Syllabus

DERIVATIVE OFFENCES IN CRIMINAL LAW - 62455

Last update 02-09-2015

HU Credits: 4

Degree/Cycle: 1st degree (Bachelor)

Responsible Department: law

Academic year: 0

Semester: 1st Semester

Teaching Languages: Hebrew

Campus: Mt. Scopus

Course/Module Coordinator: Dr. Daniel Ohana

Coordinator Email: Daniel.Ohana@mail.huji.ac.il

Coordinator Office Hours: Monday 1200-1300

Teaching Staff:
Dr. Daniel Ohana
Course/Module description:
The seminar focuses on offences, such as crimes of endangerment, complicity and attempt, which expand the reach of the criminal law by targeting conduct which does not necessarily result in actual harm. The conduct prohibited only contributes to the commission of an offence by another; constitutes a step in a course of conduct planned to culminate in the commission of an offence; or creates an abstract or concrete risk of harm. The seminar examines various controversial issues discussed in the case-law and literature concerning the scope of these offences in general and their constituent elements in particular. It addresses these issues from a broad perspective, focusing not just on legal aspects but also on aspects that connect with the fields of moral philosophy, political theory and criminology.

Course/Module aims:
To critically assess the objectives and scope of the law of complicity, the law of attempt and the principles governing anticipatory offences in the criminal law.

Learning outcomes - On successful completion of this module, students should be able to:
On successful completion of the course students should be able to:
1. Systematically analyze issues pertaining to the criminalization of conduct which falls short of a substantive harm while taking into account perspectives drawn from the fields of moral philosophy, political theory, and criminology.
2. Discuss current debates in the case-law and literature relating to the law of complicity, the law of attempt and the principles governing anticipatory offences in the criminal law.
3. Critically examine emerging issues.

Attendance requirements(%):
100%

Teaching arrangement and method of instruction: Lecture, class discussion and exchanges following student presentations.

Course/Module Content:
1. Theories of Criminal Law
   a. Instrumental theories versus legal moralism
   b. Political theories (libertarianism, liberalism, perfectionism, communitarianism, republicanism)
c. Critical (socio-cultural) approach to criminalization
d. Survey of the work of contemporary theorists (Michael Moore, Anthony Duff, John Braithwaite, Alan Brudner, Paul Robinson, Gunther Jakobs, Nicola Lacey) in order to illustrate the different approaches.

2. Justifications for Derivative Structure of Accomplice Liability
a. Harm-based conception of criminal wrongdoing
b. Principle of individual autonomy (Sanford Kadish)
c. Rational Agency (John Gardner)
d. Critique based on inchoate conception of complicity (Christopher Kutz)
e. Critique based on philosophy of causation (Michael Moore)
f. Critique based on principle of fair labeling (Douglas Husak)

3. Distinguishing between Participants in Crime
a. Joint perpetrator/Aider/Instigator/Perpetrator-by-means of an innocent agent
b. ‘Hegemony’ theory
c. ‘Proximity’ (or ‘beyond preparation’) theory
d. Common agreement and division of tasks (‘Insider’ versus ‘Outsider’)
e. Holding organized crime leaders responsible for offences committed by subordinates

4. Membership in a Criminal Organization
a. The statutory framework
b. Rationales for a special offence criminalizing membership in a criminal organization
c. Case-law of the Supreme Court: demarcating the criminal organization offence from the law of accomplice liability
d. Criticisms raised in the literature

5. Aiding and accomplice liability for an omission
a. Criminal liability for omissions generally
b. Is there a need for a specific duty to intervene to impose liability for aiding?
c. Considerations of political theory
d. Case-law of Israeli Supreme Court in cases of flight from the scene of an accident

6. Accomplice Liability for Collateral Offences (the Natural and Probable Consequence Rule)
a. The statutory framework at section 34A of the Israeli penal law — analysis of prerequisites
b. Comparative law survey
c. Critical analysis of the rule and constitutional law aspects

