



BA326

CRIMINAL LAW

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Presentation Outline

Criminal Law

- Defining Crime & Criminal Law

Purpose of Criminal Law

Sources of Criminal Law

- Liability Requirement

Objective Elements

Subjective Elements

Justification

- Excuses



DEFINING CRIME & CRIMINAL LAW

PURPOSE OF CRIMINAL LAW

THE GENERAL AND SPECIAL PARTS OF CRIMINAL LAW

CRIMINAL LAW AND HUMAN RIGHTS

PRINCIPALS OF CRIMINAL LAW

CRIMINAL LAW DISTINGUISHED FROM CIVIL LAW





Crime

A CRIME IS AN ACTION THAT IS PROHIBITED BY LAW AND IS PUNISHABLE BY THE STATE OR GOVERNMENT.



Criminal law

CRIMINAL LAW IS THE BRANCH OF LAW THAT DEALS WITH CRIMES AND THEIR PROSECUTION. IT DEFINES THE TYPES OF BEHAVIOR THAT ARE CONSIDERED CRIMINAL AND SETS OUT THE PROCEDURES FOR INVESTIGATING, PROSECUTING, AND PUNISHING THOSE WHO COMMIT CRIMES.



PURPOSE OF CRIMINAL LAW

- MAINTAINING SOCIAL ORDER
- PROTECTING INDIVIDUAL RIGHTS
- PROMOTING PUBLIC SAFETY
- REDUCING CRIME
- RESTORING JUSTICE

Absolute theories of punishment



Absolute theories of punishment are those that propose that punishment is justified in and of itself, regardless of any other consequences.

RETRIBUTIVE THEORY

This theory emphasizes the moral responsibility of the offender and argues that punishment is necessary to restore the moral balance that has been upset by the crime.

DENUNCIATION THEORY

This theory emphasizes the importance of maintaining social order and argues that punishment serves to reinforce the values and norms of society.

EXPRESSIVE THEORY

This theory emphasizes the symbolic value of punishment and argues that it serves to communicate the community's disapproval of the offender's behavior.

Relative theories of punishment



Relative theories of punishment are those that propose that punishment should be based on the consequences that it produces, rather than on any intrinsic value of punishment itself.

DETERRENCE THEORY

This theory emphasizes the importance of the threat of punishment in deterring potential offenders and argues that punishment should be severe enough to outweigh any potential benefits of criminal activity

REHABILITATION THEORY

his theory emphasizes the importance of addressing the underlying causes of criminal behavior, such as poverty, addiction, or mental illness, and argues that punishment should be designed to facilitate rehabilitation.

SOCIAL PROTECTION THEORY

This theory emphasizes the importance of removing dangerous individuals from society and argues that punishment should be based on the risk posed by the offender, rather than the severity of the offense.



WHAT CONDUCT SHOULD BE CRIMINAL?



- VIOLENT CRIMES SUCH AS MURDER, ASSAULT...
- PROPERTY CRIMES SUCH AS THEFT AND VANDALISM
- DRUG OFFENSES SUCH AS POSSESSION AND DISTRIBUTION OF CONTROLLED SUBSTANCES
- WHITE-COLLAR CRIMES SUCH AS FRAUD, AND INSIDER TRADING
- TRAFFIC OFFENSES SUCH AS DRIVING UNDER THE INFLUENCE OR RECKLESS DRIVING
- SEXUAL OFFENSES SUCH AS RAPE AND CHILD PORNOGRAPHY
- CYBERCRIMES SUCH AS HACKING AND CYBERSTALKING
- HATE CRIMES SUCH AS THOSE MOTIVATED BY RACE, RELIGION, GENDER...
- ENVIRONMENTAL CRIMES SUCH AS POLLUTION AND ILLEGAL DUMPING
- TERRORISM AND RELATED OFFENSES



THE HARM PRINCIPLE



- THE HARM PRINCIPLE IS A CENTRAL CONCEPT IN THE PHILOSOPHY OF LAW AND ETHICS THAT HOLDS THAT INDIVIDUAL FREEDOM SHOULD BE LIMITED ONLY TO PREVENT HARM TO OTHERS.
- THIS MEANS THAT INDIVIDUALS SHOULD BE FREE TO ENGAGE IN ANY BEHAVIOR THAT DOES NOT DIRECTLY HARM OTHERS OR INFRINGE ON THEIR RIGHTS. THE PRINCIPLE EMPHASIZES THE IMPORTANCE OF INDIVIDUAL AUTONOMY AND THE RIGHT TO MAKE ONE'S OWN CHOICES BUT ALSO RECOGNIZES THAT INDIVIDUAL FREEDOM MUST BE BALANCED AGAINST THE NEED TO PROTECT OTHERS FROM HARM.



