CRIMINAL LAW II

Theory of Crime

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1. MAIN OBJECTIVE

The main objective of this subject is to analyse the theory of crime. All crimes have certain features or elements in common that are ruled in the first part (General Part) of the Spanish Criminal Code (art. 1-137) forming an abstract basis from which different penal institutions (such as the theory of action, causation, objective imputation, concept and types of intent or negligence, culpability, justifications and excuses, theory of participation, grade of development and so on) will be developed. Theory of crime as an academic subject consists of a systematic and critical approach to all those institutions with the view of explaining their positive content according to the law in force.

However, pure legal regulation (de lege lata) will be systematically contrasted with a critical and ideal perspective on how criminal law should be (de lege ferenda) organized in a Social and Democratic State under the Rule of Law. In doing so International and Comparative Criminal Law will also be taken into consideration in a systematic way.

2. SPECIFIC OBJECTIVES AND ABILITIES

2.1. At the end of the academic year, students should have the ability to realise the implications of the most important institutions related to the General Part, specially to the Theory of Crime, of Spanish Criminal Law.

2.2. As was the case for Criminal Law I, a key point will still be the ability to approach criminal phenomena both from the perspective of current
legislation in force (*de lege lata*) and from an ideal point of view (*de lege ferenda*). Both perspectives are not completely separated from each other given the fact that different interpretations of the law in force may have their origins in different approaches linked to a full range of views routed in a plural understanding of criminal policy. Therefore, to be able to identify different interpretation possibilities and to link them with their implications in terms of criminal policy will be a fundamental task of this term. A fundamental task that will be applied to particular institutions of the General Part and not just in a general way.

2.3. **Case Law of the Spanish Supreme Court** will be another important reference point – and tool - both while lecturing and when it comes to give an appropriate resolution to cases within practical sessions. Case Law will be subject to consideration not only from an informative perspective but also from a critical one. Therefore, all students should be able to manage case law in relation to particular institutions of the Theory of Crime and to be critical (in a positive or in a negative way) towards it (critical level).

2.4. **Case resolution** will play a central role within practical sessions. In a progressive way real and full cases will be analysed in order to clarify complexities and difficulties of the theory of crime with the aim of establishing a correct charge sheet. Nevertheless, the **theory of penalties** will be further developed continuing with the course of action initiated in the previous term (Criminal Law I). In that regard students will be expected to be proficient in calculating the consequences of criminal liability at its full expression.
3. METHODOLOGY

In order to improve our knowledge and abilities in the field, we will combine theoretical lectures with practical sessions.

Rather than being organised in a traditional, teacher centred way, lectures will aim to be a dialogue between the lecturer and the students. Readings, both in class and at home, will be used to reinforce certain key points of the program.

The practical sessions will consist of the resolution of cases in order to check, first of all, whether students understand institutions related to the theory of crime within their natural context. But, secondly, the resolution of cases will be carried out as a tool for developing further calculation of penalties and other consequences arising from criminal accountability.

The main tools during the academic year will be bibliography, case law and the Criminal Code of Spain.
4. DETAILED CALENDAR OF THE TERM

THEORETICAL LECTURES

Week 1: Presentation; Lesson 1
Week 2: Lesson 1
Week 3: Lesson 2
Week 4: Lesson 2
Week 5: Lesson 2,3
Week 6: Lesson 3,4
Week 7: Lesson 4
Week 8: Exam I (Lessons 1 to 4)
Week 9: Lesson 5
Week 10: --------
Week 11: Lesson 6
Week 12: Lesson 7
Week 13: --------
Week 14: Exam II (Lessons 5 to 7)

PRACTICAL SESSIONS

Week 1: Introduction - Methodology
Week 2: Introduction - Methodology
Week 3: Introduction - Methodology
Week 4: Introduction - Methodology
Week 5: Introduction - Methodology
Week 6: Case 1 Objective Imputation
Week 7: Case 2 Intent
Week 8: Case 3 Negligence
Week 9: Case 4 Omission
Week 10: Case 5 Justification/Excuses/Circumstances
Week 11: Case 6 Justification/Excuses/Circumstances
Week 12: Case 7 Concurrence – Development/participation
Week 13: Case 8 Concurrence – Development/participation
Week 14: Exam
LESSON 1 – THEORY OF CRIME: ACTION, TYPE (OF CRIME) AND UNLAWFULNESS

1.1. Bipartite and tripartite systems: methodological considerations.
1.2. Concept of the offence in Spanish Criminal Law: art. 10.
1.3. Action (actus reus) and its exclusion.
1.4. Elements of a crime (type): subjects, action, object, protected interest and mens rea.
1.5. Classification of offenses.

LESSON 2 – INTENT

2.1. Objective part: causation and objective imputation.
2.2. Concept and theories of intent (mens rea).
2.3. Classes of intent: direct intent, second-degree intent and dolus eventualis.
2.4. Mistake of fact.

LESSON 3 – NEGLIGENCE

3.1. Definition of negligence.
3.2. Criminalization of negligence according to the Spanish Criminal Code.
3.3. Types of negligence.
3.4. Exceeded intent.

