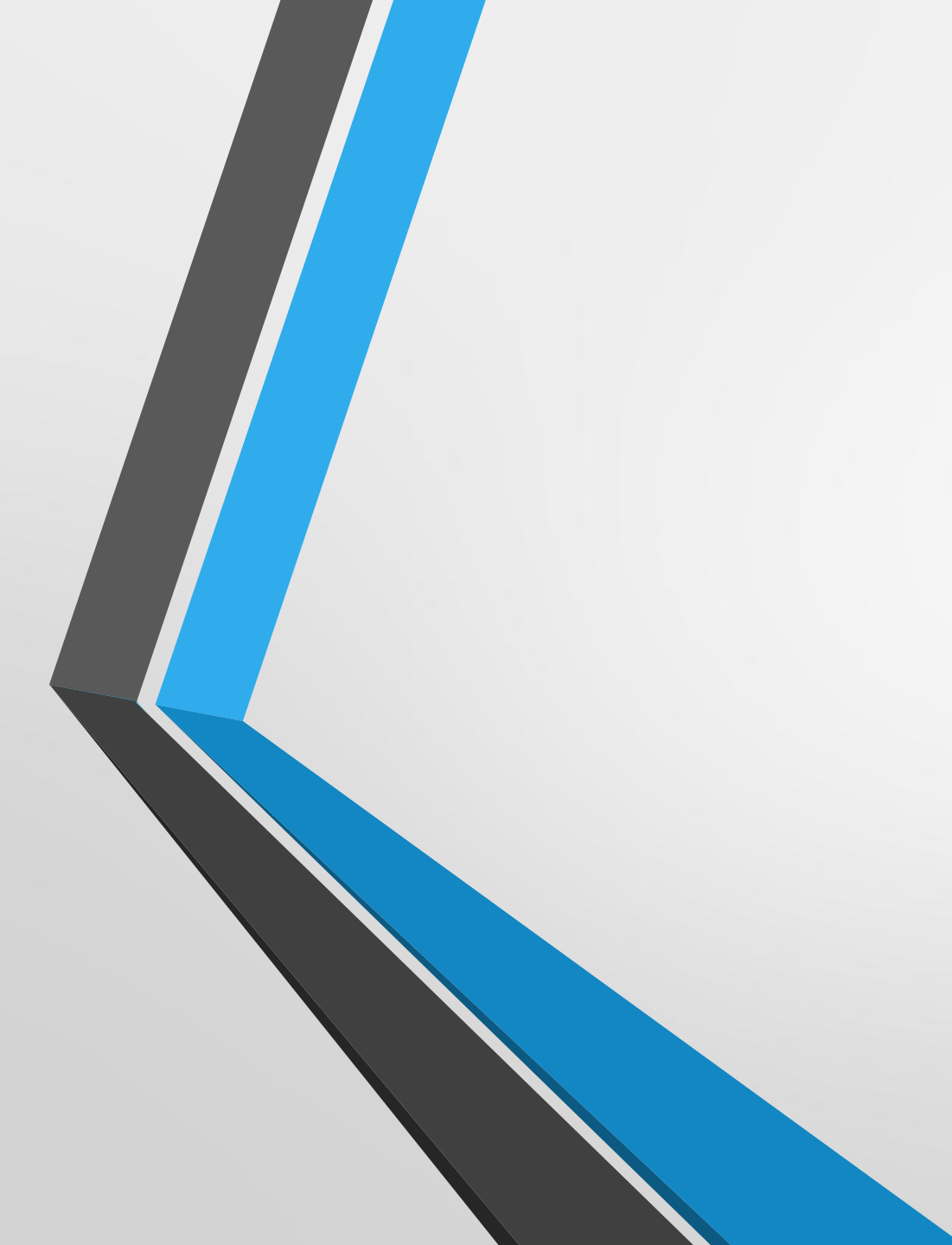




Foundations of Criminal Law

- Limitation by Time
- Limitation by Territory
- Theory of Criminal Liability

Student Question

- Assuming that:
- A Corporate Service Provider (“CSP”) is authorised by the MFSA to provide directorship services.
- The CSP has four directors, and under internal procedures following the ‘four eyes principle,’ two directors are assigned to oversee each client company for which the CSP provides directorship services.
- As a result, each pair of directors only has visibility over half of the client companies, although periodic reshufflings occur to enhance supervision.
- If two of the directors (Director A and Director B) commit criminal offenses for the benefit of client companies, can the other two directors (Director C and Director D), who did not have visibility over the activities of Directors A and B, be held criminally liable?

