



Criminal Law

Discovering Connections

ACTIVITY (PAGE 25)

1. The more advanced the students, the more difficult it is to get them to discuss moral responsibility. They will try to give you the legal answer based on their system. Push them to look at it from the moral point of view. Attorneys may also say that there is not enough information in the short scenario to decide who is morally responsible. However, the scenario purposely is developed with some of the information left out. Advanced students will notice that in the last line it is left unclear whether Jack could have stopped in time even if he had been sober.

[Language note: When discussing relative issues, it helps to encourage the use of “personalizers” to make the interactions more like conversations than absolute pronouncements. Here are samples of types of phrases you should try to encourage students to use: From my point of view . . . , It seems to me . . . , I view that from a different perspective. . . .]

From Morality to Law

Simplification and Interpretation (page 55)

- A. The answers will, of course, depend on whom the students choose to be morally responsible. As you question them, make them explain their choice in terms of *mens rea*: *Did he negligently . . . ? Did she purposely . . . ? Did they knowingly . . . ? Did she recklessly . . . ?*

[Language note: You may need to work on the difference between reckless and negligent—“I didn’t realize I was speeding” as opposed to “I knew I was speeding but didn’t care.”]

- B. It certainly looks as though the bar owner would be liable under this statute since he sold Jack more than enough liquor (alcohol) to intoxicate him.

Dramshop Statute (page 55)

Sample rewriting: Any person injured by an intoxicated person can sue for damages against anyone who sold and served any intoxicating beverage to the person causing the injury when the seller knew or should have known the person was intoxicated or would become intoxicated. If sued, the seller can use as a defense that intoxication was not a factor in the accident.

For comparison, here’s the code from page 55 in the student book.

Every person who is injured in person or property by any intoxicated person, has a right of action in his own name, severally or jointly, against any person who by selling or giving alcoholic liquor, causes the intoxication of such person. [*Lopez v. Maez*, 98 N.M. 625, 651 P.2d 1269 (1982)]

[*Cultural note*: It may be helpful to pose the following questions to the students. Who is responsible for drunkenness in your country? Is it a question of personal or societal responsibility? Is drunkenness a crime in your system, or are only the acts of the drunk the crime?]

1. Yes, tavern owners have the same liability under both statutes.
2. Under the *Lopez* statute, if you give liquor away—such as at a party—you can be held liable. Under the Iowa code, the liquor must be sold, not given away.

3. Under the *Lopez* statute, yes. Under the Iowa code, no. The Iowa code requires that the seller both sell and serve. A liquor store owner in the United States does not serve alcohol to customers.
4. Yes, under the Iowa code, the seller can show that the intoxication was not a factor in the injurious act.
5. Perhaps, if the owner could demonstrate that Jack's being drunk had nothing to do with the car's not being able to stop in time. Perhaps if the brakes had failed completely and suddenly, the tavern owner would have a slight chance to use the defense, but even then the victim's lawyer could attempt to show that if Jack had not been drunk, he might have been able to steer the car onto the sidewalk and would have been able to avoid killing Jean.

Legal Thumbnail

Exercise A. System Comparisons and Discussion

(page 57)

Student resource. There may be considerable disagreement. Try to ask questions that lead to consensus that the system may be mixed. Another possibility is to have the students assign a percentage to each category that reflects the weight they feel the particular theory is given in their countries.

If the students are having trouble, discuss the weights you feel the theories are accorded in the U.S. system. Since capital punishment is still legal in most U.S. states, it appears that retribution and deterrence still carry great weight as viable theories in the American legal system.