LESSON 4 OMISSION

4.1. Concept of omission.
4.2. Types of omission: proper omission and commission by omission.

LESSON 5 JUSTIFICATION

5.1. Justification and excuse: differences and consequences.
5.2. Grounds of justification.
   7.2.1. Self defence
   7.2.2. Necessity.
   7.2.3. Fulfilment of a duty or exercise of a right.

LESSON 6 EXCUSES: CULPABILITY OR PERSONAL IMPUTATION.

6.2. Grounds of excuse.
   6.2.1. Insanity (permanent or temporal).
   6.2.2. Intoxication.
6.2.3. Grave disturbance of the perception of reality.
6.2.4. Minority.
6.2.5. Mistake of law.
6.2.6. Insurmountable fear.

LESSON 7 OTHER GROUNDS OF IMPUNITY: PUNISHABILITY

7.1. Punishability as category and post-conduct factors.
7.2. Objective conditions of punishability.
7.3. Absolution grounds.

LESSON 8 CIRCUMSTANCES MODIFYING CRIMINAL RESPONSIBILITY

8.1. Introduction.
8.2. Mitigating circumstances.
8.3. Aggravating circumstances.
8.4. Mixed circumstance.

LESSON 9 GRADE OF DEVELOPMENT AND GRADE OF PARTICIPATION

9.1. Iter criminis: the way of a crime
   9.1.1. Preparatory acts: conspiracy, proposition and incitement.
   9.1.2. Attempt.
   9.1.3. Completion or consummation versus exhaustion.
9.2. Parties to criminal offence
   9.2.1. Principals: direct perpetrator, perpetrator by means and coperpetrator.
   9.2.2. Accessories: instigator, necessary cooperator and accomplice.
   9.2.3. Special case: crimes committed through the media.
   9.2.4. Acting on behalf and corporate liability.

LESSON 10 CONCURRENCES

10.1. Real concurrence of offences.
10.2. Ideal concurrence of offences.
10.3. Continued offence.
10.4. Apparent concurrence of criminal provisions.
6. ASSESSMENT

There will be a final written exam to assess theoretical contents and practical abilities linked to the subject.

However, following the philosophy of continuous assessment students who regularly attend lectures and practical sessions and efficiently fulfil certain requirements linked to both lectures and practical sessions, will not have to pass any final exam.

For that purpose these are in detail the tasks that students will have to carry out and the assessment criteria that are attached to them:

REQUIREMENTS/TASKS: TOTAL SCORE 10 POINTS

- Compulsory attendance of every lecture and practical sessions: 1 point.
- Resolution of 8 cases (practical sessions): 3 points
  - All those 8 cases must be submitted to the teacher in written form at the end of their resolution in class.
  - One of them must be presented in class in an oral way. For that purpose at the beginning of the course a calendar of the oral presentations will be established.
- Two written exams: 6 points
  - Theoretical exam of lessons 1-4. 2 points.
  - Theoretical exam of Lessons 5-7. 2 points.
  - Practical exam. 2 points
7. BIBLIOGRAPHY

8. GENERAL ON LINE RESOURCES (CRIMINAL LAW & CRIMINOLOGY)

UNITED NATIONS CRIME AND JUSTICE INFORMATION NETWORK
http://www.uncjin.org/index.html

OXFORD UNIVERSITY PRESS—CRIMINAL LAW ON LINE RESOURCES
http://www.oup.com/uk/orc/bin/9780199564712/01student/weblinks/

EUROPEAN COMMISSION—JUSTICE—CRIMINAL LAW POLICY

Australian Institute of Criminology
www.aic.gov.au

The Jill Dando Institute of Crime Science
www.jdi.ucl.ac.uk

Centre for Criminology Oxford
www.crim.ox.ac.uk

Institute of Criminology Cambridge
www.crim.cam.ac.uk

National Institute of Criminology
www.okri.hu

Kriminologische Zentralstelle
www.krimz.de

American Society of Criminology
www.asc41.com

British Society of Criminology
www.britsoccrim.org

Faculty of Law, Katholieke Universiteit Leuven
www.law.kuleuven.ac.be

Institute for the Study of Criminality and Law Enforcement (NSCR)
www.nscr.nl

The Centre for Criminological Research
www.shef.ac.uk/ccr

Institute for Criminology at the Faculty of Law of Tuebingen University
www.ifk.jura.uni-tuebingen.de
INTERVICT (Tilburg University)
www.tilburguniversity.nl/intervict

Max Planck Institute for Foreign and International Criminal Law
www.iuscrim.mpg.de

Scottish Centre for Crime and Justice Research
www.sccjr.ac.uk

The Konstanz Repositories on Crime and Sanctioning
www.uni-konstanz.de/rtf/ki

Mexican Society of Criminology of the State of Nuevo Leon, NGO
www.somecrimnlen.es.tl

Nacro
www.nacro.org.uk

CrimLinks
www.crimlinks.com

World Criminal Justice Library Network
newark.rutgers.edu/~wcjlen/WCJ/

"Criminology Linklist" (University of Tuebingen)
www.ifk.jura.uni-tuebingen.de/www.html

National Criminal Justice Reference Service
www.ncjrs.org

British Association for the Study and Prevention of Child Abuse and Neglect (BASPCAN)
www.baspcan.org.uk

Crime Reduction Website (UK)
www.crimereduction.gov.uk

The Internet Center for Corruption Research
www.iccg.org

Crime and Society: A comparative criminology tour of the world
www-rohan.sdsu.edu/faculty/rwinslow
9. REVIEWS (CRIMINAL LAW & CRIMINOLOGY)

British Journal of Criminology — Oxford Press.