Article 13 of the Interpretation Act

- 13. Where any offence under or against any provision contained in any Act, whether passed before or after this Act, is committed by a body or other association of persons, be it corporate or unincorporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence:
- Provided that, except in respect of offences under or against a provision contained in an Act in which a provision similar to that of this article occurs, the provisions of this article shall apply only to offences committed after the commencement of this Act.

'Il-Pulizija (Spt. Anthony Agius) Vs Antonio Busuttil' Court of Criminal Appeal – 6th December, 2012

- “having taken into account the fact that the accused resigned voluntarily, and that during the period in which he was a director he did not inform himself about the fiscal obligations of the company he represented and did not take any initiative in this regard, he should be held liable for the fiscal obligations of the company incurred during the period of which he was a director.”

'Il-Pulizija (Spt. Anthony Agius) vs Carmelo Cutajar' Court of Criminal Appeal – 11th February, 2013

- 'Now in the first part of the ground of appeal, the appellant submits that he did not have effective control of the company and that in any case article 13 of the Interpretation Act (Cap. 249) should apply. It was for this reason that he testified and produced several witnesses to show how the other directors were practically running everything and that he was not valued in the company.
- In this regard, the First Honourable Court noted that the appellant submitted his resignation in the year 2000 (when he turned sixty as can be seen from the ID Card). Until that time he had not made any move (and this covers three years which are indicated in the citation: 1998, 1999 and 2000).
- It may be true that relations with the other Directors were not the best. It may also be true that the appellant would even tell the other employees to go and talk to his brothers about wages or leave. But these same facts show that the other employees were still considering him as a person who has a different status from them. The Court does not accept the argument that the appellant should be freed from any duty imposed on him by law as a director when he failed to consult properly with those who understand this matter in order to see that everything is regularized. Therefore, it is not accepting that part of the ground marked (a) because it is not convinced that the appellant, as a director, had taken the necessary steps to see that his legal position was correct and, until this was clarified, to see that the obligations that fall on the company of which he was a director were followed.

Limitations by Time

- Validity of Laws
 - From the date of commencement
 - To the date of repeal
 - The law operates for the future and not the past.
 - Exceptions
 - Repeal of an offence
 - Article 27 of the Criminal Code

Prescription

- Definition
 - In criminal law, **prescription**, refers to the legally prescribed period within which criminal proceedings must be initiated after the commission of an offense. Once this period expires, the offender can no longer be prosecuted for that particular crime.

Prescription

- Article 687(2): “The period of prescription in respect of all criminal offences shall be suspended from the moment a charge and/or bill of indictment is served ... until such time as a final and definitive judgment is delivered.”

Prescription

- Article 688: Specifies, “save as otherwise provided by law, criminal action is barred”
 - (a) by the lapse of twenty years in respect of crimes liable to the punishment of imprisonment for a term of not less than twenty years;
 - (b) by the lapse of fifteen years in respect of crimes liable to imprisonment for a term of less than twenty but not less than nine years;
 - (c) by the lapse of ten years in respect of crimes liable to imprisonment for a term of less than nine but not less than four years;
 - (d) by the lapse of five years in respect of crimes liable to imprisonment for a term of less than four years but not less than one year;
 - (e) by the lapse of two years in respect of crimes liable to imprisonment for a term of less than one year, or to a fine (multa) or to the punishments established for contraventions;
 - (f) by the lapse of three months in respect of contraventions, or of verbal insults liable to the punishments established for contraventions

Prescription

Completed, attempted, continuous or continuing offences

- 691.(1) With regard to a completed offence, the period of prescription shall run from the day on which the offence was completed; with regard to an attempted offence, from the day on which the last act of execution was committed; with regard to a continuous offence, from the day on which the last violation took place; and with regard to a continuing offence from the day on which the continuance ceased
- (2) Where the criminal action cannot be instituted or proceeded with except on a special authorization, or after the determination of any issue upon separate proceedings, the period of prescription shall be suspended, and shall continue from the day on which the authorization is granted or the issue is determined.

