

CHAPTER 3

EXPANDING THE CONCEPT OF CRIME

CHAPTER OUTLINE

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III. Additional Principles of Criminality

A. Causation

B. Resulting Harm

C. The Principle of Legality

D. *Ex post facto* and Bills of Attainder

E. Double Jeopardy

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G. Necessary Attendant Circumstances

LECTURE OUTLINE

I. Introduction

Explain to students that for criminal liability to exist, the elements of the offense must be proven, such as the criminal mental state and the criminal act. However, other considerations also come into play. Challenge students with hypotheticals to provide the basis for discussion on each of these principles of criminality.

II. *Corpus Delicti* – Means the body of the crime. The prosecution must establish that a crime (as defined by the legislative body with elements of the offense) has been committed. Moreover, the prosecution must establish that a person is criminally responsible for committing that act. Discuss how an unsubstantiated confession is insufficient to obtain a conviction and why. Also, how it is necessary to establish jurisdiction, the court's authority to hear and decide the

case as determined by the *corpus delicti*.

III. Additional Elements of a Crime

A. Causation – The link between the act and the resulting harm. Present students with scenarios where there is an evolving concept of causation. Factual cause is insufficient for criminal liability, which can be examined through the “but for” test. Instead, for there to be legal cause, the harm must be the proximate result of the act.

Proximate cause is present when the resulting harm is the direct and probable result of the criminal act. Discuss the concept of foreseeability in that the precise harm or injury need not have been anticipated by the actor, but only that which is reasonable in light of all the facts and circumstances surrounding a particular act.

Discuss the supervening and intervening acts, as well as the common law “year and a day” rule in murder cases. Explain how factual causality can be determined through the *sine qua non* test, which holds, in effect, “without this, that would not be.”

B. Resulting Harm – The harm must be readily identifiable, and is usually determined through an objective analysis of the completed crime. However, that harm does not have to manifest in ascertainable injury. Victimless crimes are often said to not cause anyone harm or injury. Remind students how the criminal law is created, through the elected legislative body that determines the rules necessary for an ordered society to protect its citizens. To that extent, the resulting harm is to society in general. Point out that criminal law violations are brought against the accused in the name of society against the defendant, e.g., State v. Defendant, People v. Defendant, etc.

C. The Principle of Legality – There can be no crime and no punishment without a law that proscribes the act committed.

D. Ex post facto and Bills of Attainder - An extension of the legality principle, the government cannot pass a law and criminalize conduct after it has occurred. A bill of attainder seeks to legislate and punish persons by a legislative act and without the benefit of a trial. Bills of attainder are prohibited to the federal and state governments by the U.S. Constitution. Both are addressed in Article I, Section 9 of the U.S. Constitution.

E. Double Jeopardy – Another Constitutional restraint on the criminal law process protecting a person from being tried twice, within the same jurisdiction, for the same offense. Distinguish between criminal and civil cases, since a civil

suit does not place one in jeopardy. Also, discuss the dual sovereign doctrine that allows criminal prosecution in the both state and federal courts, or by two or more states, provided each can establish jurisdiction.

F. Void for Vagueness – A criminal statute that requires extensive interpretation on what a law means may be void. Discuss the principle that in the criminal law, the statute is construed strictly against the government in its application, and liberally in favor of an accused.

G. Necessary Attendant Circumstances – Specified by the law as a necessary condition to the surrounding event (e.g., proving the operability of a firearm in an assault with a deadly weapon case). These may also increase the degree or level of offense (e.g., selling a controlled substance within a prescribed distance from a school), or may be used to increase or lessen the penalty (e.g., a kidnapping charge that may be reduced if the victim is released in a safe place unharmed).

STUDENT ACTIVITIES

1. *People v. Scott Peterson* – Have students research the Scott Peterson case from California and determine what evidence was used to obtain murder convictions. If the bodies of Laci Peterson and the fetus had not washed up from the bay, would the prosecution still have been able to charge Peterson? Would the court have let the case go to trial? Would the jury have been able to convict on the evidence without the proof of any dead body?

CASE STUDIES

1. Review the case of *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972). Have the student discuss how, in light of this decision holding that the city ordinance was void for vagueness, current laws seek to address the same type of issues presented in that case.

<http://supreme.justia.com/us/405/156/case.html>

REFERENCES AND RESOURCES

1. One hundred news stories on Scott Peterson, including transcripts of court proceedings as reported by CNN:

http://topics.cnn.com/topics/scott_peterson

