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CRIMINAL LAW

Criminal Law is a branch of Public Law that governs the relationship between a state and Citizen.
What is a crime?
A crime is a wrong against the state either by omission or commission classified by the state as criminal and one to which a punishment has been attached.

- Commission means doing what is not required by the law for example killing a human being and Omission is failing to do what is required by the law for instance A police Standing by while a person is kicked to death.

Criminal wrongs are dealt with by the state for one or more of the following reasons:

- In many instances the events are so serious both in relation to the victim and to the public at large that the matter can not and should not be left to the individuals concerned to take action against the offender.
- A claim of monetary compensation alone may not suffice some form of retribution may be considered desirable.
- To ensure that standards are kept high.

SOURCES OF CRIMINAL LAW

- ❖ Constitutin of the United Republic of Tanzania 1977 as amended. The constitution is a source of criminal law because it provides for the basic rights and duties of citizens.
- ❖ Statutes- These are laws passed by a legislative body .for example the Penal Code Cap.16
- ❖ Precedent- These are laws made by the judges in the course of delivering judgments. For instance the decision of the Court of Appeal binds the Lower Courts.
- ❖ International Law- This is the law that binds the relation between states, it is normally done through the signing of treaties and thereby incorporating the provisions of the treaty to the national Acts. For example a treaty on the abolition of child labour, Tanzania has incorporated the provisions on abolition of child labour in the Employment and Labour Relations Act of 2004

FUNCTIONS OF CRIMINAL LAW

- ❖ Investigate crimes and prosecute, convict and punish criminals

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- Operates as guide to the citizen indicating the limits of legitimate activity on his part and predicting the consequences of infraction (breaking the law)
- Preservation of public order and decency (accepted moral standards)
- To protect the citizen from what is offensive or injurious and to provide sufficient safeguards against exploitation.

PURPOSE OF PUNISHMENT

- Retribution – This acts as a revenge, what the offender deserves after breaking the Law for instance a person who kills another human being if found guilty is sentenced to death by hanging.

- Deterrence- Dissuade the individual criminal from re-offending in future or other offenders. The public can refrain from committing crimes having found out that the consequences of committing offences are great and if someone was imprisoned and thereafter released, by remembering the situation of staying in prison he can not commit the same offence though this is not always the case because there are other people who keep on committing offences despite the fact that they were previously imprisoned.

- Incapacitation- Once a term of imprisonment is imposed on the offender the public are protected from further offences by him for so long as he is in prison

- Rehabilitation- Training i.e. helping the offender to live a normal life after imprisonment.

CHARACTERISTICS OF CRIMINAL LAW

- The president is the only one who has the mandate of pardoning the criminal
- Republic is the one that prosecutes wrongs
- After committing an offence one has to suffer punishment
- Criminal Law should not be vague
- It should not be retrospective
- Rule of due process –people should be told what offences they are facing or being charged with.

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Law and Morality
Morality-concern with the distinction between good and evil or right and wrong; there is a point where Law and Morality interact but not all rules of social morality however are subject to enforcement by the Criminal Law. Many as immoral may regard adultery but it is not a crime. Lying may be immoral but it is not necessarily a crime if it is not made under oath. Chapter XV of the Penal Code Cap.16 of the Laws covers offences against morality for instance rape, defilement of idiots or imbeciles, sexual exploitation of children etc.

Law is described as heteronomy; it is imposed form without. Austin defines it as that which is made by legislature, decided upon by law-courts, by the state or by God.

Morality is based on autonomy, which comes from within, the conscience and the character. Therefore Institutional Law, which comes from outside, is often contrasted with Moral Law.

In the case of Shaw vs. DPP (1962) AC 220, D was convicted of conspiracy to corrupt public morals arising from his publication of the "Ladies Directory" advertising the names and addresses of prostitutes, together with photographs and details of the services they were prepared to offer. The House of Lords upheld the conviction, Viscount Simonds stated that
" In the sphere of the criminal law I entertain no doubt that there remains in the courts of law a residual power to enforce the supreme and fundamental purpose of the law, to conserve not only the safety and order but also the moral welfare of the State, and that it is their duty to guard against attacks which may be the more insidious because they are novel and unprepared for

GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY
"Actus non facit reum nis mens sit rea"- An act itself doe not constitute a crime unless accompanied by a guilty mind.

Actus reus+ Mens rea = Crime

ACTUS REUS
The logic behind these principles is that an act by itself doe not amount to a crime unless accompanied by a guilty mind.
Actus Reus- wrongful deed that comprises the physical compound of a crime.
Actus Reus –if it is forbidden by a statute or common law.

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Actus Reus of theft is taking the thing without the consent of the owner. Not every taking amounts to Actus Reus

MENS REA

Mens rea in the context of criminal law is more specifically a mental state.

A man will not as a general rule be held to be criminally liable/responsible unless:

- He was acting voluntarily
- He knew what he was doing
- In those offences where particular consequences form part of the actus reus he foresaw the likelihood of those consequences.

VOLUNTARINESS

An involuntary muscular movement will not contain mens rea. Ordinarily involuntary muscular act are excusable under the defense of "automatism" e.g. those who suffers epileptic fit while driving causing death thereby or sleep walkers and other unconscious states.