Prescription

- Special Rules
 - Prescription does not start when the offender is unknown.
 - The court may raise the plea of prescription ex officio

Prescription

- Helps ensure that prosecutions are brought while evidence remains reliable.
- Protects the rights of the accused from being faced with very old charges when their ability to defend may be impaired.
- Balances societal interest in prosecuting crime with fairness and justice.

Limitations by Territory

- Principles of Jurisdiction
 - Territorial Principle
 - Extra-Territorial Jurisdiction
 - Active Personality Principle (Nationality of the Offender)
 - Passive Personality Principle (Nationality of the Victim)
 - Protection Principle (Self-Preservation)
 - Universality Principle

Limitations by Territory

Article 5 of the Criminal Code

- *5.(1) Saving any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences, a criminal action may be prosecuted in Malta –*
 - (a) against any person who commits an offence in Malta, or on the sea in any place within the territorial jurisdiction of Malta*

Limitations by Territory

Article 5 of the Criminal Code

- *(b) against any person who commits an offence on the sea beyond such limits on board any ship or vessel belonging to Malta;*
- *(c) against any person who commits an offence on board any aircraft while it is within the air space of Malta or on board any aircraft belonging to Malta wherever it may be;*
- *For the purposes of this paragraph the expression "airspace" means the air space above the land areas and territorial waters of Malta;*

Limitations by Territory

Article 5 of the Criminal Code

- (d) without prejudice to the preceding paragraphs of this sub-article, against any citizen of Malta or permanent resident in Malta who in any place or on board any ship or vessel or on board any aircraft wherever it maybe shall have become guilty of the offences mentioned in article 54A or of an offence against the safety of the Government or of the offences mentioned in articles 133, 139A, or of the offences mentioned in articles 188B, 188C, 188D, or of the offences mentioned in articles 311 to 318 and in article 320 when these are committed or are directed against or on a state or government facility, an infrastructure facility, a public place or a place accessible to the public, a public transportation system, or of forgery of any of the Government debentures referred to in article 166 or of any of the documents referred to in article 167, or of the offence mentioned in article 196, or of any other offence against the person of a citizen of Malta or of any permanent resident in Malta;

Limitations by Territory

Article 5 of the Criminal Code

- For the purposes of this paragraph:
- "permanent resident" means a person in favour of whom a permit of residence has been issued in accordance with the provisions contained in article 7 of the of the Immigration Act;
- "offence against the person" includes the offences mentioned in articles 86 to 90 and in articles 198 to 205;
- the expressions "state or government facility", "infrastructure facility" and "public transportation system" shall have the same meaning assigned to them respectively by article 314A(4)

Limitations by Territory

Article 5 of the Criminal Code

- *(e) against any person who being in Malta –*
- *(i) shall have become guilty of any offence under article 87(2) or articles 198, 199, 211, 214 to 218, 220, 249 to 251, 311, 312, 314A, 314B, 314C, 316 or 317 when committed or directed on or against the person of a protected person or to the prejudice or injury of such person or likely to endanger the life or to cause serious injury to the property, life or health of such a person, or in connection with an attack on any relevant premises or on any vehicle ordinarily used by a protected person or when a protected person is on or in the premises or vehicle; or*
- *(ii) shall have committed any act which if committed in Malta would constitute an offence and such act involved the use of a bomb, grenade, rocket, automatic firearm, letter bomb or parcel bomb which endangered persons; or*
- *(iii) shall have committed any of the offences under articles 188B to 188D, although the offences referred to in this paragraph shall have been committed outside Malta:*
- *Provided that for the purposes of sub-paragraph (i) of this paragraph it shall be immaterial whether the offender knew that the person was a protected person;*