Exercise B: Close Reading

(page 62)

2. In this case, *his* refers to the kidnapped person.

Exercise C. Case Hypotheticals and Pair Work**(page 63)**

2. a. Perhaps. It depends on whether ten minutes can be considered a substantial length of time. Obviously, other charges, such as robbery, could be brought against the robber.
- b. This is perhaps not a kidnapping since the farmer is not “holding” the hitchhiker nor is there any hint of the farmer terrorizing the man to force him to remain.
- c. The boy has unlawfully removed the girl but not for any of the required purposes, so it is not a kidnapping (however, notice the difference in the wording of the Colorado statute that appears in the next exercise).
- d. This is difficult. In some cases, it could be considered kidnapping since the court had given custody to the mother and removing her from that custody could be considered interfering with the performance of a governmental function.
- e. Most likely to be considered a kidnapping. This is a common crime in the United States. Centers for missing children often send out pictures of a child and of a parent who has unlawfully taken the child.

Many states have now enacted statutes specifically related to the problems addressed in scenarios (d) and (e). The statutes are normally referred to as interference with custody statutes and better address the special problems involved when the kidnapping is done by a parent.

Exercise D. Case Hypotheticals and Pair Work**(page 64)**

2. a. Perhaps. However, it appears less likely to be kidnapping than under the MPC. The bank president was not removed from one place to another, but an argument could be made that he was imprisoned.
- b. Perhaps. Under the Colorado statute [§18-3-301(1)(b)], this looks now like a kidnapping since the mentally ill man thinks he is under the apparent control of the farmer and will be “held” until he gives up something of value—his labor. However, there was no forcible seizure, so it would have to be an enticement or a persuasion.
- c. Still an interesting question, since both “children” are under 18. However, since the boy is 16, it could be argued that he was guilty

since he kept the “child” from her parents for three days. Colo.Rev.Stat. §18-3-302(2).

- d. This time the father could most likely be charged with second-degree kidnapping since he “knowingly seizes and carries” without “lawful” justification [Colo.Rev.Stat. §18-3-302(1)]. A child under 18 would not have the legal right to consent to go to Mexico.
- e. In the other statute, it might have been kidnapping. Here the issue is that the statute makes a distinct statement that a kidnapped child must be someone else’s.

Exercise E. Statutory Interpretation

(page 66)

3. A person is guilty of burglary if he enters a private building or occupied structure with the intent to commit a crime.

[*Sexist language*: In statutes, it is to be assumed that “he” refers to all people regardless of gender unless specific exceptions are made such as for the Selective Service registration notice that indicates that every *male* must register with the Selective Service (the “draft board” that would call men into the armed forces in case of war or other national emergency) within 30 days of *his* 18th birthday or face punishment.]

Exercise F. Statutory Comparisons

(page 67)

1. Suggest that the students make a chart that shows the differences.

	MPC	New Mexico	Alaska
intent to commit crime	yes	yes	yes
building	yes	yes	yes
occupied structure	yes	yes	no
unoccupied structure	no	yes	no
vehicles	no	yes	no

2. The Alaska statute is more like the MPC statute even though there are significant differences between the two.

Exercise G. Statutory Interpretation

(page 67)

1. New Mexico
2. In all three, the would-be burglar must *lack* permission to be in the building. By default, one normally has permission to enter or remain in one's own house or building.
3. Yes, New Mexico.
4. Now we would have to add Alaska.

Exercise H. Writing

(page 68)

1. Sample 1: A structure is a man-made object adapted for overnight use to accommodate people and to protect them from the elements.
Sample 2: A structure is a nonmovable object adapted for overnight use to accommodate people and protect them from the elements.
2. Answers will depend on the definition provided. Using our first sample:
 - a. Yes
 - b. No. It does not protect people from the elements.
 - c. No. It has not been modified to accommodate people.
 - d. Yes. It was adapted for overnight use and protects people from the elements.
 - e. No. An area is not an object.

Exercise I. Listening

(page 71)

2. Listening Script

The issue we address is: Given multiple stab and slash wounds, is there sufficient evidence to send the question of premeditation to a jury?

The State argues that *Bingham* is limited to its facts. In *Bingham*, we held that manual strangulation alone shows only an opportunity to deliberate and is insufficient to sustain the ele-

ment of premeditation. The State points out, however, that *Bingham* recognizes that “[t]he planned presence of a weapon necessary to facilitate a killing has been held to be adequate evidence to allow the issue of premeditation to go to a jury.”

