

# Essential Elements of Crimes

## **Actus Reus: The wrongful or illegal act or omission that comprises the physical component of a crime.**

A Physical Act (Actus Reus)

Can be any bodily movement.

Bodily movements that do not qualify for criminal liability:  
conduct that is not the product of own volition  
a reflexive or convulsive act (e.g., epileptic seizure)  
act performed while unconscious or asleep (e.g., sleep walking).

Act can be an omission if there was a duty to act. Generally, there is no duty to rescue, but there is a legal duty to act in 5 circumstances:

By statute (e.g., filing tax return)  
By contract (e.g., lifeguard or nurse's duties)  
Relationship of the parties (e.g., parents' duties; spouses' duties)  
Voluntarily assuming duty of care (e.g., jumping into lake to save drowning)  
Where conduct created the peril (e.g., you push someone into pool)

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## **Mens Rea: A guilty mind. Mens rea is an element of criminal responsibility; other terms for mens rea are criminal intent, culpability, mental state, and fault.**

Having the mental state to commit the crime. Applies to Specific Intent, General Intent, Malice and Strict Liability.

### **Specific intent**

Intent to engage in proscribed crime.

Inchoate offenses ("incomplete offenses") of solicitation, conspiracy, and attempt  
1st degree murder  
Assault as attempted battery (thus, not intending to do it is a defense)  
Common Law Felonies Against Property: Larceny, Embezzlement, False Pretenses, Robbery, Burglary, Forgery

## Malice crimes

Reckless disregard of a known risk

Murder

Arson

## General Intent

Awareness of acting in proscribed manner. A crime where the individual must only intend to perform the criminalized act, but not necessarily the specific consequences of that act.

**Transferred Intent:** if  $\Delta$  intended to harm victim 1 but harmed victim 2, her intent is transferred. Never merge different crimes that have different victims (shoot at 1, hit 2= attempt and murder).

Applies to Battery, Rape, Kidnapping, False Imprisonment.

**Strict Liability crimes:** A crime that does not require a culpable mental state, but rather is comprised solely of an unlawful action, or a failure to act when there is a legal obligation to do so. (no intent required, and thus no defense that negates intention)

Conscious commission of proscribed act

Applies to Statutory Rape, Bigamy and administrative laws, selling liquor to minors.

## Criminal Negligence

Applies to involuntary manslaughter. More than mere negligence. The failure to perceive a substantial and unjustifiable risk that constitutes a gross deviation from the standard of care a reasonable person would observe in the situation and that causes damage.

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# Offenses Against the Person

## Battery

Battery: application of force to the person of another resulting in harmful or offensive touching  
Indirect application of force: sufficient

Aggravated Battery: deadly weapon used, serious bodily injury, OR victim is child/woman/police

## **Assault**

An attempt to commit a battery (specific intent) OR intentional creation of a reasonable apprehension of imminent bodily harm (general intent)

## **Mayhem**

The malicious maiming or disfiguring of another:

1) n. the criminal act of disabling, disfiguring or cutting off or making useless one of the members (leg, arm, hand, foot, eye) of another either intentionally or in a fight, called maiming. The serious nature of the injury makes mayhem a felony, which is called "aggravated assault" in most states.

2) v. to commit mayhem is to cause gross harm in an uncontrolled fashion.

## **False Imprisonment**

Unlawful detention or confinement of a person without his valid consent. Lesser than Kidnapping.

## **Kidnapping**

The intentional and unlawful movement of another against their will. After 1932 Lindberg Baby Kidnaping the Federal Government and the States expanded the Kidnapping Statutes and made it a Felony.

# **Homicide**

## **Homicide**

Killing of one human being by another human being.

Causation - Must be the actual and proximate cause, But for and foreseeable injury. Look for intervening act. If numerous parties substantial factor test.