THE GENERAL & SPECIAL PARTS OF CRIMINAL LAW

General Part

- fundamental regulations
- principles that apply to all crimes regulated in the special parts
- provide a foundation for prosecuting and defending specific crimes.

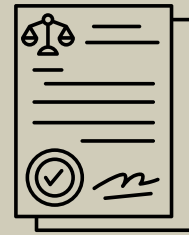
Special Part

- defines specific crimes based on principles in the general part.
- TPC (Turkish Penal Code) Article 1-76 contains general regulations for every specific crime.



Sources of Criminal Law

Legislature



- criminal prohibitions and sanctions should be based on written law.
- The main body of criminal law is contained in the Penal/Criminal Code.
- set out specific obligations and criteria and include one or more sections that outline the criminality of breaching these defined obligations.

Judiciary

- The role of the judiciary is to interpret criminal law, not create it
- If a court believes certain conduct should be treated as criminal but is not covered by a statute, they can only acquit the defendant and write an opinion alerting the legislature to the gap in the law.

Executive



- include administrative regulations, executive orders, and agency guidance documents.
- often used to provide more detailed guidance on how to implement and enforce existing statutes, as well as to address emerging issues and new developments in society.

Criminal Law and Human Rights – The Function of the ECHR



- severe breaches of human rights can result in criminal charges.
- The protection of human rights is also ensured by supranational conventions such as the European Convention on Human Rights (ECHR)
- It guarantees human rights for people in countries belonging to the Council of Europe. its duty is to monitor the respect for human rights within member states. Turkey is a party to the European Convention on Human Rights.



Principles of Criminal Law



**The Principle of
Personal Responsibility**



**The Principle of
Legality**



**The Presumption of
Innocence**

1

The Principle of Personal Responsibility

is a fundamental principle in criminal law that holds individuals accountable for their own actions. Under this principle, a person can only be held criminally responsible for their own conduct and cannot be punished for the acts of others.



2

The Principal of Legality- - Nulla Poena Sine Lege, Nullum Crimen Sine Lege

1. Nullum crimen sine lege:

There can be no crime without a law. This means that a person cannot be punished for an act that was not illegal at the time it was committed.

2. Nulla poena sine lege:

(the principle of certainty) A person cannot be punished for an act unless it was clearly defined as a crime by law before the act was committed.

3. Retroactivity:

Criminal laws cannot be applied retroactively. This means that a person cannot be punished for an act that was legal at the time it was committed, even if a new law is introduced that makes that act illegal.

4. Strict interpretation:

The statutory prohibition cannot be extended by analogy to conduct not covered by the ordinary meaning of the words used. This principle is enshrined in most state constitutions, Criminal Codes, and international treaties such as the ECHR. **The ECHR's Article 7** defines the principle as "**not holding anyone guilty of a criminal offense that was not a criminal offense under national or international law at the time of the act**"

2

- Criminal sanctions can only be imposed if the conduct was already a crime under the relevant law at the time it occurred.
- Judges can only apply criminal provisions that were applicable during the conduct.
- The non-retrospectively principle will not be applicable if changes in the penal code are in favor of the accused person.

3

The Presumption Of Innocence

The legal principle of "**innocent until proven guilty**" means that a person is not considered guilty until the prosecution proves their case beyond a reasonable doubt. The burden of proof is on the prosecution to prove the committed offense, and a person is considered innocent until proven guilty, as stated in Article 6/2 of the ECHR.



Criminal Law Distinguished from Civil Law

Civil law provides remedies for private wrongs that violate the legal rights of the injured party and are not necessarily crimes. These wrongs include breaches of contract or torts, such as wrongful death, personal injury, property damage, trespass, and defamation of character.

Example

When someone intentionally damages another person's property, they may face both criminal charges brought by the state and a civil lawsuit brought by the property owner seeking compensation. The state's aim is to punish the offender, while the property owner's goal is to recover damages. Additionally, social influence from family, friends, and communities can deter people from committing crimes, but criminal law is the official response to crime.



