



*Session 18*

*Criminal Law 1*

## Crimes

Wrongful acts that the State recognizes as deserving of control and punishment in the interests of society as a whole ... the State prosecutes the alleged perpetrators to ensure the safety of the public and to preserve the rule of law, which is the foundation of or democratic society'

ACTIVITY: use the above definition to say which of the following are crimes

HIV transmission

crime

tax avoidance

no - tax evasion is a crime

draft dodging

crime

music piracy

within private sphere no

## Purposes

- Retribution: the public denouncing and punishing of wrongful acts so as to reaffirm social values and deliver justice.
- Protection of society: deterring future wrongdoings so as to ensure security and prevent crime in addition to rehabilitating wrongdoers

## *Principles for justifying protection of society*

- Private harm: the prevention of harm to individuals
- Public harm: the prevention of harm to public institutions and practices
- Offence: the prevention of offence to others
- Legal paternalism: the prevention of harm to the self
- Legal moralism: the prevention of immorality

ACTIVITY: read *Velma Demerson's* case (2004: 238-239) to establish the extent to which the above principles hold.

they do hold so as the private harm does not include the state itself; but in this case there is a paradox: if the state is included who is to prevent and punish crime since it is the state that does this?

## Actors

ACTIVITY: read report by the National Council of Welfare (pp240-241) to establish a profile of the causes of crime.

there is no typical cause and the financial question seems to be irrelevant; it seems to be more a matter of care and attention at home, and living in a balanced family environment

ACTIVITY: read information on p245 to build a victimization risk profile.

male and female 50% chances of personal crime – theft, assault, robbery; if male more likely theft, robbery; if female more likely sexual assault; risks increase with work at night and urban dwelling.

## *Elements of the offence*

- The wrongful act, *actus reus*, is the act or omission.
- The willful mental element, *mens rea*, that accompanies the act.
- Subjective approach: concerned with the actual knowledge of the accused.
- Objective approach: concerned not with that which a reasonable person can foresee as intended.

ACTIVITY: class to be divided in 3 teams, to read case *R v. Cuerrier* (2004: 234-235) so as to establish the *actus reus* and *mens rea* of that offence on the basis of CC s.265(1)(a).

- *actus reus* is HIV transmission due to unprotected sexual intercourse;
- *mens rea* is intentional wrongdoing because the accused preferred not to inform his partners when he knew he was HIV positive (i.e. had the choice of doing otherwise but did not while knowing the risks of transmission)

# *Types of offence*

One distinguish between:

Criminal offences: sentences are aimed to deter inherently wrongful behavior

Example: murder, assault, robbery etc.

Regulatory offences: sentences are aimed to deter risky behavior

Example: speeding, absence of license, misleading advertising etc.



## *Liability in offence*

One can approach an *actus reus* in three ways:

absolute liability offence: culpability based on the charge of an *actus reus* without regard to the *mens rea*.

Example: company X is found guilty of discharging pollutants once it is established that it committed the *actus reus*.

full means rea offence: culpability based on both the charge of an *actus reus* and *mens rea*.

Example: company X is found guilty of discharging pollutants once it is established that it committed the wrongful act and did so recklessly.

## *Liability in offence (cont.)*

strict liability offence: culpability based on the charge of an *actus reus* and inability to prove the defense of due diligence.

Example: company X is found guilty of discharging pollutants because it has been proven that it committed the wrongful act but demonstrated that it was duly diligent as it made all reasonable efforts to avoid the discharging of pollutants.