

**CRIMINAL LAW**  
Professor Alexander

Required Readings:

Dressler, Ch. 22; MPC § 3.02

**Problem Set 13**

1. D knowingly diverts a river from its normal course to an alternative course, where D knows it will flood V's home.
  - a. Assume D knows that the river, if not diverted, will flood the town, killing hundreds, and that saving those townspeople is a lesser evil than flooding V's farm. Nevertheless, D's reason for flooding V's farm is D's hostility to V, not his concern for the town.
  - b. Assume alternatively that D is unaware that the town is in danger, and diverts the river out of hostility to V. Nevertheless, the diversion saves the town.
  - c. Same as a., except D is not hostile to V. But the reason the river is a threat to the town is due to D's negligence regarding a dam upstream.
  - d. Assume that D *mistakenly* but reasonably believes the town is in danger and diverts the river "to save" the town. What if the mistake was unreasonable?
  - e. Same as d., except D diverts the river out of hostility to V.

Suppose in each case D is prosecuted for flooding V's farm and pleads the lesser evils defense. What results? (Two pages)

2. Consider the following examples of taking one life to save more than one:
  - a. Dudley and Stephens (eating the cabin boy to save the lives of the shipwrecked sailors).
  - b. U.S. v. Holmes (tossing people out of an overcrowded lifeboat).
  - c. "The trolley problem" – A runaway trolley is heading down a track on which five men are working, oblivious to the danger. There is a switch you can throw to divert the trolley onto a siding. There is one person working on the siding. May you throw the switch? What if it was your negligence that caused the trolley to go out of control?
  - d. A surgeon has a hangnail patient with healthy organs. Without permission, he removes the patient's organs and transplants them to several patients in imminent

danger of dying from organ failure. The surgeon is prosecuted for murdering the healthy patient and pleads “lesser evil.”

- e. An anti-abortion group, which believes abortion is homicide, trespasses on an abortion clinic’s property as a means of slowing the rate at which abortions are performed. When prosecuted, they plead “lesser evil.”
- f. Moose are foraging on D’s cattle ranch in competition with D’s cattle. D shoots some moose to protect his herd and is prosecuted for shooting moose out of season. He pleads “lesser evil.”
- g. D, a doctor, prescribes marijuana for his terminally ill cancer patients. When prosecuted, he claims “lesser evil” on the ground that the marijuana is therapeutically useful.
- h. D believes the military draft is a great evil and intentionally burns down a draft headquarters. When prosecuted for arson, he pleads “lesser evil.”
- i. V is trapped in a burning car. She is screaming in pain and terror, and there is no way to save her. D, V’s husband, out of a desire to stop V’s suffering, shoots her. When prosecuted for murder, D pleads “lesser evil.”

How should each of those cases come out, and why? (Two pages)