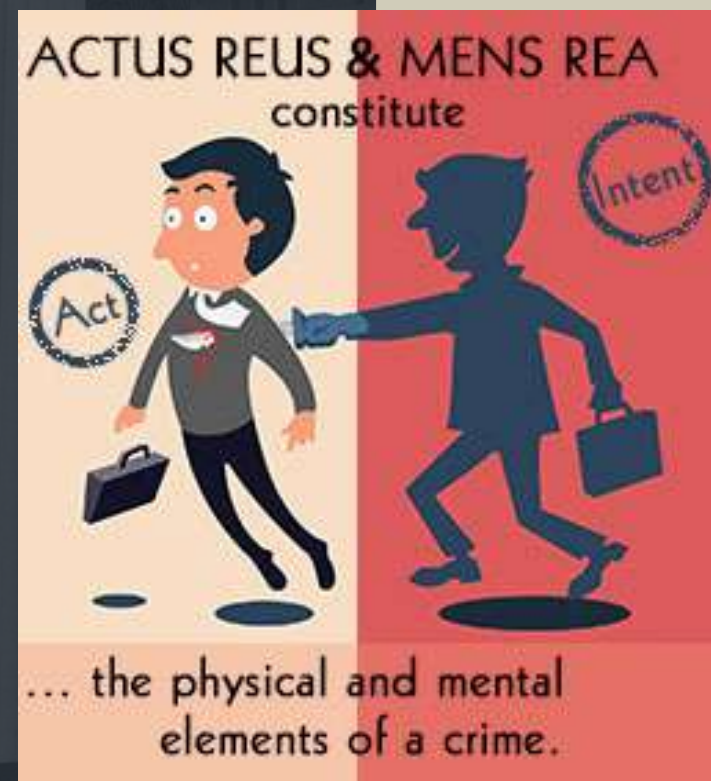
LIABILITY REQUIREMENTS

OBJECTIVE ELEMENT
SUBJECTIVE ELEMENT
CRIMINAL ATTEMPT
FORMS OF PARTICIPATION
CORPORATE LIABILITY
CAUSATION
JUSTIFICATIONS



Objective element (Actus Reus)

VOLUNTARY ACT
OMISSIONS



Subjective element (Mens Rea)

INTENTION
NEGLIGENCE

Voluntary Act



- The objective element called the physical or external element referring to either voluntary act or omission relates to the actions of the perpetrator and their consequences.
- A person is responsible for their action but not the effect beyond their control.
- The acts should be voluntary however you can still be liable for involuntary actions.

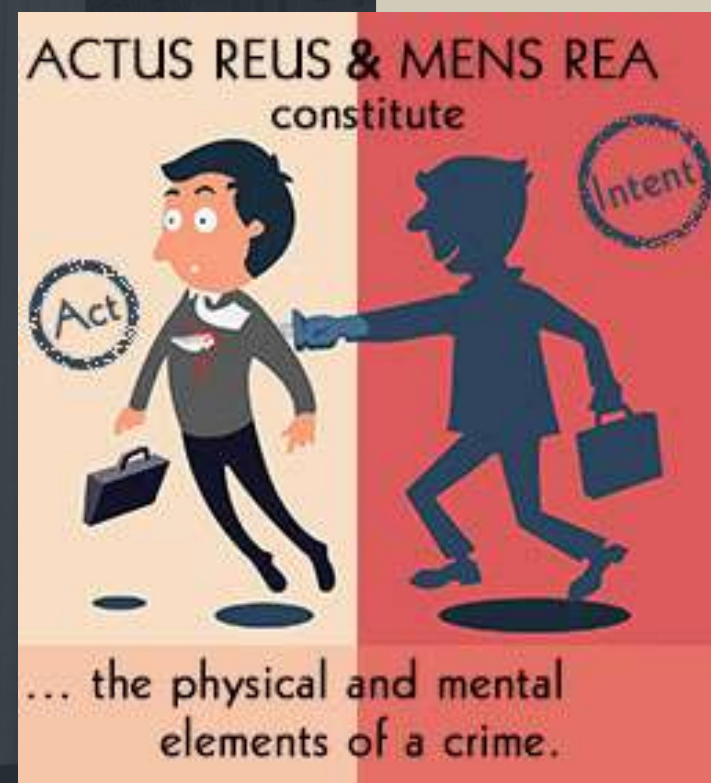
Omission



- Both civil and common law consists of several offensive definitions that do not require an act while giving rise to criminal liability which is referred to as acts of omission or failure to act.
- intervention should not result in self-harm and is limited to one's ability.
- gross negligence in failing to perform one's duties may attach criminal liability
- Failing to avert harm while having the ability to do it holds criminal liability.