CL - Requires cessation of heartbeat and respiration

ML - Requires permanent cessation of brain activity

## **Murder**

Unlawful killing of a human being with malice aforethought

Must show 1 of 4 intents

Intent to Kill or

Intent to Inflict Serious Bodily Injury

Wanton/Reckless Indifference to An Unjustifiably high risk to human life;

**Malignant Heart - Depraved Heart:**

The defendant acted with implied malice if:

1. He intentionally committed an act;

2. The natural and probable consequences of the act were dangerous to human life;

3. At the time he acted, knew his act was dangerous to human life;

AND

4. He deliberately acted with conscious disregard for human life.

**Felony Murder** - Burglary, arson, rape, robbery, mayhem kidnapping, BARRKM

**Second Degree Murder**

All murder starts at second degree and then elevates to first or felony

**First Degree Murder**

**Specific Intent to kill plus premeditation/deliberation**

**Premeditation** - Thought of Killing

**Deliberation** - requires that the act be cold blooded, not impulsive

Also can be first degree by **felony murder**

Lying in wait, torture, poison.

**Felony Murder**

Any homicide committed in the perpetration of an inherently dangerous felony.

Burglary, arson, rape, robbery, mayhem kidnapping, sodomy, and sexual molestation. BARRKM  
(any attempt to these will suffice)

Felony must be something other than killing

If D has a defense to underlying felony, he has a defense to felony murder

Deaths caused while fleeing felony are felony murder BUT once D reaches some point of temporary safety, deaths caused thereafter are not felony murders.

Co felons liable for killing victims (Conspiracy Pinkerton Rule)

Killing of Innocent parties

CL - Foreseeable

Modern - co felon not liable unless it is a co felon doing the killing

Killing of co felon by victims of felonies or pursuing police officer  
CL - Co felon liable  
Majority - not liable  
Minority - not liable

**Voluntary Manslaughter:** The unlawful killing of another where there are mitigating circumstances to reduce culpability.

They are charged with murder and then can mitigate down to voluntary manslaughter if you can find one of these elements.

(“heat of passion”): Adequate provocation

Adequate Provocation: would arise sudden and intense passion in an reasonable person;

A must in fact have been provoked;

Must not have been sufficient time to cool off, did he cool down;

Loss of mental equilibrium

## **Involuntary Manslaughter**

Criminal Negligence: killing is caused by A’s negligence (tougher standard than for tort liability). Can be recklessness.

“Unlawful Act”

“Misdemeanor Manslaughter” rule: killing in course of commission of a misdemeanor or any felony not listed in the Felony Murder Statute

Imperfect Self Defense will mitigate it to involuntary manslaughter. D was at fault, honest but unreasonable belief to use deadly force.

Sex Offenses

Rape - sexual penetration of women without consent. Modern can be wife.

Statutory Rape - sexual intercourse with person below the age of consent (strict liability- consent and mistake of fact are not defenses)

Bigamy - marrying someone else while you are married.

## **Property Offenses**

### **Larceny**

A wrongful taking

and carrying away of (asportation – any movement of property is sufficient)  
personal property of another  
without consent of victim  
with specific intent to permanently deprive owner of property at time of taking.

Note: taking property in the belief that it's yours or that you have a right to it is not common law larceny.

Under larceny you are in custody and embezzlement is possession.

Larceny by trick is when consent is granted through misrepresentation.  
Larceny by conversion - had lawful acquisition and then intended to steal it.

Abandoned property no larceny, loss or mislaid property look for clues.

## **Embezzlement**

Wrongful conversion of property of another, by a person in lawful possession. Entrustment and look at the relationship. Employee/Employer lower level will be larceny. Manager would be possession.

## **False Pretense**

Obtaining title to the property of another by an intentional false statement made with the intent to defraud.

## **Robbery**

The trespassory taking and carrying away of personal property of another from the person or presence by force of threats, with specific intent to permanently deprive.

## **Extortion**

Blackmail - Obtaining property from another with consent by means of intimidation which is of a lesser degree than that required of robbery

## **Receipt of Stolen Goods**

Must receive possession and control of stolen property AND have knowledge that property was criminally obtained. If it is no longer stolen meaning the police had it then it is not considered stolen.