Case: ANTHONY MHIKWA vs. R (1968) H.C.D 460

The accused was convicted by a lower court of contempt of court c/s 114 (1) (a) of the Penal Code on the ground that he had shown disrespect to the Court by laughing and making noises in the course of a trial in which h e was involved.

On appeal he explained that a fly had flown into his nose causing him to snort and sneeze and the High Court of Tanzania in accepting the explanation quashed the conviction. The reason given was lack of mens rea because the accused's reaction was instinctive and not subject to conscious control it was involuntary.

KENNY'S OUTLINE OF CRIMINAL LAW 15th (Ed)

The Actus Reus (deed of a crime) as so used does not indicate the crime itself but merely one of the ingredient of a crime i.e. actus reus may be present without any crime at all.

The actus reus is essential to a crime but is not sufficient and it is for this purpose without mens rea.

ELEMENTS CONSTITUTING ACTUS REUS

Actus Reus constitutes all elements in the definition of a crime except the accused's mental element

Read: Winzar vs. Chief Constable of Kent at page 23 of Michael J. Allen- Criminal Law

Generally Actus Reus is made up of three things:

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- Conduct which is the central feature of a crime e.g. putting of a poison in the glass
- Surrounding material circumstances e.g. putting a drink in A's room
- Consequence i.e. death

S.134 of the penal code – it is an offence for acting without lawful authority or excuse to take and marry a girl under 14 years old. From her parent without free will the person is charged with an offence of abduction of a girl under the age of 14 years.

- Surrounding feature is "taking away a girl"
- Surrounding circumstance "there is no lawful authority or excuse taking unmarried girl below the age of 14"- the girl is under the custody of her parent.
- Consequence is the removal of the girl from her parents

At common law, liability for omission is an exception.

- i.e. omission is rarely punishable under common law e.g. when a person saw a child drawning in a swamp, if he leaves that child to die the person can not charged with an offence.
- The person is punishable under the law when he breaches the duty imposed by the Law

The conduct must be voluntary

In the case of **HILL vs. BAXTER** (1958) 1 QB 277, D was driving home after night shift work when overcome by sleep he drove into a party of soldiers. H was convicted of driving without due care and attention and dangerous driving as realizing that he was becoming drowsy she should have stopped and it was immaterial that he was not conscious of his actions when the accident happened. Humphrey J stated that "

RECKLESS

Is the taking of unjustifiable risk/ giving little thought to danger.
There are two types of recklessness:

- Caldwell recklessness
- Cunningham recklessness

Under Cunningham recklessness it was suggested that before the defendant could be said to be liable he must have bee unaware that he was taking an unjustifiable risk.

Facts of the case:

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The defendant stole money from a gas meter and in so doing tore the meter from the wall and left the gas pipes exposed. Gas then seeped through the poruous walls into the basement of the house next door and affected a woman living there. Cunningham was convicted but made a successful appeal.
The Court of Appeal held that when the word malicious was used in a statute, it was necessary to establish that the defendant had either intended to cause the harm in question or he had foreseen that such an event would occur.

Cunningham could only be convicted if he knew of the risk from the gas but nevertheless went on to take it.

CALDWELL RECKLESSNESS
The defendant could also be convicted if he ought to have foreseen that the risk was unjustifiable.
Facts of the case:
The defendant had been engaged to work for the proprietor of a residential hotel but had been dismissed and nursed a grievance against the owner. When he was very drunk, Caldwell broke a window in the hotel and started a fire on the ground floor. Fortunately, this was discovered an put out quickly and no serious harm was done either to the ten people residing in the hotel or in the form of property damage.
Caldwell was prepared to admit to the lesser charge or criminal damage but fiercely resisted the more serious charge of intention to endanger life. The Court found him guilty and was sentenced to three years imprisonment.

Lord Diplock said: That the only person who knows what the accused mental process were at the time of committing the crime is the accused himself and probably not even he can recall them accurately when the rage or excitement under which he acted has passed or he has sobered up if he were under the influence of drink at the end of the relevant time.
The defendants recognize that there was some risk involved and has nonetheless gone on to do it.

Case: **CROSSMAN** (1986) Crim.LR 406
The lorry driver rejected the advice of the loaders of the piece of heavy machinery that it was heavy unless it was chained and sheeted. But the driver said that the machinery was as safe as houses he later killed a pedestrian. He was charged with reckless driving and causing death.

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NEGLIGENCE
Is a failure to take reasonable care to avoid causing injury or loss to another person/ acting in a way that falls below the standard expected of the reasonable person in the same situation as the defendant.

Ingredients of negligence:
- Duty
- Breach of duty
- Damage

Case: **R vs. CHEPE KALANGALI** (1973) LRT 77
Ss 206- 210

INTENTION
Is the conscious exercise of the mental faculties of a person to do an act for the accomplishment of a purpose.
Intention is always expressed by words like recklessly, knowingly, deliberately, willfully etc.
In a criminal trial it is necessary to prove the intention to cause specified results.

Case: **DPP vs. SMITH** (1961) AC 1, the defendant had been ordered to leave sharply and drove off at great speed with a policeman clinging to the vehicle. The officer was thrown off and into the path of an oncoming car and died from his injuries. Smith was charged with murder and convicted because he had the necessary intention for murder.

