

Academic Year: (2022 / 2023)

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Department assigned to the subject: Criminal Law, Procedural Law and History Law Department

Coordinating teacher: OTERO GONZALEZ, MARIA PILAR

Type: Compulsory ECTS Credits : 6.0

Year : 3 Semester : 1

REQUIREMENTS (SUBJECTS THAT ARE ASSUMED TO BE KNOWN)

The subjects of Law contained in the Degree

DESCRIPTION OF CONTENTS: PROGRAMME**DIDACTIC UNIT # 1: INTRODUCTION TO CRIMINAL LAW**

Positive criminal law: The Penal Code of 1995 and its reform process. Special Criminal Laws. Criminal legislation on minors.

The principle of legality. The reservation of law. Criminal penalties on white. The favorable retroactivity of criminal rules. The mandate of determination and the prohibition of analogy. Non bis in idem. Case studies on the principle of legality.

Theory of the interpretation of criminal norms. The competition of laws. The contest of crimes (I). Real contest of penal infractions: concept of plurality of facts. Effects.

The competition of crimes (II). Ideal competition for criminal offenses: classes; concept; Concept of unity of fact.

Effects. Continued crime: requirements and effects; The so-called mass crime. Case studies on contests.

Functions of criminal law. Minimum intervention principle. The theory of the protection of juridical goods. Criminally protected interests. Nature and purpose of the penalty. Practical cases on end of sentence.

DIDACTIC UNIT # 2: LEGAL THEORY OF CRIME

Historical development of the legal theory of crime. Classical, neoclassical and finalist concepts of action and crime.

Evolution of the criminal concept of omission. The legal concept of crime today: normative finalism; The functionalist theories and the teleological and political criminal system. The absence of action and actio releases in cause.

Theory of the criminal type. Structure and elements: a) objectives and b) subjective.

Classes of types (I): a) malicious and reckless; B) Action, commission for omission and own omission; C) common and special.

Classes of types (II): d) types of results and types of mere activity and omission; E) types of instantaneous and permanent consummation; (F) types of an act or acts; G) basic and aggravated or privileged types.

The causal relationship and objective imputation. Theories on causality: theory of equivalence or condition; Theories of adequacy and relevance.

Specific problems of certain causal courses. Theory of objective imputation. Criteria added for objective imputation: a) creation of a risk not allowed; B) realization in the result of the risk not allowed; (C) the scope of protection of the target type.

Case studies on causality and objective imputation.

The fraud of the type. Cognitive and volitional elements. Dolo classes. Special consideration of eventual deceit and its difference from conscious recklessness: theory of acceptance or consent; Theory of indifference; Theory of representation; Probability theory; Other theories.

Practical cases of fraud.

The error about the type. Error about essential and accidental elements. Winning and invincible error. Special consideration of the cases of error on the causal course, aberratio ictus and error in obiecto vel in person. Dolus generalis. Penalty effects of the error on the type.

Practical cases of error.

Attempt. Basis of his punishment. The beginning of the execution: delimitation with the preparatory

acts. Concept of suitability of the attempt and delimitation with the failed attempt and the impossible. The delimitation between finished and unfinished attempt. The abandonment in the finished and unfinished attempt: requirements for its criminal effectiveness and legal nature.

Practical cases of attempt.

Authorship (I). Evolution of the concept of author: unitary and differentiating theories, formal and material objectives. The theory of mastery of fact in willful crimes. Forms of authorship: direct authorship, mediate and co-authorship.

Authorship (II). Those who are considered authors: the inductor and the necessary cooperator. The authorship of special crimes.

Authorship (III). The actions of the administrators of legal persons and those acting on behalf of others. The authorship of crimes committed through means or mechanical media.

Criminal liability of legal persons.

Participation (I). Legal nature. Limited accessibility. Unity and rupture of imputation title. Elements common to forms of participation: the effectiveness of the contribution; Deceit; The abandonment in the attempt of the author.

