

GENERAL STRUCTURE OF THE CRIME

A. WRONGDOING: primarily concerning the ACT¹⁾

B. BLAMEWORTHINESS: primarily concerning the ACTOR²⁾

I. DEFINITIONAL ELEMENTS OF THE OFFENSE
("Tatbestandselemente")

1. Voluntary CONDUCT by act³⁾ or omission⁶⁾
2. other OBJECTIVE elements, e.g.
 - external RESULT
 - CAUSATION
 - (virtually) SPECIFIC methods or instruments
3. INTENT⁷⁾ or NEGLIGENCE⁸⁾ in particular as to the result
4. other SUBJECTIVE elements e.g. a specific PURPOSE or MOTIVE

may be NEGATED by

UNCONSCIOUSNESS or other INABILITY to act

LACK of any of those elements

(unavoidable) MISTAKE OF FACT

LACK of the respective element

II. INLAWFULNESS¹⁾
("Rechtfertigungsgründe")

may be NEGATED by a ground of JUSTIFICATION²⁾, e.g.

- self-defense
- consent of the victim
- necessity by reason of superior interest

III. INCAPACITY^{1) 2)}

1. Penal CAPACITY
2. CONSCIOUSNESS OF WRONGDOING ("Unrechtsbewusstsein")
3. REASONABLE EXPECTABILITY of lawful conduct ("Zumutbarkeit")

may be NEGATED by

INSANITY or other grounds of INCAPACITY (e.g. involuntary intoxication)

(unavoidable) MISTAKE OF LAW

ground of EXCULPATION, e.g.

- duress
- excusing necessity
- conflict of duties

IV. (Virtually) SPECIAL PUBLIC POLICY PREREQUISITES^{1) 4)}
("Sekundäre Strafvermeidungs- oder Strafbefreiungselemente")

- FORMAL COMPLAINT of the victim
- Statute of LIMITATIONS

may be NEGATED by specific DEFENSE, e.g.

- ABANDONMENT in case of attempt
- INNOCENTLY for members of parliament
- LACK of complaint
- EXPIRATION

Additional Comments (with particular reference to the numbers in the scheme)

1. Though this scheme indicates four stages (I-IV), it still can be considered a TRIPARTITE structure since only the stages I-III (definition of the offense, unlawfulness and culpability) are common to any crime whereas stage IV comprises elements and defenses that are (a) less justificatory or exculpatory in nature but rather more general matters of public policy and (b) relevant not for all but only certain types of offenses and, thus, are no essential part of the general structure of the crime.

On the other hand, this tripartite structure could as well be conceived of as a TWO-STAGED if we, as indicated by the sideline -- inscription A and B, considered the definitional elements (I) and unlawfulness (II) as merely two complimentary sub-elements of WRONGDOING (A) as stage I, primarily concerning the ACT, and CULPABILITY (B) as stage II, primarily concerning the blameworthiness of the ACTOR.

So far, however, as the PRACTICAL PROVING of an offense is concerned, the two-stage as well as the tripartite construction require the same sequence of analysis since in both schemes we have to affirm all elements in order to reach full punishability. That means: One reaches II only after affirming I, and III only after affirming I and II, and IV (if specifically required at all) only after affirming I-III. And, vice-versa, as soon as one stage is not reached, you won't go any further.

2. A ground of JUSTIFICATION negates II, but not I (unless one considers grounds of justification as "negative elements of the definition of the offense": so-called "negative Tatbestandsmerkmale").

3. A ground of EXCULPATION (respectively of PRECLUDING CULPABILITY) negates III, but not I or II. Therefore, since the offense remains unlawful, it may entail non-punitive measures of

rehabilitation and security as well as it may be capable of being participated in by an aider and abettor or an instigator.

4. Lack of a (specifically required) PUBLIC POLICY ELEMENT negates IV and, thus, precludes full punishability, but does not suspend the unlawfulness and culpability of the offense, thus remaining capable of rendering punishable a participant that personally fulfills all requirements of stage IV.

5. The common law notion of ACTUS REUS equals either all definitional elements of I (and perhaps including II) or just the ACT (I. 1).

6. To be criminally liable for OMISSION, there has to be breach of a LEGAL DUTY TO ACT which, according to the prevailing consensus is to be considered as a (mostly unwritten) element of the definition of the offense (I) or, as some dissenters suggest, only as requirement of unlawfulness (II).

7. The common law notion of MENS REA equals either INTENT (I. 3) or CULPABILITY (III). Similarly in German theory there is still some discussion whether, as it was the traditional view, intent and negligence are mere elements of culpability (III) or, as originally developed by the so-called "finalistic theory of act" but meanwhile widely accepted on other grounds, already have to be considered as elements of wrongdoing (I).

8. NEGLIGENCE is punishable only if specifically proscribed for by statute. As part of WRONGDOING (I. 3), negligence requires breach of a "duty of care" in the sense of not coming up to a REASONABLE man's standard of diligence under the given circumstances (so-called "objektive Sorgfaltswidrigkeit"). As far as the actor's INDIVIDUAL ability of realizing and complying with that duty is concerned, this is considered as a matter of CULPABILITY (III).