DOCTRINE OF TRANSFERRED MALICE
A situation whereby an accused's acts ends to an unintended results.
If X with the mens rea of a particular crime does an act with causes the actus Reus of the same crime he is guilty even though the result in some respects is an unintended one.
X intends to murder Y and in the dusk shoots a man who is in fact Y but misses and kills P who unknown to X was standing close by. This is unintended result, X with the mens rea of a particular crime has caused the actus reus of the same crime and guilty of murder i.e. transferred malice.

Note: The doctrine operates when the actus reus and mens rea of the same crime coincide.

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If A with mens rea of one crime does an act which causes actus reus of a different crime he can not as a general rule be convicted of either offence. A shoots at P's dog with intent to kill it but misses and kills B who unknown to A

EXCEPTIONS TO THE PRINCIPLE OF ACTUS NON FACIT REUM NIS MENS SIT REA

As already discussed that for a person to be charged with a crime, actus reus and mens rea must be proved but strict liability, vicarious liability and strict liability are the exceptions to this rule.

STRICT LIABILITY

This covers offences which do not require the proof of mens rea. A person can be convicted on the proof of Actus Reus only. In most cases the judges have at times invoked strict liability as a protection for the society.

Examples of strict liability offences includes: Possession of dangerous drugs, road traffic, pollution and contempt of court. It should be understood that liability is strict not absolute which means that the fact that A has caused death due to dangerous driving and this is an offence of strict liability still he can have a defense of automatism when driving.

Therefore other offences such as insanity, necessity should be available equally on a charge of an offence of strict liability as in the case of any other offence.

READ: **JOSEPH HAWKS vs. R** (1970) H.C.D 271

S.134 of the Penal Code enacts the offence of strict liability i.e. abduction of girls under the age of 16

PRINCE (1875) LR 2 CCR 154- D was convicted of taking an unmarried girl under the age of 16 out of the possession of her father against his will, D believed that the girl was 18 but he knew she was in custody of her father. D was convicted as knowledge that the girl was under 16 was not required.

Other cases on strict liability:

- Maulid v R. (1970) H.C.D. n. 346
- Copperfield Cold Storage Co. Ltd. v. R(1953) 5 N.R.L.R. 248 & 264

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- Mumir v. R(1967) E.A. 430

JUSTIFICATION FOR STRICT LIABILITY

- Encouraging safety and improved standards of prevention
- Relieving the prosecution of the difficult task of proving mensrea thereby increasing administrative efficiency.

VICARIOUS LIABILITY

Principal /employer being criminally liable for the offence committed by the employee S.77 of the Interpretation of Laws Act R.E. 2002
In the Law of tort, contract, civil a master is held liable for all acts of the servants **but in criminal law** a master is not liable. In criminal law for a master to be liable there must be a piece of evidence showing that the act of the employee was directed by the master.
Read:

- The Manager, Burhani Saw mills Ltd. v. R (1968) HCD 395
- Hamad Abdallah v. R (1964) E.A. 270
- Ally Mzee v R (1970) E. A. 404
- Coppen vs. Moore (1898)2 QB 36

CORPORATE LIABILITY

It is a legal person – it has no physical existence, it can not form mens rea.

A corporation is being capable of being fixed by a criminal liability. It is it's directors that can form an intention.

HISTORICAL BACKGROUND OF CORPORATE LIABILITY

At the beginning it was not possible to charge a corporation with a criminal charge because the existence of a person was required.

Later on the Kings Bench decided that it was possible for a company to appear by attorney if it is faced with a criminal charge.

A corporation may appear and plead through a representative. A Corporation was required to act within the legal bounds.

Criminal law has been extended to cover the companies and public enterprise.

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In every corporation there are persons who control and direct the activities of that corporation.

The company may be held liable for failure to fulfill a statutory duty. E.g. failure to pay tax, or to hold the meetings as required by the law. Refer. The Companies Act Cap.202 R.E. 2002

In the case of **H.L BOLTON ENG.CO.LTD vs. T.F.GRAHAM &SONS LTD** (1977)1 QB 157

Where Denning Lord Justice said the following “A company may in may way be likened a human body it has a brain and a nerve centre which controls what it does, it also has hands which holds the tools and acts in accordance with the direction from the centre, some of the persons are servants and agents who have nothing more than hands, others are directors and managers who directs the will of the company and what it does, the state of mind is the state of company and the law treats as such”

The company is held liable because the acts of the servants are deemed to be the acts of the company.

Therefore the company is held criminally liable. BUT if the offence requires the proof of mens rea then the controlling officer must be shown to have mens rea because the controlling officer is the mind of the company.

LIMITATION OF COMPANY LIABILITY

A company can only be convicted with offences which are punishable by fine.

S.71 of the Interpretation of Laws Act

If it is 6 months imprisonment- 3million

1-2 years imprisonment- 5 million

2 years and above- 10 million and above

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Crimes which a company can not commit:

-Rape

-Assault

-Perjury

-Incest

Note: The director can not say that these are the acts of the company because they are outside the scope of employment. These are personal acts.

The justification for company liability is that the offence can not go unpunished.

The conviction of the corporation itself will serve to warn the public.