## **Forgery**

Making or altering of a false writing with intent to defraud

## **Malicious Destruction**

Malicious destruction of or damage to the property of another

# **Offenses Against the Habitation**

## **Burglary**

**Common Law** - Requires a breaking and entering of the dwelling house of another in the nighttime with the specific intent to commit a felony therein.

Breaking (either actual (involving force) or constructive (threat or fraud))

Entering (any part of body crosses into dwelling, can be tool)

Dwelling house of another - Can be barn, garage called curtilage, immediately surrounding house

at nighttime

Specific Intent to commit felony (not borrow items inside, at that time)

**Modern Law** - Trespassory/unlawful entrance in any structure with the intent to commit a crime required by majority of the jurisdictions

## **Arson**

Common law arson is: the malicious burning and charring of the dwelling house of another.

**Each part must be satisfied:**

**Burnings** - Charring required not just blackening

**Malice** - Reckless/Wanton Conduct not specific intent

**Dwelling** - Someone else's dwelling house - not your own

**Modern Law** - Insurance fraud and any structure.

Duress is a defense.

# **Parties**

## **Accomplice**

Person who aids or encourages before, during a crime. Mental State – Intent to aid or encourage. Knowledge assist, intent. Common Law - Liable for all crimes Modern - No

## **Accessory**

Common Law – Person that are not actually present when crime is committed.

Accessory before the fact – person who aids or encourages but is not present. Knowledge assist, intent. Common Law - Liable for all crimes Modern - No

Accessory after the fact – person who aids after the crime. Knowledge assist, intent. Common Law - Liable for all crimes Modern - No

Modernly- Person who aids another knowing that he has committed a felony for the purpose of escaping arrest, trial or punishment. Knowledge assist, intent. Common Law - Liable for all crimes Modern - No

## **Defenses**

### **Withdrawal**

Common Law: Communicated to all effectively and timely.  
Modern Notify authorities or crime is preventable.

### **Impossibility**

Factual impossibility - no defense. No – legal impossibility – valid defense.

### **Attempt**

A substantial act towards preparation of an intended crime

SLAP

S - Specific Intent

L - Legal (no attempt) v factual impossibility

A - Apparent Liability

P - Preparation v perpetration - substantial step towards the crime

## **Defenses for Attempt**

### **Withdrawal**

Majority - no effect if the zone of preparation entered. MPC - allowed if voluntarily and successful.

### **Factual Impossibility**

Never a defense. D starts to commit the crime but it is factually impossible to complete the crime. Unknown factors make result impossible (go to steal wine not there)



## Legal Impossibility

Always a defense. D's conduct even if carried out would not constitute a crime. Thought it was a crime but was not a crime.

**Solicitation:** The criminal offense of urging, inciting, or counseling someone to commit an unlawful act.

Intent to induce another to commit a crime  
Commits when D asks.

## Merger

Will merge with attempt, conspiracy or target offense.  
Solicitor can be held liable for crime solicited if solicitee actually commits the target offense  
Cannot be punished for both solicitation and the crime, if merge than the crime only  
No merger if solicitee takes no step in furtherance of solicitation

## Defenses for Solicitation

Withdrawal - once solicit cant withdraw but limits the accomplice liability. MPC - it must be complete and voluntary abandonment of criminal purpose.

# Conspiracy

Conspiracy is an agreement between two or more persons to commit a crime with the specific intent to commit that crime. Also by conduct.

**Overt Act** (Majority Rule – any little act will do) (Minority and Common Law Rule - you only need an agreement) **Example: Our Ft. Knox Platoon Mate had a map and it was an overt act/step in furtherance of a conspiracy.**

**Pinkertons Rule** - Each conspirator is liable for crimes committed by other conspirators if 1) the crimes are in furtherance of the conspiracy; and 2) they are foreseeable.

**Wharton Rule** – When a crime by its nature requires more than one party, a conspiracy can only be accomplished when at least one additional party is participating in the agreement. (i.e. Adultery, dueling, bribery, drug dealing).

