



Teaching Publications LAW 1804 Criminal law : General Principle Tanawat Pisitchinda



College of Politics and Government

Teaching Publications

LAW 1804

Criminal law : General Principle

Tanawat Pisitchinda

**College of Politics and Governance
Suan Sunandha Rajabhat University**

Preamble

The course of the law students for the term 2 of the first year specified that the law students shall enroll for Subject LAW 1804 Criminal Law: General Principles to study general principles of criminal law, application of law, penalty and method for security, criminal liability, attempt to commit crime, principal and supporter, concurrence of offences, repeated offence, and prescription including general provisions for petty offences according to the Criminal Code, Title 1. The writer as the lecturer has compiled the contents of this document in compliance with the explanation of such subject.

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1.

GENERAL PRINCIPLES OF CRIMINAL LAW

Introduction

In principle, the nature of law can be divided into 2 categories, which are the “**content-based law**”, regulations issued by state, which must specify the human behavior. If failing to comply, the human will face unfavorable impact; and “**procedure-based law**”, which is considered from the source of that law, such as the act, the royal decree etc.¹

1.1 Definition of Criminal Law

“**Criminal law**” means the law to specify the nature of action that is the offence and criminal penalty for such offence.² This definition can be considered as follows:

1.1.1 The criminal law determines the action of person.

In consideration of whether any law is the criminal law or not, the preliminary consideration for anyone who starts studying criminal law is whether such provision of law has specified the behavior of person relating to the act or not. The action of the criminal law. There are 2 types of actions under criminal law.

1.1.1.1 Act in type of gesture

The acts in type of gesture are the acts to present the gesture by moving or budging body, such as speaking, walking, punching, catching etc.

¹Yoot Sang-Uthai, **PRINCIPLES OF JURISPRUDENCE**, 20thed. (Krung Thep Maha Nakhon: Thammasat University Press, 2016), pp. 36-52.

²Office of the Royal Society, **Thai legal dictionary**, 4thed. (Krung Thep Maha Nakhon: Office of the Royal Society, 2013), p. 8.

1.1.1.2 Act in type of not showing gesture

The acts in type of not showing gesture are the acts without any gesture, which are non-movement of body such as silence, indifference etc.

1.1.2 The criminal law shall specify the action of person to be offence.

Next, although such law provides the provision on the act of person, the students must further consider whether it provides the action of person as offence or not. The “**Offence**” means the criminal offence or sentence only, excluding the offences under other laws, such as civil offence pursuant to Section 420 of the Civil and Commercial Code regarding tort etc.

1.1.3 The criminal law shall specify the penalty of the offence.

Lastly, when the law specifies the provision on the action of person and specifies such action as offence, it must specify the penalty. Then, such law shall be considered as the criminal law because the penalty is deemed as the sanction of the criminal law. The “**penalty**” means criminal punishment³, which the criminal law of Thailand specifies in Section 18 of the Criminal Code as follows:

- Capital Punishment
- Imprisonment
- Confinement
- Fines
- Forfeiture of property

³The Supreme Court’s judgment No.2137/2557.

1.1.4 Definition of criminal law in the view of academicians

Once the Act Promulgating Criminal Code B.E. 2499 (1956) came into force, the Criminal law was repealed and replaced by the Criminal Code” on January 1, 1957 onwards, which the academicians defined the meaning of the criminal law as follows:

“For the criminal law, if it was mentioned about the nature of law, it was categorized as the public law on offence and criminal penalty.”⁴

“The criminal law was the law specifying any action or non-action as offence and penalty for the offenders. In other words, the criminal law was the law prohibiting to do any action or force to do any action which the person who violated or fails to comply shall be subject to the penalty.”⁵

“The criminal laws were all laws specifying the criminal offences, penalties, procedure for safety and other criminal sanction measure.”⁶

“The criminal law means the law specifying the offence and penalty.”⁷

In summary, the criminal law is the law regarding the control of act of person for certain issues. It specifies such act as offence and penalty. Such penalty shall be only the criminal penalty to apply as mechanism for clear physical sanctions, such as death penalty for the offender etc.

⁴Jitti Tingsabhat, **Criminal Law**, 11th ed.(Krung Thep Maha Nakhon: The Thai Bar Under the Royal Patronage, 2012), p. 2.

⁵Kietkajorn Vachanasvasti, **Criminal Law Explanation, Part 1, Volume 1**, 11thed. (Krung Thep Maha Nakhon: KRUNG SIAM PUBLISHING CO.,LTD., 2019), p. 1.

⁶Kanit Nanakorn,**Criminal Law General Principles**,6th ed.(Krung Thep Maha Nakhon: Winyuchon Publication, 2017), p.49.

⁷Taweekiat Meenakanit, **Criminal Law General Principles**, 20th ed.(Krung Thep Maha Nakhon: Winyuchon Publication, 2019), p.14.

