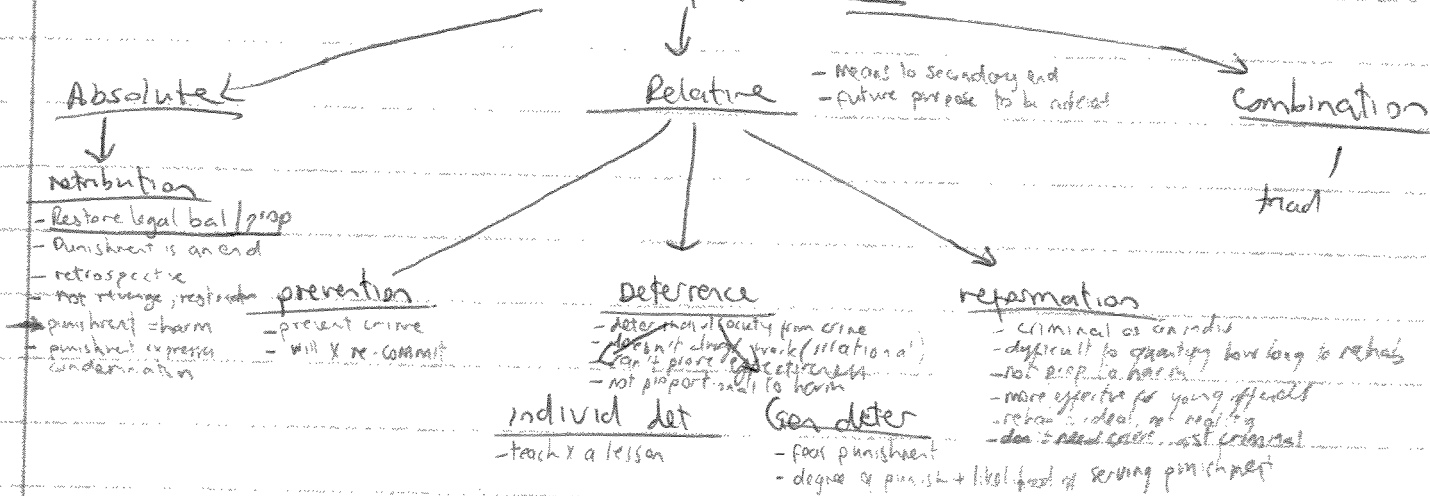
pg 69

Intoxication

- Excludes Vol act: Chretien: not guilty of crime, but guilty of crime of contrav s(1) of Act 1988
 - Excludes crim cap.
 - Excludes intention: Not guilty of crime, not contrav s(1) of Act 1988, prove crim cap + negligence = culp form
 - Excludes culp homicide X charged @ murder. ito Chretien can be acquitted if of intox, but may be guilty of culp form of cont crime that X had crim cap & also negligent (test for negl is objective = reasonable person)

④

Theories of punishment



DW courts = combination system

* Triad in Zim: Crime (degree of harm - retribution) + Criminal (personal circum - reformatory) + Int of Society (protect - deter - gen d - individualize)

Criminal liability: legality: X's conduct must be legally recognized as a crime
- mt considered element as 99% of crimes are well known. Sometimes statutes must be studied th

Crime: Public interests, publ law, state prosecutes, result in punishment, inspect of priv indiv desig, crim proc

Delict: Private interests, priv law, priv party prosecutes, result in damages, injured party decides of civ proc

* Legality: can't be convicted of a crime / prosecuted unless sentence:
- unless conduct is recognized by law as a crime
- in clear terms - before conduct took place - without broad interpret
- indiv should know precisely what conduct is criminal. Sep of powers.

Legal = 5 rules:

- certa C ius acceptum: court can't create a crime, must already be an accepted crime com to statute
- accept A ius praevium: already a crime when act was performed (previous). inconst
- certum P ius certum: crimes must be defined certainly
- poena P ius strictum: court must use strict narrow definition
- ame S nulla poena: same on above goes for sentence

Legal norm = no crime. Criminal norm = crime, criminal sanction = punishment of convicted
→ only, in Act, sanction @ court's discretion

CRW 2601 Cases

Non "read in" crime

Zinn: Triad in Zinn. Crime, criminal, interests of society when sentencing. ^{retributive reformatory preventative & gen deterrence} Furniture fraud. ^{Govt won't "read in" criminal aim to act if expect}

Francis: Statutory crimes

^{Court has no legislative powers}

Masiya: Legislature must reform law, not courts. Separation of power must be accepted. Does rape include anal?

^{anal}

Common law then said only vaginal. Govt may exceptionally extend application of crime to promote Constit value. Constit empowers court to develop common law. Legality shouldn't be development of common law, but only prospectively. CC said Masiya = indecent assault, all future anal = rape ∴ foreseeability is part of legality.