Objective element (Actus Reus)

VOLUNTARY ACT
OMISSIONS



Subjective element (Mens Rea)

INTENTION
NEGLIGENCE



INTENTION

Direct intention

Intention does not care about whether the goal is obtained but what the offender is trying to achieve.

Indirect intention

This applies when the perpetrator foresees that a certain consequence of his action is not desired but acts anyways.

NEGLIGENCE

Negligence is the failure to foresee the result that is described in the legal definition of a crime, as a consequence of carelessness or lack of diligence.

Unconscious negligence

Conducting an act without foreseeing the results as stated in the legal definition of the offense, due to a failure to discharge a duty of care and attention.

Conscious negligence

When the offender is aware of the result however he or she thinks or hopes that the harm will not happen. The foreseeability of the offender is assessed in consideration of the subjective conditions of his/her individual capabilities.

CRIMINAL ATTEMPT



Culpability

A person is guilty of an attempt to commit a crime if they act with culpability. otherwise if they: purposely engage in conduct which constitutes the crime or, does or omit to cause a particular result is an element of the crime or causing substantial step in a course of a crime.

Unfinished attempt

A perpetrator who intends to commit a crime through the appropriate acts, but is not able to complete the act due to unavoidable reasons or circumstances beyond his/her control, shall be held liable for the attempt.

Punishment

In order to punish the attempt to commit an offense, the perpetrator must have an intention with regard to committing that offense and must have immediately proceeded to fulfill the act. The commission of the act is not necessary to define it as a crime.

Impunity

The TPC provides impunity for those perpetrators who voluntarily abandon an attempt.



Forms of participation

Principal

&

Complicity





Principal

Joint principal

- Agreement between two or more persons to behave in an unlawful manner.
- Joint principals requires a plan and does not need any verbal agreement.
- any offender can be already in the process of committing the crime.
- joint principales are not required to be present at the crime scene.

Indirect principal

- Refers to committing the offense through another person who conducts the criminal act.
- Basically the other person becomes the instrument of the offense.
- Jurisprudence and commentators have acknowledged categories with regard to indirect principles.

- a) The agent is not fulfilling either the actus reus or mens rea of the offense.
- b) The agent lacks a specific mens rea component or has the mens rea for a different offense.
- c) The agent is acting objectively lawfully under an accepted defense.
- d) The agent is acting without personal guilt under an accepted defense.
- e) The agent lacks criminal capacity.



Complicity

Incitement

- The instigator who incites another person to commit an offense shall be subject to the penalty appropriate to the offense that is committed even though he/she does not directly perform the act
- The instigator uses psychological influence on the person who performs the criminal act.
- In other words, the abettor plants the idea in the principal's mind, after which the principal decides whether and how to commit the act.

Aider

- Aiding refers to helping the principal at the time when the offense is committed.
- Unlike an instigator, an aider does not impose the idea of committing a crime. Yet aider facilitates the commission of the offense.
- In cases where the assistance of the aider becomes essential in order for the crime to succeed, the aider transforms into a joint principal.

- a) Encourages the commission of an offense
- b) Reinforces the decision to commit an offense,
- c) Promises that he will assist after the commission of an act,
- d) Provides counsel as to how an offense is to be committed,
- e) Provides the means used for the commission of the offense,
- f) facilitates the execution of an offense by providing assistance before or after the commission of the offense.



Causation

The principal is accused of the result only if there is a casual relationship between the act committed by the principal and the result of the act.