1.2 Nature of the criminal law

After the students have studied the definition of the criminal law, the next step will be the understanding of nature of the criminal law, which has specific model different from other natures of laws significantly as follows:

1.2.1 Intention of the criminal law

The criminal law is the law with intention to control crime especially in society. According to the nature of person, they can show their serious behavior or non-serious behavior but not appropriate. Therefore, the criminal law relates to any act that is harmful against the society, such as prohibition of killing person, prohibition of stealth etc.

1.2.2 Interpretation of the criminal law

The interpretation of the words in the criminal provision is special because the person who uses the criminal law, shall search for the meaning of the word and provision of law based on the strictness as the letters are written, which are:

1.2.2.1 The criminal law shall be interpreted strictly according to the letters.

The Supreme Court's judgment No. 5710/2541 decided that "Once Section 217 specifies only whoever sets fire to the things belonging to the other person shall be punished, which there is no clause specifying that **"or others as the co-owners"**, it is also the offence. Therefore, the word **"things belonging to other person"** must be strictly interpreted because it is the interpretation of the law with criminal penalty that may not extend the interpretation to include things that other person is the co-owner to have negative impact to the defendant or alleged offender. Therefore, once the defendant is co-owner of the house in such incident, the offender's action is neither the offence under Section 217 nor the offence under Section 218(1)."

Note: If the law is not specified the criminal penalty, it shall not be strictly interpreted, such as the Amnesty Royal Decree etc.⁸

1.2.2.2 The extensive interpretation according to letters in line with the intention of the criminal law

The extensive interpretation according to letters in line with the intention of the criminal law is deemed as the relaxation of using the criminal efficiently in compliance with the objectives of criminal law to intend to protection only. It is not the interpretation to expand the criminal proceeding widely. However, some cases may be extensively interpreted to punish the offenders. For example:

The Supreme Court's judgment No. 877/2501 decided that “the stealth of electric current was the offence according to Sections 334 and 335 of the Criminal Code, as the case may be.”

1.2.2.3 The interpretation by applying the tradition for the benefit of the offenders.

The Supreme Court's judgment No. 390/2483 decided that “Master Chit carried knife to the school to hurt the students. Mr. Chai, the Principal, knew the incident and then held the meeting with teachers and students. Then, he ordered Mr. Chob, the teacher, to hit Master Chit in front of the teachers and students pursuant to the regulation on the punishment of students of the Pathumthani Section Committee. Mr. Chob performed according to the order of Mr. Chai in good faith and with reasonable ground as Master Chit was only 12 years old and a student trying to conduct badly and it was reasonable for the teachers to suppress. Otherwise, there was no result of learning. The action of Mr. Chob was not beyond the reasonable action. Therefore, he did not commit the offence.”

⁸The Supreme Court's judgment No.6517/2562.

1.2.2.4 The interpretation by applying the general principle of law for the benefit of the offenders

As the general principle of law has not specified in writing, which the principle is applied for the benefit of the offender, it is therefore generally acceptable, such as “**Volenti non fit injuria**” from latin. The said consent is that the victim gave consent to the offender to act against the victim. For example, the patient gave consents to the doctor to perform operation to his body. The doctor used knife, the surgery tools, to cut on the torso of the patient. The doctor performed the action which was harm to the body of the patient. However, the doctor was not liable for this because his action was incurred due to the patient’s consent which was honestly given, (such as not swindling for consent). Also, such consent should not be against any moral feeling. Therefore, such consent, which is the general principle of law, can be used to exempt the offence under the criminal law.⁹

Test after studying

Question: What is the definition of the criminal law? Please explain briefly.

⁹Jitti Tingsabhat, “ Volenti non fit injuria,” *Chulalongkorn Law Journal* 3, 2 (May - August 1977):52-57.

References

- Chanhom,K.**Foundation of criminal law.** 2nd ed.Krung Thep Maha Nakhon: Winyuchon Publication, 2018.
- MeenakanitT.**Criminal Law General Principles,** 20th ed.Krung Thep Maha Nakhon: Winyuchon Publication, 2019.
- Nanakorn,K.**Criminal Law General Principles,** 6th ed.Krung Thep Maha Nakhon: Winyuchon Publication, 2017.
- Office of the Royal Society.**Thai legal dictionary.** 4thed.Krung Thep Maha Nakhon:Office of the Royal Society, 2013.
- Sang-Uthai,Y.**PRINCIPLES OF JURISPRUDENCE.** 20thed.Krung Thep Maha Nakhon:Thammasat University Press, 2016.
- Tingsabhat,J.“ Volenti non fit injuria,” Chulalongkorn Law Journal 3, 2(May - August 1977):52-57.
- Tingsabhat,J.**Criminal Law,** 11th ed.Krung Thep Maha Nakhon:The Thai Bar Under the Royal Patronage, 2012.
- Vachanasvasti,K.**Criminal Law Explanation, Part 1, Volume 1,**11thed.KrungThep Maha Nakhon: RUNG SIAM PUBLISHING CO.,LTD., 2019.