^{Donald}

Dlamini: Killed someone while dreaming = automatism (involuntary behaviour) = not convicted.

Trickett: If X relies on sane automatism (automaton), onus to prove voluntariness rests on state. ^{but depends on medical expert} (or accident "don't know why, illness, blackout"). Found negligent, not reckless.

Herry: a quo ⇒ guilty of murder pointing a gun, rejected defense of sane automatism as no evidence to show possibility.

Min van Polise v Swels: legal duty upon X to act positively if conviction of community require. ^{police must stop ask} Also if office requires.

Leun ~~possib~~ very movement or effort needed doesn't mean impossible

Daniels: Factual causation is determined by ^{condition sine qua non test}. Policy consideration decide if factual cause is legal. ^{2/3 ⇒ X liable. 2/3's shot not novus actus interveniens}

Mokgathi: Policy consider if factual cause is also legal cause. Must consider all threads of causation. ^{Policy consideration decide if factual cause is legal} X shot Y, Y paraplegic, bed-sores, didn't shut himself enough. Shot was condition sine qua non but not legal cause. ^{but not legal cause for medical negligence}

Jembani: X shot Y, medical negligence. ^{consciously embraced risk of death & not good medical care in st. Negl med treat ≠ novus actus interveniens. Convicted for murder} Inflict wound that would be fatal without treatment, but easy to treat. Govt said Yes, X is liable.

Fouze: Conduct is unlawful if ^{Contra bonas mores} magistrate late so speedy, not contra bonas mores because he was rushing to judge. ^{phys/sex integrity} must be proportionate. ^{Suggest ⇒ kill for body & property, not only property}

Van Wyk: Priv defense may protect property, may even kill (may be inconsistent tho?). ^{open no relationship} Basbop shopkeeper killed robber = private defense.

Patel: Priv defense may protect innocent 3rd. M attacked W, W came and punched M, may hit fist to avoid blow. ^{with axe} = priv defense, attack not completed, part of same act.

Magohlwane: Y stole from X. Threat. X ran to house, got ^{with axe} Y threatened @ axes again, X stabbed & killed Y to save property. ^{can demand more than reasonable. Necessity is a successful defense. Relative force = necessity here}

Goliath: Z tells X to kill Y, or Z killed, no escape, so kills. X found not guilty = ^{compulsion/coercion}. Not lightly decided.

Master: defense of obedience to orders. ^{women mentally ill, intoxicated, drunk, asleep, unconscious} (1) lawful authority (2) duty to obey (3) no more harm than necessary done while obliging. ^{not if order is manifestly unlawful}

Chretien: Drunk X crashed into people killed & injured, charged murder & att murder ∴ drunk, he thought they'd more = no intent. ^{murder ⇒ culp harm. No att murder on no intent, not guilty of att murder or comm assault.}

intox may exclude vol act (= no act) or crim cap or intention. = too lenient? Act 1 1988 passed ^{deal with B} not A.

Eddle: Hockey player road rage Y kills Y. X relies on non-pathological crim incap for murder, court rejects & convicts, Govt says no distinction between NPCI from emotional stress & provocation v sane automatism. ^{Govt ⇒ single course of conduct}

Masilela: X "killed" Y & burnt the house. Y actually died & the fire. = murder, not 2 separate acts = exception to contemporaneity. ^{Common intention to kill. Govt ⇒ doubt if of non-path crim incap still exists. NPCI}

Groen: Accused mistake re manner time of death may exclude mens rea. ^{No intention if markedly difficult} ^{subst diff in causal chain = material mist}

Nqubane, Mtshiza, Ntuli, De Blom, De Oliveira, Comgle.

★ CRIMINAL LAW CASES

⑥

Zinn. Furniture company fraudulent borrowing & stole. Zinn appealed sentence

cont convict when conduct @ time was not an offence & unconstitutional

Massey abduction - taking minor away from parental control to enable someone to marry / have sex with

M Shump - principle of legality conduct must be prohibited & penalised by common law / statute to be a crime

Courts can't create crime. Must be offence @ time of commission

intentional killing of 38th week fetus ≠ crime

Makgathi no theory of causation is set one. fair & just & public policy

Daniel causation has factual & legal aspect. Accused injures, victim fails to get / use medical assistance, victim's conduct ≠ novus actus interveniens

Intox may exclude voluntary act, or crim capacity, or intention

Christie unconscious thru involuntary intoxication. Voluntary intoxication is an offence, but created a new

§ 91B2

offence of committing an offence while intoxicated where accused would otherwise not be criminally liable

CAA to fix Christie tho escaping crim liability because intoxicated. murder → culp harm - no intention to kill
alt motive → not guilty in 1st inst. Appeal case.

Goosen Accused's mistake re manner / time & place of death may exclude mens rea. If accused conception of CDD is markedly different to intention

Masilela: thought they'd killed by strangling, then set fire. Fire actually kills = attempted murder? No!