Participation (II). Forms of criminal participation: a) induction: forms of induction and beginning of induction; The deceit of the inductor and its limits; Efficiency of induction. Delimitation with the provoking agent and the provoked offense; B) complicity; Criteria for delimitation with the necessary cooperation; C) the necessary cooperation: nature and requirements. The so-called necessary participation.

Practical cases of authorship and participation.

Preparatory acts punishable. Legal nature. The conspiracy. The proposition. The provocation and its difference with the apology.

The omission (I). Concept of omission. Classes of crimes of omission. The crime of self-omission: concept and elements. The commission by omission: concept, elements, legal regulation (article 11 CP). The position of guarantor from the formal and material perspectives. Between the own omission and the commission by omission: omissions "of intermediate gravity" or "own of guarantor".

Practical cases of omission.

The antijuridicidad and its relation with the tipicidad: theory of the criminal injustice. Political criminal meaning of the causes of justification. System of causes of justification. The exclusion of the unjust: theories of objective justification, of congruence and of separate justification. Objective and subjective elements of the causes of justification. Causes of full and incomplete justification. The error on the factual presuppositions of the causes of justification: limited and strict theories of guilt; Theory of the negative elements of the type; Theory of guilt that refers to the legal consequence; Theory of putative justification.

Self-defense. Concept. Basis and restrictions. Elements: (a) unlawful aggression; The extensive excess. Defendable legal assets; B) the subjective element or legal status of defense and its absence; C) the rationality of the defensive medium; The intensive excess; D) lack of provocation.

The state of necessity: concept, foundation and legal nature. Elements of the justifiable state of necessity: a) the situation of necessity: collision of evils and collision of duties; B) the proportionality of the evil caused; C) lack of provocation of the situation of need; C) lack of obligation to sacrifice; D) the subjective element of justification. Practical cases of self-defense and state of necessity.

The fulfillment of a duty and the legitimate exercise of a right, office or position. Area of application. Special consideration of the violent actions of the agents of authority: objective and subjective elements.

The guilt. Concept. Functions: a) systematic function; B) function of guarantee or limitation of *ius puniendi*: guilt as the basis of the penalties and origin of the dualistic system of criminal consequences; C) regulating function of the application or measurement of penalties. Legal content of guilt.

Imputability: concept and legal nature. The *actio libera* in question. Causes of full or incomplete imputability: a) abnormalities or psychic alterations. Psychological biological assumptions: mental alienation, mental weakness, psychopathies and other personality disorders. Effect of the anomaly. Transient mental disorder; B) disturbances of consciousness by full intoxication and withdrawal syndrome; C) the alteration of the consciousness by handicaps in the perception; D) the criminal minority. Specific penal regime due to age.

The knowledge of the antijuridicidad: legal nature and object of reference. Classes of prohibition error. The avoidability of the prohibition error. Effects.

Causes of unenforceability, exclusion of guilt, exculpation or apology and exclusion of responsibility: concepts and contents. The so-called state of need excusing or excluding responsibility. Requirements: a) the conflict between duties; Civil disobedience; B) the conflict between goods or personal evils equivalent; Common equivalent risk assumptions; C) other requirements. The insurmountable fear. The so-called supralegal causes of exclusion of guilt: concept and assumptions.

Objective conditions of punishability. Nature.

Modifying circumstances of criminal liability (I): legal nature. The communicability of aggravating or attenuating circumstances and the error about them. Mitigating circumstances, in particular: (a) Incomplete exonerations; B) the addiction to the consumption of certain substances; C) the states of passion; D) confession; (E) civil compensation for damage; F) undue delay; G) analogous circumstances.

Modifying circumstances of criminal responsibility (II): Aggravating circumstances, in particular: a) treachery; B) disguise, abuse of superiority or use of certain circumstances; C) price, promise, reward; (D) discrimination; E) cruelty; (F) breach of trust; G) prevalence; H) recidivism. The mixed circumstance of kinship.

