

## Chapter 2

### PRINCIPLES OF CRIMINAL LIABILITY

#### 201 CULPABILITY; DEFINITION OF TERMS

The following definitions are applicable to this code:

1. "Act" means a bodily movement.
2. "Voluntary act" means a bodily movement performed consciously as a result of effort or determination, and includes the possession of property if the actor was aware of his physical possession or control thereof for a sufficient period to have been able to terminate it.
3. "Omission" means a failure to perform an act as to which a duty of performance is imposed by law.
4. "Conduct" means an act or omission and its accompanying mental state.
5. "To act" means either to perform an act or to omit to perform an act.
6. "Culpable mental state" means "intentionally" or "knowingly" or "recklessly" or with "criminal negligence," as these terms are defined in Section 202.

#### 202 CULPABILITY; DEFINITIONS OF CULPABLE MENTAL STATES

The following definitions are applicable to this code:

1. "Intentionally." A defendant acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct.
2. "Knowingly." A defendant acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.
3. "Recklessly." A defendant acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A defendant who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.
4. "Criminal negligence." A defendant acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

**203 REQUIREMENTS FOR CRIMINAL LIABILITY IN GENERAL AND FOR OFFENSES OF STRICT LIABILITY AND MENTAL CULPABILITY**

The minimal requirement for criminal liability is the performance by a defendant of conduct which includes a voluntary act or the omission to perform an act which he is physically capable of performing. If such conduct is all that is required for commission of a particular offense, or if an offense or some material element thereof does not require a culpable mental state on the part of the actor, such offense is one of "strict liability." If a culpable mental state on the part of the actor is required with respect to every material element of an offense, such offense is one of "mental culpability."

**204 CONSTRUCTION OF STATUTES WITH RESPECT TO CULPABILITY REQUIREMENTS**

1. When the commission of an offense defined in this code, or some element of an offense, requires a particular culpable mental state, such mental state is ordinarily designated in the statute defining the offense by use of the terms "intentionally," "knowingly," "recklessly" or "criminal negligence," or by use of terms, such as "with intent to defraud" and "knowing it to be false," describing a specific kind of intent or knowledge. When one and only one of such terms appears in a statute defining an offense, it is presumed to apply to every element of the offense unless an intent to limit its application clearly appears.
2. Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of such offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such culpable mental state. A statute defining a crime, unless clearly indicating intent to impose strict liability, should be construed as defining a crime of mental culpability. This subdivision applies to offenses defined both in and outside this code.

**205 EFFECT OF IGNORANCE OR MISTAKE UPON LIABILITY**

1. A defendant is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief of fact, unless:
  - A. Such factual mistake negatives the culpable mental state required for the commission of an offense; or
  - B. The statute defining the offense or a statute related thereto expressly provides that such factual mistake constitutes a defense or exemption; or
  - C. Such factual mistake is of a kind that supports a defense of justification.
2. A defendant is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief that it does not, as a matter of law, constitute an offense, unless such mistaken belief is founded upon an official statement of the law contained in (a) a statute or other enactment, or (b) an administrative order or grant of permission, or (c) a judicial decision of the Court, another Indian Nation court or a state or federal court, or (d) an interpretation of the statute or law relating to the offense, officially made or issued by a public servant, agency or body legally charged or empowered with the responsibility or privilege of administering, enforcing or interpreting such statute or law.
3. Notwithstanding the use of the term "knowingly" in any provision of this code defining an

offense in which the age of a child is an element thereof, knowledge by the defendant of the age of such child is not an element of any such offense and it is not, unless expressly so provided, a defense to a prosecution therefore that the defendant did not know the age of the child or believed such age to be the same as or greater than that specified in the statute.

## **206 EFFECT OF INTOXICATION UPON LIABILITY**

Intoxication is not, as such, a defense to a criminal charge; but in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

## **PARTIES TO OFFENSES AND LIABILITY THROUGH ACCESSORIAL CONDUCT**

### **207 CRIMINAL LIABILITY FOR CONDUCT OF ANOTHER**

When one defendant engages in conduct which constitutes an offense, another defendant is criminally liable for such conduct when, acting with the mental culpability required for the commission thereof, he solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct.

### **208 CRIMINAL LIABILITY FOR CONDUCT OF ANOTHER; NO DEFENSE**

In any prosecution for an offense in which the criminal liability of the defendant is based upon the conduct of another person pursuant to Section 207, it is no defense that:

1. Such other person is not guilty of the offense in question owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the conduct in question or of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of the offense in question; or
2. Such other person has not been prosecuted for or convicted of any offense based upon the conduct in question, or has previously been acquitted thereof, or has legal immunity from prosecution therefor; or
3. The offense in question, as defined, can be committed only by a particular class or classes of persons, and the defendant, not belonging to such class or classes, is for that reason legally incapable of committing the offense in an individual capacity.

### **209 CRIMINAL LIABILITY FOR CONDUCT OF ANOTHER; EXEMPTION**

Notwithstanding the provisions of Sections 207 and 208, a person is not criminally liable for conduct of another person constituting an offense when his own conduct, though causing or aiding the commission of such offense, is of a kind that is necessarily incidental thereto. If such conduct constitutes a related but separate offense upon the part of the actor, he is liable for that offense only and not for the conduct or offense committed by the other person.

### **210 CONVICTIONS FOR DIFFERENT DEGREES OF OFFENSE**

Except as otherwise expressly provided in this code, when, pursuant to Section 207, two or more persons are criminally liable for an offense which is divided into degrees, each person is guilty of such degree as is compatible with his own culpable mental state and with his own accountability for an aggravating fact or circumstance.

## **211 CRIMINAL LIABILITY OF CORPORATIONS**

1. As used in this section:
  - A. "Agent" means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation.
  - B. "High managerial agent" means an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.
2. A corporation is guilty of an offense when:
  - A. The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or
  - B. The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation; or
  - C. The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation, and the offense is (i) a misdemeanor or a violation or (ii) one defined by a statute which clearly indicates intent to impose such criminal liability on a corporation.

## **212 CRIMINAL LIABILITY OF AN INDIVIDUAL FOR CORPORATE CONDUCT**

A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or in behalf of a corporation to the same extent as if such conduct were performed in his own name or behalf.