> **Read**: **Smithfield Butchery Ltd., v. R** (1949) 23 92) K.L.R. 81
>
> **Lennards Carrying Co., Ltd. v. Asiatic Petroleum Co**
>
> **Noore v. I Bresler Ltd**. (1944) 3 K.B. 515

BURDEN OF PROOF IN CRIMINAL PROCEEDINGS

By proof- to prove a fact it means to satisfy the court as to the existence/non existence of certain facts by admissible facts, what is admissible and not admissible is the matter to be dealt with evidence.

For instance the prosecution charges the accused with murder it is the prosecution which should prove that there was a killing and that there was malice aforethought.

A person is presumed to be innocent until is proved guilty.

A standard of proving that the accused is guilty is beyond reasonable doubt.

The burden of proof lies on the prosecution side. This principle was laid down clearly in the case of **WOOLMINGTON vs. DPP** (1935) AC 462, D was charged with the murder of his wife who had left him. His

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defense was that he had gone to his wife taking the gun with him to show her and tell her that he was going to commit suicide, and in showing it to her it had gone off accidentally. The judge directed the jury that once prosecution proved that the deceased was killed by D; it was for D to show that the killing was not murder. The house of Lords held that this was misdirection. The accused in a criminal trial is presumed innocent until proved guilty. It was not enough to show that D had done the act; it had also to be proved that he did so with the necessary criminal intent…

GENERAL DEFENCES

1. MISTAKE OF FACT- S. 11 of the P.C
Where the accused pleads that he acted under mistake it is vital important to classify the matter. The question is whether he alleged offence negatives the mens rea required for the offence charged.

Case: **MCHELENGWA NJINGI vs. R** (1968) H.C.D 370
The men while taking Pombe with a woman, they thought that the woman consented and the court believed them on the ground of intoxication.
Case: **JOHN NYAMUHANGA BISARE** (1980) TLR

Case**: R.V. Sultan Maginga** (1969) H.C.D n. 250

Case: **R v. Selemani Hassani** (1969) H.C.D. n. 370

2. NECESSITY
The defense of necessity is a common law defense not under the penal code
The accused does not deny that he committed what will otherwise be an offence in order to avoid greater evil and that his defense justifies his conduct
The defence of necessity is divided into two:

- Public necessity- A man interferes with another for the public interest

- Private necessity- A man interferes with another for his private interest.

❖ **Cases:**
❖ R. v. Dudley & Stephems (1884) 14 Q.B.D. 273
❖ R.v. Bourne (1938) ALL ER 615

3. COMPULSION/DURESS – S.17
It is a defense because threats of immediate death or serious personal violence so grat as to overbear the ordinary powers of human resistance should be accepted as a justification for acts which would otherwise be criminal.
When a person pleads duress he admits that he had a choice and chose to commit the act which he is charged but denies that it is a crime, he claims to be excused because of the threats to which he was subjected. What he means is that his courage and will were not strong enough to take that course.

In **HUDSON &TAYLOR** (1971)2 QB 202
Lord Widgery CJ stated that the threats must be death or serious personal injury.

- Note: Where a person has voluntarily and with knowledge of its nature, joined a criminal organization which he knew might bring pressure on him to commit an offence and was an active member when he was put under such pressure he can not raise the defence of duress.

4. BONAFIDE CLAIM OF RIGHT S.9 of the P.C
If the accused is able to adduce evidence that he had an honest belief that the property belonged to him no offence is committed.
Case: LENDERITO LAISDOLI vs. R (1972) H.C.D 169
MOHAMED HASSAN vs. R (1969) H.C.D. 71
SALUM IBRAHIM vs. R (1971) H.C.D 481

A person is not criminally responsible in respect of an offence relating to property if the act done or omitted to be done by him with respect to that property was done in the exercise of an honest claim of right and without intention to defraud

Case: **MUSSA vs. KANDENGE** (1968) H.C.D 398
Case: **JOHN CHIZE BAHINGANYI vs. R** (1988) TLR 234
The defense is only available where the claim of right is fairly, honestly and reasonable

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BUT unpaid salary is not covered by the principle.
Case: **GEOFFREY BUYOMBE vs. R** (1968) H.C.D 373

5. IMMATURE AGE
A person under the age of is not criminally responsible for any act or omission . S.15 of the P.C
Read SOSPA.

A male person under the age of 12 years is presumed to be incapable of having carnal knowledge.
If the child is above 10 years and under 12 though prima facie he is to be judged not guilty yet if it appear by strong circumstances and pregnant evidence that he had discretion to judge between good and evil judgment may be given against him.
The prosecution must adduce evidence that the juvenile knew that he was doing something that is morally wrong
The prosecution may therefore produce the evidence of the child's previous activities, previous crimes committed by him and what the child has been taught aboth at home an school.

Case**: R vs. WAITE** (1892)8 TLR 782
It was stated that a boy under 14 is under a physical incapacity to commit the offence of rape.

6. SELF DEFENCE
S.18 of the P.C provides that subject to the provisions of S.18A a person is not criminally liable for an act done in the exercise of the right of self defense of another / defense of property.