Theory of last cause



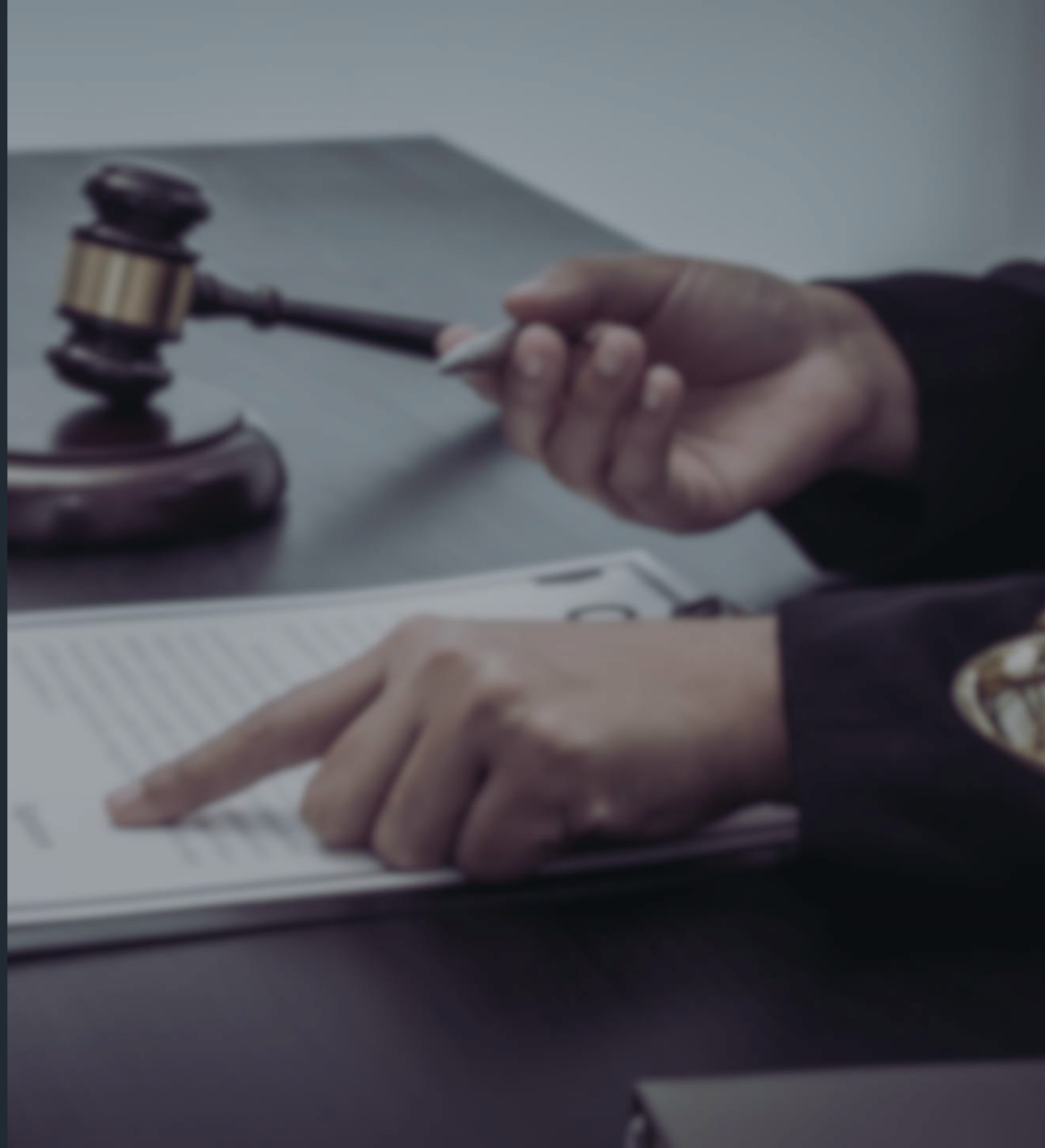
Theory of adequate causation



Equivalence Theory



Justification





Self-defense and defense of another

Those are the legal justifications for using force against an attacker. The use of force must be reasonable and necessary to protect oneself or another person from immediate harm.





Consent

Consent is a defense to a criminal charge that can be raised when the victim of the alleged crime gave their voluntary and informed consent to the defendant's actions.





Execution of statutory duty

This defense can be raised when a person is acting within the scope of their legal duties.





This defense can be raised when a person is exercising their legal rights, such as freedom of speech or assembly.