Buffalo Criminal Law Review — State University of New York

Georgetown University American Criminal Law Review

Journal of Criminal Law and Criminology — Northwestern University.


The Berkeley Journal of Criminal Law — University of California Berkeley Law School, Boalt Hall.

University of Texas American Journal of Criminal Law — University of Texas publication on criminal law.

Washington College of Law Criminal Law Brief

Western Criminology Review — Western Society of Criminology. Full Text.

European Criminal Law Review

European Criminal Law Review

New Journal of European Criminal Law

Internet Journal of Criminology
www.internetjournalofcriminology.com

The British Journal of Criminology
www.bjc.oupjournals.org

European and International Research Group on Crime, Ethics and Social Philosophy (ERCES)
www.erces.com

International Observer on Crime Prevention
Bulletin on Crime Prevention published monthly by the International Centre for Crime Prevention (ICPC)

Western Criminology Review
wcr.sonoma.edu
The Criminologist ONLINE (ASC)
www.asc41.com/criminologist.html

Criminology in Europe (ESC)
www.esc-eurocrim.org/newsletter.shtml

International Bulletin on Community Safety and Indigenous Peoples (ICPC)
www.crime-prevention-intl.org/vn

Rivista di Criminologia, Vittimologia e Sicurezza (S.I.V.)
www.vittimologia.it/rivista

European Journal of Probation
www.ejprob.ro

The Newsletter of the International Juvenile Justice Observatory (IJJO)
www.oijj.org/boletin_resultado.php
10. INTERNATIONAL SOCIETIES (CRIMINAL LAW & CRIMINOLOGY)

International Society for Criminology (ISC), Société Internationale de Criminologie (SIC) was established in 1938 as a non-governmental organization whose members are scientists and researchers, scholars and judges, all working in the field of criminology. It associates members of almost 70 countries from all over the world and enjoys an advisory status at the UN and the Council of Europe. The headquarters and general secretariat of ICS are in Paris. ISC has organized international criminological congresses every five years since 1938 (there had been 14 of them until now, the last one in 2005 was held in Philadelphia, USA). It has also organized international courses on criminology designed to promote criminology development by encouraging local initiatives. Annually publishes "International Annals of Criminology". ICSP has been a collective member of ISC.

http://www.isc-sic.org/
http://crimsic.0fees.net/
www.perso.wanadoo.fr/societe.internationale.de.criminologie/

European Society of Criminology (ESC) was established in 2000 to promote mutual cooperation of professionals in the field of criminological research, education and training in Europe.

www.esc-eurocrim.org

United Nations Interregional Crime and Justice Research Institute (UNICRI)
www.unicri.it

European Institute for Crime Prevention and Control Affiliated with the UN (HEUNI) was established in 1981 in Helsinki. It is the European link in the network of institutes operating within the framework of UN crime prevention and criminal justice.

www.heuni.fi

International Association of Penal Law (AIDP) was established in 1924, at present it is the main international professional institution operating in the field of criminal justice and codification of criminal law, comparative criminal justice, international criminal law and human rights in criminal justice.

www.penal.org

Amnesty International (AI)
www.amnesty.org

International Institute for Restorative Practices (IIRP)
www.iirp.org
International Scientific and Professional Advisory Council of the UN (ISCPAC)  
The goal of the council is to help to more effective promotion of UN programme  
for crime prevention and criminal justice by means of scientific institutions and  
international organizations whose activities step in this field.  
www.ispac-italy.org

International Centre for the Prevention of Crime (ICPC)  
www.crime-prevention-intl.org

World Society of Victimology (WSV)  
www.world-society-victimology.de

European Forum for Victim - Offender Mediation and Restorative Justice  
(European Forum)  
www.euforumrj.org

European Crime Prevention Network (EUCPN) was established by the Council  
of Europe decision in 2001. The main aim of the network is to contribute to the  
development of different aspects of crime prevention on the EU level and to  
support preventive activities on local and national level of the EU member states.  
The Czech Republic joined activities of EUCPN immediately after becoming a  
member of EU. European network of crime prevention associates state bodies´  
representatives of the member states responsible for crime prevention, research  
institutions´ representatives and non-governmental organizations´  
representatives.  
www.europa.eu.int/comm/justice_home/eucpn

Permanent European Conference on Probation and Aftercare (CEP)  
www.cep-probation.org

Penal Reform International (PRI)  
www.penalreform.org

United Nations Crime and Justice Information Network (UNCJIN)  
www.uncjin.org

United Nations Office on Drugs and Crime (UNODC)  
www.unodc.org

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