- Excessive force should not be used in self defense
- Ss.18 B and 18 C

Read the following cases:

- **Selemani Ussi v. R** (1963) E.A. 443
- **Saidi Abdalah v. R** (1967) H.C.D. 266
- **Mongi v. R** (1964) E.A. 289
- **Mohamedi Ally v. R**(1969) H.C.D.N. 54
- **R.v. Mohamed Ndowe** (1970) H.C.D. n. 211

7. INTOXICATION

- A state of being affected by alcohol/drugs

S.14 of the PC as a general rule intoxication is not a defense to any criminal charge.
BUT intoxication becomes a defense where:

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S.14 (2) a –Intoxication was caused without his consent by the malicious or negligent act of another person.
(b) The person was by reason of intoxication insane temporarily at the time of such act/ omission
Read: R vs. STEPHANO ALOIS (1972) H.C.D 199
R vs. ATUPELYE LWIDIKO (1967) H.C.D 389
R vs. DAMSON SIMBACUNGILE (1967) HCD 71
R vs. STANSLAUS SORONI MARESI (1969) H.C.D.32
R.v. Thomas Mfaume (1967) H.C.D. n. 18

R.v. Ngado Mwakalinga (1976) H.C.D. n. 300

R v. Ally Mohamed (1968) H.C.D. n. 146

8. INSANITY S.12 and 13 of the Penal Code

The defense of insanity is concerned with the accused mental state at the time when the alleged offence was committed.

Many people would agree that someone suffering from insanity who is completely unaware of his actions should not be branded as criminal.

Members of the public need reassurance that they will be protected from his violent acts.

It should be noted that such an offender should face trial it is then proved that he committed an unlawful act he will not be found guilty instead a special verdict will be recorded of not guilty by reason of insanity.

Rules on insanity were laid down in the case of M'Naghten 1843
FACTS:
The accused Daniel M'Naghten tried to kill the Prime Minister Sir Robert Peel but instead shot and killed the prime minister's secretary Edward Drummond. M'naghten was not found guilty of murder on the grounds that he was insane.

Under S.12 of the penal code it is clearly stated that every person is presumed to be sane until the contrary is proved. Thus the court should be informed that a person is presumed sane and responsible for his crimes unless it can be proved that at the time of the offence: He was labouring under such a defect of reason, from disease of mind

as not to know the nature and quality of the act he was doing or if he did know it, he did not know he was doing what was wrong.
The defendant has to prove three things:
-A defect of reason
-Caused by a disease of mind
-So that he did not know what he was doing OR if he knew he did not know that the act was wrong.

- **A defect of reason.**

The Court have decided that this means a complete loss of the power of reasoning, not mere confusion or absentmindedness.

In the case of **Clarke 1972** – The accused was charged with theft of a jar of coffee, a pocket of butter and a jar of mincemeat which she had transferred from the wire basket to her bag. Her defense rested on her forgetfulness caused by depression.

The Court held that the rules are not meant to apply to those who retain the power of reasoning but who in moments of confusion or absentmindedness fail to use their powers to the full.

- **Caused by the disease of mind**

Disease of mind is not merely confined to disease of brain alone; multifunction of the mind caused by inside source will be included.
In the case of **KEMP** (1957)1 QB 399, The accused inflicted grievous bodily harm on his wife with a hammer for no apparent reason. Evidence had been brought to show that he was normally a mild tempered man and a devoted husband. He claimed that he had lost consciousness because he was suffering from arteriosclerosis which had casued a congestion of blood in his brain. The prosecution argued that the defect of reason had been caused by a physical illness not a mental one and was not therefore within the definition of the M'Naghten rules.
The Court of Appeal upheld the trial judge's finding of insanity arguing that the law is not concerned with the brain but with the mind in the sense that "mind" is ordinarily used, the mental faculties of reason, memory and understanding.

Read: The case of **R vs. SHAUYINGA** (1971) H.C.D 369

OTHER ILLNESSES:

- Epilepsy
- Diabetes
- Sleep walking

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Read: The case of **R vs. THOMSON MSUMALI** (1969) H.C.D. 26
The case of **R vs. AGNES LIUNDI** (1980) TLR 46

- As not to know the nature of and quality of the act he was doing: The effect of the disease of mind must be such that the defendant is unaware of what he is doing. The defendant does not understand the physical nature and the quality of his act. Refer the case of KEMP in which the defendant's attack occurred when he had lost consciousness and in the case of BURGESS 1991 The man claimed that he was asleep. Neither therefore, knew the nature and quality of their acts

OR

If he does understand this he fails to appreciate that he is doing something wrong, this might be very difficulty to prove in the case of **R.v. Windle** (1952) 2 AB 826 make this position clear: The defendant, a 40 year old man said to be of weak character, was married to a much older woman who was believed to be insane. She often spoke of suicide and a workmate of the defendant, irritated by Windle's constant complaints about his unhappy home life, suggested giving here a dozen aspirins. The defendant instead gave her 100. A defense doctor believed that the accused was suffering from ("folie a deux") a form of communicated insanity, but both sets of doctors agreed that Windle knew that he was performing a wrongful act. He had made the following comment to the police. **" I suppose they will hang me for this"** The Court of Appeal confirmed that the word wrong in this context meant that the defendant knew that what he was doing was contrary to law and the he had realized what punishment the law provided for murder.

Note: Insanity can also be caused by intoxication- refer S.14 (2) (b) of the penal code Cap.16.