7. Law of Attempts
a. ‘subjective’ versus ‘objective’ theories
b. ‘choice’ ‘character’ and ‘act as the focal points of responsibility
c. Considerations of political theory
d. The significance of the prospect of a renunciation of criminal purpose at a later time in delimiting the minimum conduct for an attempt
e. Case-law of Israeli Supreme Court on the distinction between preparation and attempt
f. Impossible attempts
g. The Mental Element (should oblique intention, conditional intention and willful-
blindness suffice?)
h. The defense of abandonment
i. Moral luck
8. Preparatory Offences
a. Special justifications for criminalizing preparatory actions
b. Preparatory offences and the distinction between citizens and enemies
c. The normative significance of the possibility of a renunciation of the criminal purpose – should it bar criminalization of preparatory actions as a matter of principle?
d. The crime of conspiracy
9. Abstract and Concrete Crimes of Endangerment
a. The distinction between abstract and concrete risk
b. Abstract endangerment and the limits of the criminal law (analysis of rationales)
c. Larry Alexander and Kimberly Ferzan's claim that there is no objective 'concrete' degree of risk
d. Risk and culture
10. Alternatives to criminal law in coping with preparatory actions and preliminary forms of encouragement and assisting crime
a. Preventive orders
b. Administrative monetary penalties
c. Civil Forfeiture

Required Reading:

Class 1-3: Theories of Criminal Law


George P. Fletcher, Political Theory and Criminal Law, Criminal Justice Ethics 18 (Winter/Spring 2006).


Class 4-5: Justifications for the Derivative Structure of Accomplice Liability


Amidh Cohen, "ע"פ 5758/02 אהמד ג'אבר נ' מדינת ישראל, תק-על 7580/02 ע"פ 635 (3)2005 ג'מאל מחאג'נה נ' מדינת ישראל, תק-על 9862,9826/05 ע"פ 3735 (3)2008".
Class 6: Distinguishing between Participants in Crime


Class 7 - Organizational Control and Specific Offences Targeting Membership in a Criminal Organization

A few related cases that may be of interest:

• 4463/12 מרדכי קרמניצר, "ננוי לאוניות בדולמן לאוניות מדינה, תפ"ת-על 2012. 11433 (3)

• 2950/14 אליאור ציון, תפ"ה-על 2014, 5493 (2)

• 2638, 2705/10 פלונית נ' מדינת ישראל, תפ"ה-על 2012 (3) 3813.

• 404/13 אליאור ציון, תפ"ה-על 2015, 7988 (2)

• 3/10 רפי אוחנה נ' מדינת ישראל, תפ"ה-על 2012, 11894 (4)

• 1158/02 ברגוטי, תפ"ה-על 2004, 343 (2)

• 6976/09 ברגר, תפ"ה-על 2012, 1202 (1)

• 6785/09 רפי, תפ"ה-על 2011, 2201 (1)

• 2607/09 נ' מסדה, תפ"ה-על 2011, 6785 (4)


Shachar Eldar, "Indirect Co-Perpetration" 8 Criminal Law & Philosophy 605 (2014).

Class 8: Parties to Crime: Aiding, Instigating and Accomplice Liability for Collateral Offenses

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Gideon Yaffe, "Intending to Aid" 33 Law and Philosophy 1 (2014).

Class 10 - Preparatory Offences


Class 12 - Endangerment Offences

Class 13 - Moral Luck


Class 14 - Alternative Mechanisms of Control: Administrative Penalties, Preventive Orders and Third-Party Policing


Kimberly Kessler Ferzan, "Beyond Crime and Commitment: Justifying Deprivations of the Dangerous and Responsible" 96 Minn. L. Rev. 141 (2011).


Kimberly Ferzan, "Preventive Justice and the Presumption of Innocence" 8 Criminal Law and Philosophy 505 (2014).

Additional Reading Material:
**Course/Module evaluation:**
End of year written/oral examination 0 %
Presentation 0 %
Participation in Tutorials 0 %
Project work 100 %
Assignments 0 %
Reports 0 %
Research project 0 %
Quizzes 0 %
Other 0 %

**Additional information:**