**EXERCISING OF
RIGHTS**



EXCUSES

NECESSITY

MISTAKE

INSANITY & DIMINISHED RESPONSIBILITY

INFANCY

INTOXICATION

COERCION

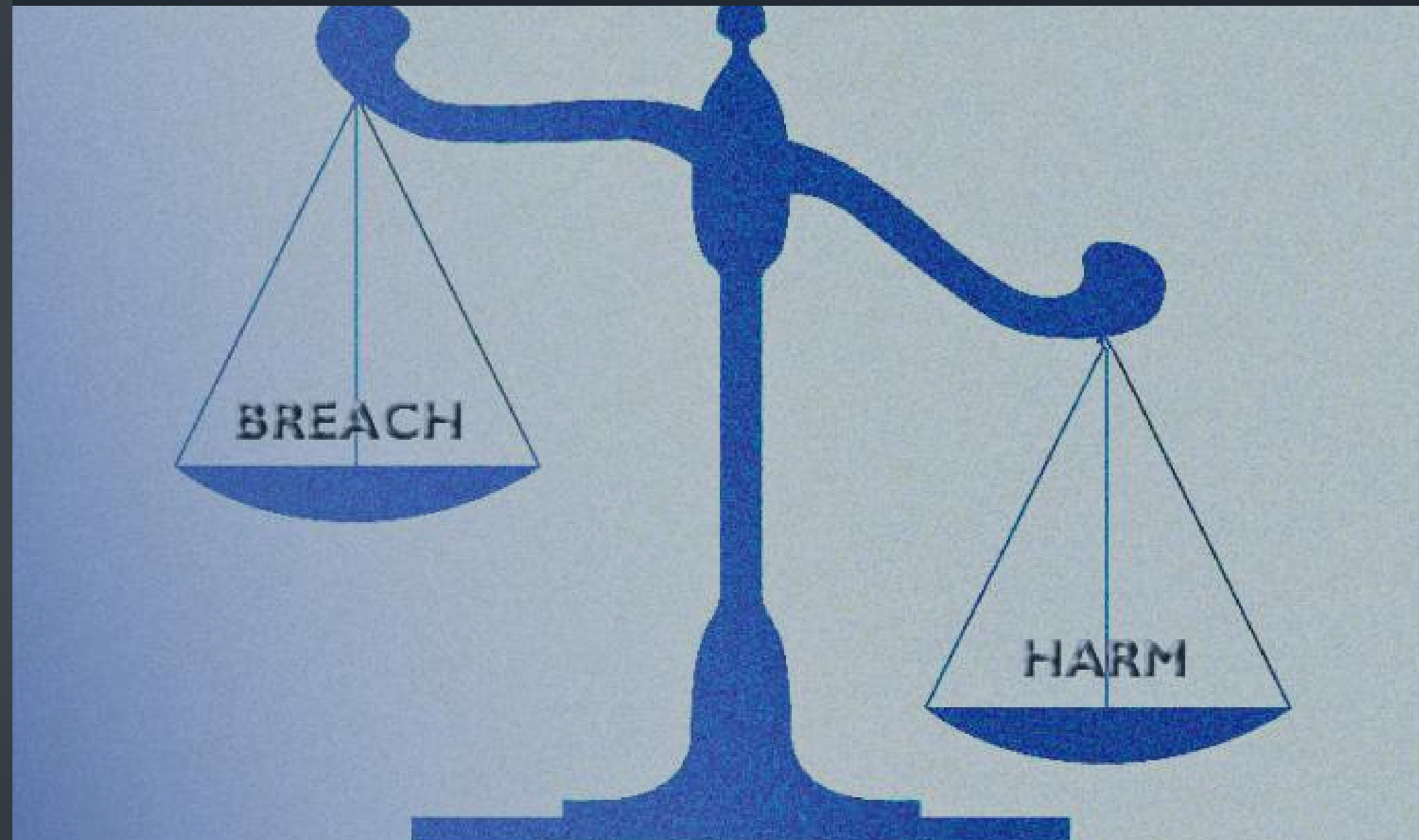
PROVOCATION





The necessity defense can be raised when a person committed a criminal act in order to prevent a greater harm from occurring.

Necessity





Mistake

The mistake defense can be raised when the defendant had an honest and reasonable belief that their actions were legal or justified.





Insanity and diminished responsibility

The insanity and diminished responsibility defenses apply when the defendant lacked the mental capacity to understand their actions or appreciate the wrongfulness of their behavior.





The infancy defense applies when the defendant was too young to be held responsible for their actions under the law.

INFANCY



Intoxication

The intoxication defense is used when the defendant was under the influence of drugs or alcohol at the time of the offense, which impaired their ability to understand their actions.





Coercion



The coercion defense can be raised when the defendant was forced or threatened to commit the criminal act.



The provocation defense applies when the defendant was provoked into committing the crime by the victim's actions or words.

PROVOCATION

THANK
YOU
FOR
YOUR
PATIENCE
THANK
YOU