Extra cases on insanity:

- **R.v. Magata Kachohakana** (1957) E. A. 330
- **R v. Nyingo Suwatu** (1959) E.A. 974

PARTIES TO CRIMES

In the commission of crimes it is possible that a group of people participates in fulfilling the desired actions. For example two of

four persons may arrange to steal money from an individual having a supermarket. If they commit the offence together , they are considered in law to be joint principals.

The reason as to why the law makes a distinction between the principal offender and an accomplice is due to the reason that:

- It could be important when sentencing because in most cases the judge has some flexibility
- The actus reus and mens rea of secondary participation is different to that required for the principal.

THE POSITION AT COMMON LAW

Offenders are divided into four groups:

- Accessory before the fact
- Accessory after the fact
- Principal offender
- Principal offender in the second degree

- **The principal offender:**

This is he person who directly brings about the actus reus of the offence i.e. the main perpetrator of the crime. (The person who executes the criminal act by way of emphasizing) He is the one with the mens rea

The test in deciding as to whether an offender is a principal or a secondary offender is to discover whether his act is the most immediate cause of the actus reus or whether he is merely helping that cause to be effected.

Different types of secondary offender.

Secondary offenders are those who aids, abets, counsel or procure the commission of a crime.

TO AID

The term to aid has been interpreted to mean giving help, support or assistance. Normally such help is given at the time the crime is committed though cases show that this is not normally the position.

TO ABET

This means to encourage or incite.

It is felt that such encouragement would normally be at or near the scene of the crime. A mere passive presence at the scene of the crime will not normally make a person liable.

In the case of **BLAND** 1988, the defendant's conviction for aiding and abetting a dealer in drugs was quashed. The Court of Appeal held that merely living with such an offender and perhaps having knowledge of his activities was not enough to incur liability: a more active involvement was required.

TO COUNSEL
This involves the giving of advice and encouragement but usually takes place before the crime.

TO PROCURE
This term means to produce by endeavor – Lord Widgery said that procure a thing by setting out to see that it happens and taking the appropriate steps to produce that happening.

- **Principal Offender in the second degree**

Includes abettors, aiders, and counselors.

- Accessory before the fact

A person, who does procure, aids or counsels the commission of the offence. He is doing something with facilitates the commission of something. For instance when A intends to steal from the bank and B assists by using his car to take A to the scene he will have assisted A before the stealing takes place.

- Accessory after the fact

The person who knows that the offence has been committed but is helping the offender to evade justice. For instance if A kills B and then in the course of being arrested C comes and tells him that the police are on their way to arrest you. C will be an accessory after the fact by helping A to run away from the police officers.

THE POSITION OF PARTIES TO OFFENCE IN TANZANIA

S.22 of the Penal Code (a) – (d)
Ss.23 and 24

Under S.22 (3) of the P.C it is stated that a person who counsels another in the commission of an offence is guilty and liable to the same punishment as if he had himself done the act or the omission.

The Law of parties to offence in Tanzania shows that there are only 2 categories.

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1. Principal offender
2. Accessory after the fact

1. PRINCIPAL OFFENDER

In Tanzania the principal offender includes accessories before the fact, principal offender in the 1st degree and principal offender in the 2nd degree (That means the three categories that are covered under common law are all included) For instance persons who assists in the commission of murder are all treated as principal offenders regardless the role they played in the offence.

2. **ACCESSORY AFTER THE FACT** –S.387-389 of the P.C

Conditions:

- The accused person must be shown to have the knowledge of the offence with which he is an accessory after the fact.
- You must indicate that an accused is charged as an accessory after the fact because he received the offender or assisted him to evade the justice for instance by destroying the evidence.

The wife and husband can not be an accessory. S.387

S.213 of the Penal Code – Accessory after the fact to murder

Case: **ANDREA NICODEM vs. R** (1969) H.C.D 265
(1968) H.C.D.52

INNOCENT AGENTS:

Is the one who commits the actus reus but is he is devoid of responsibility due to incapacity, immaturity/ duress by threat. S.15 of the P.C

- Vicarious liability& corporate liability- Students were assigned to go and read on these.

INCHOATE CRIMES (Attempt, Conspiracy &Incitement) 16th November 09

Inchoate offences are incomplete offences. The parties may well have desired that a crime should go ahead but circumstances could prevent the happening.

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For example an offender may have intended to murder another; he may have raised the gun to s hoot him taken careful aim but then for some reason the gun does not fire.

ATTEMPT

The definition of attempt is covered under S.380 of the Penal Code to mean the person putting his intentions into execution by means adapted to its fulfillment and manifests his intention by some overt act, but does not fulfill his intention…

This will exist where the party does an act which is more than merely preparatory to the commission of the offence.

In the case of **R vs. JONES** (1990) 3 All ER 886- The defendant was unable to accept that his ex-mistress had formed a serious relationship with another man. Jones purchased four guns and shortened the barrel of one of them. He drove to the school where his rival was dropping off his child and jumped into the victim's car. He then pointed the loaded gun at the man and state" you are not going to like this" The victim managed to grab the gun, threw it out and escape. The police later arrested the defendant who also had a knife with him… The CA agreed that the acts of obtaining the gun, shortening it, loading it, putting on a disguise and going to school were merely preparatory to the commission of the offences but added that once he had got into the car, taken out the loaded gun and pointed it at the victim with the intention of killing him there was sufficient evidence for the consideration of the jury on the charge of attempted murder. The appeal was therefore dismissed.