Ollens disputes that the evidence in this case permits the inference that premeditation occurred. He argues that some time did pass during the struggle; however, this passage of time is inherent in the manner of a multiple stabbing death and is mere passage of time, not evidence of premeditation. He also asserts that the manner of death, in other words, violence and multiple wounds, does not support an inference of deliberation actually occurring or of a calmly calculated plan to kill, which is requisite for premeditation and deliberation.

The issue before this court is whether *Bingham* is controlling in this situation such that given the evidence, no trier of fact could find premeditation beyond a reasonable doubt. We hold that *Bingham* is distinguishable. First, manual strangulation involves one continuous act. In the case at hand, not only did Ollens stab the victim numerous times, he thereafter slashed the victim’s throat. This subsequent slashing is an indication that respondent did premeditate on his already formed intent to kill. Second, a knife was used in the killing. The strangulation in *Bingham* did not involve the procurement of a weapon. Third, from the evidence a jury could find that Ollens struck Tyler from behind, a further indication of premeditation.

We hold that there is sufficient evidence to submit to a jury the issue of whether Ollens not only intended to kill the victim, but it was also premeditated. It is properly the function of a jury to determine whether Ollens deliberated, formed, and reflected upon the intent to take Tyler’s life in order to effectuate the robbery. We reverse the Superior Court’s dismissal of the premeditation charge and remand for the continuation of proceedings consistent with this opinion.

- a. The supreme court of the state of Washington reversed the superior court’s ruling that there was insufficient evidence to allow the jury to make a determination on premeditation. It was the jury’s duty and right to determine that issue.
- b. The state maintained that *Bingham* was not the appropriate case to use as precedent since it could be distinguished from *Ollens*. The state has evidence that would allow the jury to decide if there was premeditation: striking from behind, slashing of the throat, procuring a knife, and committing a robbery.

- c. Ollens insists that *Bingham* supports his claim that there was no evidence to discuss premeditation. He reasons that the passage of time—multiple stabbings take time—does not indicate premeditation. Moreover, the violent nature of the crime does not demonstrate cold, reasoned premeditation.
- d. There was no evidence in *Bingham* to suggest that premeditation was involved. Strangulation (*Bingham*) is one act. On the other hand, there is evidence that suggests premeditation in *Ollens*. After stabbing the victim many times, Ollens then slit his throat. Additionally, Ollens had to procure a weapon, and, finally, Ollens struck Tyler from behind.

Exercise J. Discussion

(page 72)

Possible answer: Cooling off is a subjective issue. When some people look as though they have cooled off, they are actually just sunk deep in internal rage that can erupt like a volcano with no true cooling off.

Exercise K. Writing a Memorandum

(page 73)

You may wish to discuss the American memo at this point since the students are asked to write one.

- The most important points to remember in writing American memos are clarity and directness.
- A memo often contains many short paragraphs since each paragraph should have one clearly identifiable, main point. Remember, however, that this style of writing, which seems choppy to many, is often in direct contradiction to accepted writing practices in other cultures.
- If your students are unfamiliar with American memos, you should begin by having them write extremely short, objective memos first as practice. For example, you might begin by asking them to write a memo telling you they won't be at work next week. Make sure you remind them it was just an exercise! Have them create a fake law firm (of course you are the boss) using their own names.

Here is a sample.

Memorandum

Buben, Hall, and Thrush
Memphis TN

TO: Charles Hall, Senior Vice President
CC: Susan Barone
FROM: Debra Lee
SUBJECT: Law School Community Day Reception
DATE: February 5, 2007

As we discussed by telephone this morning, I will not be in Memphis on March 6, 2007.

Since this project is so important to our recruiting efforts, we agreed that Marsha Hurley will represent our firm at the annual Law School Community Day reception on March 6, 2007.

Should you need any additional information, do not hesitate to contact me. Thank you.