Limitations by Territory

Article 5 of the Criminal Code

- (3) For the purposes of sub-article (1)(e): "a protected person" means, in relation to an alleged offence, any of the following:
- (a) a person who at the time of the alleged offence is a Head of State, a member of a body which performs the functions of Head of State under the constitution of the State, a Head of Government or a Minister for Foreign Affairs and is outside the territory of the State in which he holds office;
- (b) a person who at the time of the alleged offence is a representative or an official of a State or an official or agent of an international organisation of an inter-governmental character, is entitled under international law to special protection from attack on his person, freedom or dignity and does not fall within the preceding paragraph;
- (c) a person who at the time of the alleged offence is a member of the family of another person mentioned in either of the preceding paragraphs and –
 - (i) if the other person is mentioned in paragraph (a) above, is accompanying him,
 - (ii) if the other person is mentioned in paragraph (b) above, is a member of his household;
- "relevant premises" means premises at which a protected person resides or is staying or which a protected person uses for the purpose of carrying out his functions as such a person; and
- "vehicle" includes any means of conveyance;
- and if in any proceedings a question arises as to whether a person is or was a protected person, a certificate issued by or under the authority of the Minister responsible for foreign affairs and stating any fact relating to the question shall be conclusive evidence of that fact.

Limitations by Territory

Article 5 of the Criminal Code

- (f) against any person who –
 - (i) commits any offence in premises or in a building outside Malta having diplomatic immunity due to the fact that it is being used as an embassy, residence or for such other purpose connected with the diplomatic service of Malta; or
 - (ii) commits an offence in a place outside Malta when such person enjoys diplomatic immunity by virtue of such service;

Limitations by Territory

Article 5 of the Criminal Code

- *(g) against any person who being in Malta, shall be a principal or an accomplice in any of the crimes referred to in article 87(2), or in articles 139A, 198, 199, 211, 214 to 218, 220, 249 to 251, 298, or in articles 311 to 318 or in article 320 when these are committed in the circumstances mentioned in paragraph (d) or (e) of this sub-article, or in a crime which is committed by any act as is mentioned in paragraph (e)(ii) of this sub-article, or conspires with one or more persons for the purpose of committing any of the said crimes, although the crimes shall have been committed outside Malta.*

Limitations by Territory

Article 5 of the Criminal Code

- *(h) against any person in respect of whom an authority to proceed, or an order for his return, following a request by a country for his extradition from Malta, is not issued or made by the Minister responsible for justice on the ground that the said person is a Maltese citizen or that the offence for which his return was requested is subject to the death penalty in the country which made the request, even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;*

Limitations by Territory

Article 5 of the Criminal Code

- (i) against any person who commits an offence which, by express provision of law, constitutes an offence even when committed outside Malta:



Limitations by Territory

Article 5 of the Criminal Code

- Provided that no criminal action shall be prosecuted against the President of Malta in respect of acts done in the exercise of the functions of his office.

Limitations by Territory

Chapter 226 – Territorial Waters and Contiguous Zone Act

- 3.(1) Save as hereinafter provided, the breadth of the territorial waters of Malta shall be twelve nautical miles measured from baselines determined using the method of straight baselines joining appropriate points on the low-water line, defined by coordinates in the Schedule.
- (2) For the purposes of the Fisheries Conservation and Management Act and of any other law relating to fishing, whether made before or after this Act, the territorial waters of Malta shall, with respect to the exercise of sovereign rights for the purpose of exploring and exploiting, conserving and managing the living and, or non-living natural resources therein, extend to a breadth of twenty-five nautical miles from the baselines from which the breadth of the territorial waters is measured, and, for the purpose aforesaid, jurisdiction shall extend accordingly.
- 4.(1) Without prejudice to the provisions of article 3(2), in the zone of the open sea contiguous to the territorial waters of Malta as defined in article 3(1) (such zone being in this Act referred to as "the contiguous zone") the State shall have such jurisdictions and powers as are recognised in respect of such zone by international law and in particular may exercise therein the control necessary –
 - (a) to prevent any contravention of any law relating to customs, fiscal matters, immigration and sanitation, including pollution, and
 - (b) to punish offences against any such law committed within Malta or in the territorial waters of Malta as defined by article 3(1) or (2), as the case may require.
- (2) The contiguous zone shall extend to twenty-four nautical miles from the baselines from which the breadth of the territorial waters is measured.