THE MENS REA OF ATTEMPT

This consists of an intention to bring about the offence.

- There must be intention
- Begins to put his intention into execution by means adopted to its fulfillment
- Does not fulfill his intention

THE ACTUS REUS OF ATTEMPT

An attempt to commit a crime is:

- An act done with intent to commit that crime
- The act must form part of series of acts which will constitute its actual commission
- The crime would have been committed if it would not have been interrupted.

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Case: **R vs. CHRISTOPHER NGAMBILO** (1967) H.C.D 388
Case: **ANDREW AVARITE** (1973) LRT
Case: **R vs. MLATENDE** (1971) H.C.D 371
S.132 of the penal code – Attempted rape
S.211 of the penal code – Attempt murder

IMPOSSIBILITY OF OBJECTIVE
The mere fact that the accused person was attempting to do something which is physically impossible does not prevent a conviction for attempt.
For example a person who puts his hands on the pocket though the pocket is empty the charge is attempt pick pocketing.

- Firing at X's jacket thinking it is X or confusing a bottle of petrol and that of water- e.g. A goes to B's house with the intention of setting it into fire. Opens the bottle and lights the match box only to find that it was oil and not petrol.

CONSIPIRACY- Ss.384- 386 P.C
Conspiracy is an agreement between two or more people to do an unlawfully act.

THE ACTUS REUS OF CONSPIRACY
Three points need to be established:

- An agreement with others
- To pursue a course of conduct
- Which if carried out will amount to or involve the commission of an offence.

Case: **MAWJI vs. R** (1957)41 Crim.App.Report 69
Husband and wife are not more that 1 person; the implication is that they can not commit conspiracy. The position is different in Tanzania. S.386 P.C Hus+ wife may be guilty of conspiracy.

THE MENS REA OF CONSPIRACY
This requires intention to be proved; the liability would be incurred if the defendant intended to commit the offence.

INCITEMENT –S.390 of the P.C
Incitement occurs where:

- A person urges another to commit a crime OR
- Reaches or seeks to influence the mind of another.

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> Incitement can be effected by suggestion, argument, and persuasion or even by threats or other pressure. Incitement can be done verbally or in writing.
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> In the case of **R vs. Most** (1881)7 QBD 244, D published in a London newspaper an article urging readers around the world to follow the example of those in Russia and murder their Heads of State. This was held to be incitement to murder.

In the case of R vs. EL-FAISAL (http://www.hmcourts-service.gov.uk/judgmentsfiles/j2352/regina-v-el-faisal.htm) Retrieved on the 16th of November 2009 at 12:45 hours

1. From about February 1998, at a number of public meetings, the appellant addressed audiences of predominantly young Muslim males about Islam and the way in which Muslims should conduct their lives. Some of these meetings were recorded on tape and the tapes were distributed to a number of specialist bookshops. It is the content of the appellant's speeches on those tapes on which the charges of soliciting to murder were based.
2. In his speeches, the appellant encouraged his listeners to kill. He encouraged them to wage *Jihad* against the enemies of Islam as he deemed them to be. He asserted that it was compulsory for all Muslims to undertake *Jihad* and that the meaning of that word was the killing of those who did not believe in the Islamic faith (Kaffars). In particular, the appellant urged his audiences to strike against Americans, Hindus and Jews.
3. Among the speeches, the following phrases were included: "The way forward can never be the ballot. The way forward is the bullet ?"; "We spread Islam by the Sword and so what, and today we are going to spread by the Kalashnikov and there is nothing you can do about it."; "Is there any peace treaty between us and

   Hindus and Indians? No, so you can go to India and if you see a Hindu walking down the road you are allowed to kill him and take his money."

The appeal against the conviction was therefore quashed.

OFFENCES AGAINST PERSON

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HOMICIDE
Simply homicide means the killing of human being by another human being. The term includes both lawfully and unlawfully killings.
Not all homicide amounts to crimes there are other homicides that are done with justification for instance a person who kills on self defence and those who kills because they have received orders from their superiors. Good examples of people who are capable of killing under superior orders are the Police. Thus the circumstances surrounding the killing determines whether it is a criminal act or not.
Always the intent of the offender should be taken into consideration in determining if it is murder or manslaughter.

Unlawfully homicide covers:
- Intentional killing (murder)
- Unlawfully killing (not intentional)- Infanticide, manslaughter
- Reckless driving resulting in death

Examples of lawfully killings include:
- An executioner lawfully executing a death sentence passed by a competent court
- Where a police officer employs a reasonable force which results in death while affecting an arrest.
- Where a person is accidentally killed e.g. where a soccer player is accidentally hit by a stray ball during a football match.

Murder –S.196 & S. 200 of the Penal Code
Is the killing of human being with malice aforethought, a person convicted of murder is sentenced to death by hanging.S.26 of the penal code.
An Accused person can be found guilty of murder if:
- ❖ He intended to kill
- ❖ He had an intention of causing grievous harm

Causation: S.203 of the penal code

A person is deemed to have caused the death of another person, although his act is not the immediate or sole cause of death

S.203 (a) Implies that the person inflicting the injury is not deemed to have caused the death of the treatment which was its immediate

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cause was not employed in good fait or was so employed without common knowledge or skill.

