

# CRIMINAL LIABILITY

Building blocks:

- Offense definition (Capacity, mens rea, actus reus)
- Wrongfulness
- Blameworthiness

## Capacity:

The capacity to understand and be motivated by the norm. Ascription in criminal law refers to the process of attributing or assigning criminal responsibility to an individual for their actions or omissions. Legal criteria whose fulfillment is presupposed, unless there are grounds for their exclusion (e.g. insanity, age). Capacity establishes prerequisites for criminal responsibility as a recognition of human autonomy: the law only holds accountable those who could understand their actions and choose differently.

## What constitutes criminal capacity?:

- Capable of appreciating the nature of their conduct (cognitive requirement)
- Capable of controlling their acts/stimuli accordingly (control requirement)
- Capacity and theories of punishment.

## Insanity defense(s):

**R v M'Naghten:** "Every man is to be presumed to be sane, and ... that to establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong."

Established the classic standard for the insanity defense in common law criminal law.

## Common elements of insanity defenses:

- Cognitive incapacity → Unable to understand what they are doing
- Moral incapacity → Unable to understand that their action is wrong
- Volitional incapacity → They could not have controlled their actions
- Product of mental illness tests → A person's action was a product of mental disease or defect.

## Andrea Yates case (2001):

State: Texas "It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease, did not know that his conduct was wrong"

We see two elements:

- Moral incapacity
- Product of mental illness tests

Notable case: Mother who drowned her five children while suffering from severe postpartum psychosis.

### **The Kahler case (2020):**

State: Kansas Insanity defense: Mens rea approach

Case: James Kahler killed his ex-wife, his two daughters, and his mother-in-law in 2009.

Mens rea approach, Kan. Stat. 21-5209: "It shall be a defense to a prosecution under any statute that the defendant, as a result of mental disease or defect, lacked the culpable mental state required as an element of the crime charged. Mental disease or defect is not otherwise a defense."

You can use your mental illness as a defense ONLY to demonstrate that you did not have the "culpable mental state" (mens rea) necessary for the crime.

Example: If the crime requires "intent to kill," you can argue that your mental illness prevented you from forming that specific intent.

What is NOT allowed: You cannot use your mental illness as a defense in any other way. You cannot say: "Yes, I intended to do it, but due to my mental illness, I did not know it was wrong."

Kahler tried to use evidence of severe depression as a defense, but Kansas had eliminated the traditional insanity defense. Kansas only allows evidence of mental illness to prove that the defendant did not have the specific intent (mens rea) required for the crime. Kahler appealed to the Supreme Court arguing that abolishing the insanity defense violated the Constitution. The Supreme Court decided (5-4) that states can constitutionally limit mental illness defenses to the restrictive mens rea approach.

### **Germany:**

S.20 StGB (full excuse): "Any person who at the time of the commission of the offence is incapable of appreciating the unlawfulness of their actions or of acting in accordance with any such appreciation due to a pathological mental disorder, a profound consciousness disorder, debility or any other serious mental abnormality, shall be deemed to act without guilt."

### **Italy:**

Art. 85 C.P.: "No one may be punished for an act provided for by law as an offense, if, at the moment in which he committed it, he was not imputable. A person is imputable who has the capacity of understanding and the capacity of willing."