DIDACTIC UNIT # 3: LEGAL THEORY OF CRIMINAL CRIME

Imprudence as a type of crime. Reckless types in criminal law. The reckless typicity: a) action and result in the imprudent type; B) causality, breach of the duty to care and criteria of objective imputation of the result in the imprudent type. Content of the breach of duty of care in the reckless type: a) creation of a risk not allowed: the duty of care, its sources and its content; The predictability of the result; Avoidance of the result; B) the scope of protection of the type: special consideration of the cases of consent consented in danger. Conscious and unconscious imprudence. Guilt or need for penalty for reckless conduct: content; Serious and less serious recklessness. Specific problems of justification of typical reckless facts.

DIDACTIC UNIT 4: LEGAL THEORY OF THE PENALTY AND THE EXTINCTION OF CRIMINAL RESPONSIBILITY

Classes and effects of penalties: severe, less serious and minor penalties; Principal and accessory. Privatives of freedom, deprivation of rights and fine.

Alternative forms of execution of custodial sentences and probation: a) suspension of execution or conditional sentence; B) substitution of custodial sentences; C) parole.

Causes that extinguish criminal liability: special consideration of the prescription of crimes, penalties and security measures.

Theory of the application of penalties. General rules for the application of sentences: according to the intervention in the crime, according to the execution phase and according to the aggravating or attenuating; Grade determination. Special rules for the application of penalties: incomplete exemptions; Real and ideal contest; Continuous crime and mass crime. Limitations on the accumulation of penalties in compliance.

Practical cases of determination of sentences.

DIDACTIC UNIT 5: LEGAL THEORY OF SAFETY MEASURES

Legal nature of security measures: bases of the dualistic system of penalties and security measures and vicarial system of compliance. Basis of security measures, classes and effects. Termination, suspension and replacement of the measures imposed. Rules for the application of security measures: a) custodial; B) non-custodial.

DIDACTIC UNIT # 6: THEORY OF CIVIL LIABILITY DERIVED FROM CRIMINAL INFRINGEMENT

Specific regime of civil liability for damages caused by criminal offenses: a) basis and content of civil liability; B) concurrence of responsibility of the victim; (C) direct civil liability; Regime of civil liability of insurers; D) subsidiary civil liability; Regime of civil liability subsidiary of public administrations; D) fulfillment of civil liability and other pecuniary responsibilities.

LEARNING ACTIVITIES AND METHODOLOGY

¿ The teaching will be practical theoretical so that in the sessions, together with the teaching of the corresponding theoretical material, will solve practical cases made by the students previously.

METHODOLOGY TEACHING-LEARNING

¿ Presentations in the teacher's class with support of computer and audiovisual media, in which the main concepts of the subject are developed and the bibliography is provided to complement the students' learning.

¿ Exposition and discussion in class, under the moderation of the professor of subjects related to the content of the subject, as well as of practical cases.

ASSESSMENT SYSTEM

% end-of-term-examination/test: 50

% of continuous assessment (assignments, laboratory, practicals...): 50

The final assessment of the course will consist of 1 theoretical and practical exams, to be held in sessions 59 and 60 (with a value of 50%). Continuous assessment will consist of a practical theory exam to be taken in sessions 29 and 30 (worth 50%).

The final mark for the course (Nf) will be obtained from the sum of the two exams. We will try to ensure

% end-of-term-examination/test: 50

% of continuous assessment (assignments, laboratory, practicals...): 50

that the exams and practicals are carried out during the students' face-to-face periods and that if the situation worsens, they can be carried out on-line.

BASIC BIBLIOGRAPHY

- Prieto del Pino, Ana M^a Lessons of spanish substantive criminal Law General Part I: Scope of application of the spanish substantive criminal Law, Aranzadi, 2017
- Prieto del Pino, Ana M^a Lessons of Spanish substantive criminal law General part I. Legal theory of crime I. Tipicity, Aranzadi, 2021
- corporate author criminal law, Minneapolis MN: UNiversity of Minnesota libraries Publishing, 2015

ADDITIONAL BIBLIOGRAPHY

- ¿ Claus ROXIN. Derecho penal . Parte general . , Civitas. , 1997