An example falling under S.203 will be where A inflicts bodily injury on B of which B goes to hospital and undergoes surgical or medical treatment and dies. If the medical treatment B received was done in good faith and in accordance with the prevailing procedures on the injury, A will still be liable to have caused the death of B.

On the other hand, if it is shown that the medical treatment received by B was not employed in good faith or was so employed without common knowledge or skill A will not be held to have caused the death of B.

In the case of R vs. BASARE (1954) G.LR. 321

The evidence showed that every available means of treatment was used and that the deceased was tended with anxious care in an attempt to allow the effects of his wounds and to save his life.

S.203 (b) – If he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living.

A good example on this is the case of the case of **BLAUE** (1975)3 ALL ER 446

In which D stabbed P a young girl and pierced her lung. She was told that she would die if she did not have a blood transfusion. Being a Jehova's witness she refused on religious grounds. She died from bleeding caused by the wound. D was convicted of manslaughter and argued that P's refusal to have a blood transfusion being unreasonable had broken the chain of causation. The Court of Appeal rejected this argument and stated that … those who use violence on other people must take their victims as they find them… the fact that the victim refused to stop this end coming about did not break the causal connection between the act and death.

S.203 (c) – underlies the principle that if a person is running away under an apprehension of violence it is not unreasonable consequence that the person might fall down and if in the course of falling down that person becomes injured, the person who caused him or her to run away will be responsible for the fall. It follows that if the person dies

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as a result of that fall he accused person is responsible for the death, even though the death may be a somewhat unlikely consequence of her running away and falling.

S.203 (d) – If by any act or omission he hastens the death of a person suffering under any disease or injury which apart from such act or omission would have caused death. This happens where a person hastens the death of an already injured person or one who is already dying of any disease. For instance- A knocks B on the head draining B's brain through the wound inflicted. It is obvious that B will die shortly. But IF C comes and knocks B again on the head, fracturing the already fragile skull and B dies C will be deemed to have caused the death of B even though his act is not the sole cause of B's death.

S.203 (e) –If his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other person

For instance where a person sets fire to another person's hut with the intention of causing grievous harm or death to its occupants one of the occupants returns into the burning hut and is overwhelmed by fire.

Cases on Murder

1. R. v. Mohamed Nite (1974) LRT n. 36.

2. Solomon Ulaya v.R. (1972) HCD b. 233.
3. R v. Simon (1972) HCD n.
4. R v. Gwegere Sinyangwire (1935) 2 EACA 133.
5. Mugao v. R (1972) E.A. 543.
6. Rv. Tirugurwa 10 EACA 44.
7. R v. Lukanfubila Kahema (1970) HCD n. 175.
8. Bukenya v. Uganda (1972) E.A. 549.
9. R. v. Mgomboi Bwanyigeta (1973) LRT n. 90
10. Rv. Amani Zephania Kimweri (1968) HCD n. 50.
11. Dastan A. Luambano v.R. [1990] T.L.R. n. 4
12. Wilson Nyamhanga V. R. [1984] T.L.R. 340
13. Manazo Mandundu et al V.R. [1990] T.L.R. n. 92

Manslaughter S.195 of the P.C
This covers in totality all unlawfully homicides which are not murder.

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Voluntary manslaughter:
Voluntary manslaughter is committers in circumstances where the accused has killed with malice aforethought and could have been convicted of murder but because of mitigating events which lessen his responsibility. For instance when a person kills under provocation thus in the absence of provocation it could have been murder.

Involuntary manslaughter
Is an unlawful killing committed by an accused who did not have malice aforethought
E.g. killing under a mistake of fact or gross negligence

1. R. v. Atupele Lwidiko (1967) HCD 389.
2. R. v. Eria Galikuwa v. R (1951) EACA 175.
3. Kulambalimbali (1974) LR T n. 41.
4. R. v. Juma Legeza (1969) HCD n. 244
5. Bedder v. R (1954) All ER 801.
6. Yona v. Uganda (1970) EA 405.
7. R. V. Chela Anthony [1985] T.L.R. n. 75
8. Sukusamanido Mwamakosi v. R (1958) E.A. 775.

Infanticide –S.199

The word **infant** derives it meaning from the Latin word *infans,* meaning "unable to speak." It is typically applied to children between the ages of 1 month and 12 months

Infanticide is the practice of someone intentionally killing an infant. Often it is the mother who commits the act.

-Concealing the birth of the child-S.218 P.C

-Child destruction –S.219 P.C

1. R. v. Esta Ikumboka (1967) HCD n. 447.

2. R v. Evelyn Mathias (1969) HCD n. 445.
3. Yowanina Namayoja v. R20 EACA 204

Causing death by reckless driving:

The person is regarded to be driving dangerously if:

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- The way he drives fall far below what would be expected of a competent and careful driver
- And it would be obvious to a competent and careful driver that driving in that way would be dangerous
- If the current situation of a car is does not suppose to be used

Cases:

- R. V. Stephano Alois (1972) HCD n. 199.
- R v. Atupelye Lweidiko (1967) HCD n. 389
- Mwita Nyamhanga V. R. [1992] T.L.R. n. 118
- Thabo Melli v. The Queen (1954) 1 WLR 228.

Limitation as to the time of death- S.205 of the Penal Code Cap.16