Theory of Criminal Liability

- Mens Rea
 - Wilful Intention (Dolus or dolo)
 - Culpable Negligence (Culpa)

Theory of Criminal Liability

- Wilful Intention (Dolo)
 - Positive Direct Intent
 - Positive Indirect Intent

Theory of Criminal Liability

- Culpable Negligence
 - Negative Indirect Intent

Theory of Criminal Liability

Positive Direct Intent	Consequence
	Willed
	Forseen Forseeable
Positive Indirect Intent	Consequence
	Not Willed
	Forseen Forseeable
Negative Indirect Intent	Consequence
	Not Willed
	Not Forseen Forseeable
Casus (Accident)	Consequence
	Not Willed
	Not Forseen Not Forseeable

Theory of Criminal Liability

- General Intent
- Specific Intent
- Motive
- Pre-Meditation
- Good Faith

Theory of Criminal Liability

“Ir-Repubblika ta’ Malta vs Salvatore sive Salvu Gauci” – 8th July, 2004 – Court of Criminal Appeal

- “There is a presumption, indeed a principle, that everyone wants the natural consequences of their actions, of what they do. If I pick up this glass cup and smash it with all my strength on the ground, what is its natural, logical consequence? That it breaks. That is to say, in circumstances like these, I cannot say that I wanted to smash it, yes, but I did not want it to break. If I, that is to say, have done an act, which clearly shows or one can reasonably conclude that the natural consequence of that act of mine is that that cup breaks, then I must respond to the fact that that cup broke. So I have the intention there that I wanted that cup to break as well.
- If, on the other hand, I buy a glass from a shop, - and he tells me, gives me a certificate, a guarantee, that it is unbreakable glass, - and I go home, I pick up this glass and I myself smash it on the ground to see if this glass is unbreakable. - At that moment when I smash it, I am presuming that it will remain whole. But it breaks. The natural consequence of my action, when I have a guarantee that that glass will not break, the natural consequence is not that that glass will break, - as in the first example, - but that it will not break. And if it was broken, I did not intend for it to be broken, rather, I intended for it not to be broken, that is, from the point of view of both the first example and the second example, you can see what my intention was. Therefore, there is the principle that everyone wants the natural consequences of their actions...
- ...That is, if I do something that one should reasonably think that from that something one can foresee that I could cause death, - and in fact death occurs, then you have the specific indirect intention, that I put the life of another in clear danger, and she died.

Theory of Criminal Liability

“Ir-Repubblika ta’ Malta vs Salvatore sive Salvu Gauci” – 8th July, 2004 – Court of Criminal Appeal

- The whole issue in this main ground of appeal of the appellant is whether he really intended to kill Anna Kok or to put her life in clear danger – that is, the homicidal intention under its two forms, the direct positive and the indirect positive – or whether his intention was simply that of injuring, even if gravely or seriously, the said Kok. In the first case, the appellant must answer for voluntary homicide, in the second case for grave injury followed by death. To reach the conclusion that this was a case of voluntary homicide, the jurors had to be morally convinced that (1) either the appellant saw death as a consequence of his action and wanted that death of Kok, or (2) that he saw death as a probable consequence of his action and although he did not want the death he nevertheless did that act or acts which he knew would probably cause that death.
- In the absence of either of these two forms of intent, the jurors had to conclude that the appellant only wanted to injure Kok; and since he must then answer for all the consequences of that injury, then he must answer for the crime of grievous hurt followed by death.