**Feigned Agreement** – Only one guilty mind no conspiracy. Unilateral Theory - Under the modern penal code defendant is guilty of conspiracy if he believes he entered into a conspiracy.

Impossibility is no defense to conspiracy

**Withdrawal- CL** - Not a defense, **MPC** - Communicate to all conspirators, timely and effective, or anything to avert the crime.

## Defenses

**Self Defense:** One person's use of force to defend against the imminent use of unlawful force by another person. A person may use non-deadly force in self-defense if he actually and reasonably believes that the force is necessary to defend against imminent, unlawful force. A person may use deadly force in self-defense if she actually and reasonably believes that deadly force is necessary to protect herself from imminent death or serious bodily injury. In some jurisdictions, deadly force may also be used to defend against especially serious crimes, such as kidnapping or rape.

### Murder

Allowed to use the amount of force reasonably necessary (reasonably necessary) to prevent attack.

Majority - No requirement that defendant retreat before using deadly force

CL and Minority - Required D retreats before using deadly force in self defense

### Other crimes

Only reasonable force not deadly force

**Defense of Others:** A person is justified in using force to protect a third party from unlawful force by another.

### Murder

Deadly Attack, special relationship - wife, child ect

Majority - No relationship required

Minority - Step in the shoes and can use same force

### Other Crimes

Relationship and no deadly force and step into the shoes of the victim

## Defense of Property

### Murder

Limited to home, must have reasonable belief of that a felony or harm intended

### Other Crimes

Non deadly force

Request to desist required unless futile

## Crime Prevention

## **Murder**

CL - Deadly force to prevent perpetration of felony

Modern - Deadly force limited to present public danger, Police can use it.

## **Other Crimes**

Non deadly force to prevent crime/felony

## **Insanity**

**M’Naghten Test:** Right/Wrong Test - did not know what he was doing wrong

**Irresistible Impulse Test:** Inability to control conduct

**Model Penal Code:** Lacks the substantial capacity to conform his conduct to the law or appreciate the wrongfulness of his conduct

**Durham Rule:** Conduct was due to mental illness

## **Diminished Capacity**

As a result of mental defect. Limited to specific Intent crimes

## **Intoxication**

Voluntary intoxication: only a defense to specific intent crimes

Involuntary intoxication: form of insanity and is defense to all crimes

## **Mistake of Fact**

Did D lack the mens rea for the crime

Malice/General Intent Crime - mistake must be reasonable (RP test)

Specific Intent Crimes - Mistake be reasonable. (RP Test)

Strict Liability Crimes - Mistake no defense

**Mistake of Law:** A misunderstanding or mistaken belief that occurs when a person, with complete knowledge of the facts, reaches an incorrect conclusion as to the legal effect or result.

Generally, it is not a defense that the defendant believed that her activity would not be a crime, even if that belief was reasonable and based on the advice of an attorney.

Exceptions: the statute proscribing her conduct was not published or made reasonably available prior to the conduct, there was reasonable reliance upon a statute or judicial decision, or in some jurisdictions, there was reasonable reliance upon official interpretation or advice.

Mistake of Law May Negate Intent – if defendant is mistaken as to a collateral law, usually civil.

## **Duress**

D reasonably believed that another would imminently harm him or a family member if he did not commit the crime. Duress will not excuse a homicide, but does excuse arson.

## **Consent**

Defense if negates some element of the crime  
Never a defense to felony unless minor assault or battery

## **Entrapment**

Majority – Predisposed to commit the crime.

Minority – Look to police activity, did they induce the crime that they were not going to commit.

**1973 Barazas Objective Standard for Entrapment.**

## **Effectuate Arrest**

### **Police**

-**Non Deadly force** - If reasonably necessary to arrest.

-**Deadly Force** - Only to prevent escape of felon who threatens human life.

### **Private Person**

- **Non Deadly force** - if crime in fact committed and reasonable belief that this person committed it.

- **Deadly Force** - Only to prevent escape of person who actually committed felony and who threatens human life.