Note that although cc originally meant carbon copy, many now refer to it as a courtesy copy. You may wish to point out that the very short paragraphs are separated by double spacing for quick reading.

1. It is possible to decide either way: to prosecute Roth for manslaughter or not to prosecute. Here again argumentation is much more important than the actual decision.

[*Cultural note*: Each year many people are shot in the United States during the legal hunting seasons. Indeed two friends of one of the authors of this book were shot and killed in separate hunting accidents in the forests of Michigan. In neither case was there an attempt by the families to have the “killers” prosecuted for manslaughter. These events were seen as tragic accidents more akin to traffic fatalities than to killings. Especially tragic in the United States are the many cases of children who

are accidentally shot and killed by other children who find their parents' guns inside the home and then kill their brothers or sisters while "at play." This case would be a good start to discussing the role of guns in the United States, where the right to own a gun is seen by many as a fundamental liberty. The Internet can provide much information about the problems associated with the interpretation and enforcement of the Second Amendment—the right to bear arms.]

Possible reasons to prosecute:

- Roth shouldn't have fired till he had positive visual identification. Firing after seeing the "white flash" (her gloves), which might indicate a white-tailed deer, is not taking necessary care.
- Since Roth did not see any deer, he could not have first sighted a real deer and then believed that the white flash was the same deer running away.
- Roth should have investigated the areas in which he was hunting before he shot, and then he would have discovered his victim's house.
- Public policy. A person should not have to fear death in a hunting accident while in his or her own yard.

Possible reasons not to prosecute:

- The damage that would be caused by Roth's conviction would far outweigh any guilt he might have: the destruction of yet another family, loss of yet another productive member of society.
- Roth exercised due care before firing at what a reasonable person would have assumed to be a white-tailed deer in a hunting area.
- Weston knew that it was hunting season and that her house was in a hunting area. She should not have worn white gloves in her yard.
- Public policy. This was an accident and not an intentional or even a reckless killing.

[*Note:* This is an actual case that occurred in Maine. The prosecution took the case before the grand jury, which refused to indict Roth. However, a second grand jury did indict him. He was finally acquitted by a jury at trial.]

Exercise L. System Comparisons and Discussion

(page 75)

1. Student resource and opinion
2. Student resource and opinion

Exercise M. Case Hypotheticals and Discussion

(page 76)

1. entrapment
2. insanity
3. duress
4. necessity
5. self-defense

Exercise N. System Comparisons and Discussion

(page 78)

1. Student opinion and resource. Does the home environment of the criminal matter? Does the social status of the criminal matter? Does it matter if the criminal is otherwise a model citizen with a fine family and a steady job?
2. If a student's home country is multiethnic, are there different laws and expectations for members of the different religions or groups? For example, in the United States devout members of certain religions are exempted from military service (however, they must still prove that they deserve the exemption) or are not required to take oaths in court but rather simply have to "affirm" when testifying. There is also no requirement that a child be educated in English; consequently, there are many groups that maintain separate schools to teach their language and culture to their American-born children.

Does Islamic law govern some members of a society, while a Western civil code is used by others? A legally trite but economically important example is that in the United States Native Americans living on reservations have different laws from their non-Native American neighbors. As a result, there are many gambling establishments on Native American lands even though those lands are in states that forbid gambling.

Other problems have arisen with Asian cultures that use a hot coin to "burn" out sickness from a child. The coin leaves a burn mark that has been mistaken by some non-Asian teachers as child abuse.

In areas in which Sikhs have settled, there have been problems with school officials because the Sikh children are required by their beliefs to

carry a small, ceremonial, but nonetheless potentially dangerous knife. Ask students to explain how that would be a problem for school officials.

Exercise O. Role Play

(page 79)

2. Make sure that you find out if the teams are adding any additional facts. You should give those facts to the opposing team too.
3. You may wish to have each team file a “theory of the case” memo with you to tell you how they plan to demonstrate to the jury the necessity of a certain verdict.