

# **CRIMINAL LAW OUTLINE**

## **I. ELEMENTS OF A CRIME**

(1) Actus Reus (2) Mens Rea (3) Concurrence (4) Causation

## **II. CRIMES AGAINST THE PERSON**

### **HOMICIDE**

#### **Murder**

Malice Aforethought

Degrees of Murder

#### **Manslaughter**

Voluntary

Involuntary

Assault and Battery, False Imprisonment

Rape, Statutory Rape

Kidnapping

Mayhem

## **III. CRIMES AGAINST REAL PROPERTY**

Burglary

Arson

## **IV. CRIMES AGAINST PROPERTY (THEFT CRIMES)**

Larceny

Embezzlement

False Pretenses

Receiving Stolen Property

## **V. CRIMES AGAINST THE PERSON AND PROPERTY**

Robbery

Extortion

## **I. INCHOATE CRIMES**

Solicitation, Attempt, Conspiracy

## **II. ACCOMPLICE LIABILITY—Parties to the Crime**

**VI. DEFENSES—Insanity, Voluntary Intoxication, Involuntary Intoxication, Entrapment, Mistake of Fact, Mistake of Law, Infancy, Necessity, Duress, Crime Prevention, Self Defense, Defense of Others, Defense of Property, Consent, Unconsciousness, Legal Impossibility, Factual Impossibility, Abandonment**

## **General Principles**

Terminology (crime v. tort)

Felony—any crime punishable by death or imprisonment for more than one year.

Misdemeanor—most other crimes, other than felonies

Malum in Se—wrong in itself, something naturally evil

Malum Prohibitum—something made wrong by legislation

Burden of Proof—to a moral certainty beyond a reasonable doubt

## **I. ELEMENTS OF A CRIME**

### **Actus Reus—Overt Act (or Omission where Legal Duty)**

General Rule: there is No Legal Duty to Act.

Exceptions (Basis for Duty to Act):

1. Statute (hit and run)
2. Contract
3. Relationship
4. Assumption of Care
5. Peril (if you create peril, a duty arises)
- \* Defenses: physical impossibility, permissible mistake, self defense

### **Mens Rea—Mental State**

Purposely (Intentionally)

Knowingly (Intentionally)

Recklessly

Negligently

Strict Liability (public welfare offenses)

**Specific Intent Crimes:** Burglary, Robbery, Assault, Murder (1), Manslaughter (voluntary), Attempt, Conspiracy, Theft crimes, Solicitation

**General Intent Crimes:** Battery, Rape, Arson, Manslaughter (involuntary), Murder (2), Kidnapping, False Imprisonment

(Note: voluntary intoxication is not a defense to a general intent crime, but may be a defense to a specific intent crime).

### **Concurrence**

(1) Between Mens Rea and Actus Reus (temporal concurrence)

(2) Between Mens Rea and Criminal Result

### **Causation**

Actual and Proximate Causation

### **Resulting Social Harm**

## II. CRIMES AGAINST THE PERSON

### HOMICIDE

#### Murder

Malice Aforethought

Degrees of Murder

#### Manslaughter

Voluntary

Involuntary

### **Memorize Definitions!**

**Homicide** is the killing of one human being by another human being (modernly: brain death; at CL cessation of respiratory and cardiac functions)

Note: Homicide can be justifiable, excused (non criminal) or, mitigated or malicious (criminal)

**Murder** is the unlawful killing of one human being by another human being with malice aforethought

**First Degree Murder** is murder by poison, lying in wait, torture; murder done willfully, deliberately and with premeditation or murder that results from a death that occurred during the commission of a dangerous felony (in other words through application of the felony murder rule)

**Willful** means done with intent

**Deliberate** means carefully considered

**Premeditation** means to plan or to think out beforehand (Issue: How much time?)

**Second Degree Murder** is all other murder, in other words, homicides committed with malice aforethought but which do not meet the requirements for murder in the first degree.

**Manslaughter** is an unlawful homicide committed without malice aforethought

**Voluntary Manslaughter** is the intentional killing of a human being by another human being without actual malice or with malice but under mitigating circumstances

**Heat of Passion** –elements (1) legally adequate provocation, i.e., provocation which would cause the reasonable person to lose self control; (2) actual provoked; (3) no time to cool off; (4) no actual cooling off; (5) concurrence

**Imperfect Justification (honest but unreasonable belief entitled to defense)**

**Involuntary Manslaughter** is the unintentional killing of a human being by another human being without malice but under circumstances involving gross or criminal negligence (Note: Compare with Depraved Heart Murder)

**\*\*\*Misdemeanor Manslaughter Rule (Bad Act Manslaughter)**

## **MURDER**

**Malice Aforethought** is a “man endangering state of mind” as evidenced by one or more of the following:

1. An intent to kill as expressed by defendant (Express Malice)
2. An intent to cause someone serious bodily harm as implied by the actions of the defendant (e.g. Deadly weapon doctrine—intent to kill is inferred)
3. A wanton and willful disregard for human life as implied by the actions of the defendant (also known as Depraved Heart Murder or Gross Negligence Murder)
4. An intent to resist a lawful arrest in a dangerous manner as implied by the actions of the defendant
5. An intent to commit a dangerous felony as implied by the actions of the defendant (Felony Murder Rule), in other words if the killing occurred during the perpetration or attempted perpetration of a dangerous felony

### **Depraved Heart Murder**

“An abandoned and malignant heart”

#### Elements

- (1) Risky Act creating high risk of death
- (2) Act has no social value
- (3) Intent to act (not intent to kill)
- (4) Subjectively aware of the risk but disregarded
- (5) Not justified, excused or mitigated

### **Felony Murder**

Killing during Res Gestae?

Underlying crime cannot be murder or manslaughter or lesser-included offense thereof  
But has to be a separate felony (*People v. Ireland*)

Underlying crime “dangerous felony”----Situational or Definitional

List of the dangerous common law felonies for Felony Murder:

- (1) Robbery
- (2) Rape
- (3) Arson
- (4) Burglary
- (5) Mayhem
- (6) Kidnapping for Ransom
- (7) Forcible Sodomy

3<sup>rd</sup> Party Killings\*\*\*\*TESTABLE

## **FELONY MURDER—EXAMPLES**

### **Example 1--A, B, and C commit a Robbery (a dangerous felony)**

A kills a bystander accidentally

A is guilty of murder under felony murder rule

B and C are guilty under Accomplice Liability Theory (Agency Theory)

### **Example 2--A, B, and C commit a Robbery**

A kills C accidentally

SPLIT—some jurisdictions FM Rule only to protect innocent people

Other jurisdictions

A—guilty of felony murder

B—guilty under Accomplice Liability

### **Example 3--A, B and C commit a robbery**

Bystander kills C (co-felon) (Bystander is excused—see above)

A, B—NOT guilty of Felony Murder under the *Redline* Rule. Exception: gun battle

Rationale—incentive for undeterred felons to commit crimes carefully.

***Redline rule: if a justifiable killing of an accomplice occurs by a third party, no malice can be implied on the defendant***

### **Example 4--A, B and C commit a robbery**

Bystander kills Bystander (Note that Bystander is excused—under self defense, defense of others, crime prevention, prevent escape of felon, etc.)

A, B, and C—Felony Murder?

### **SPLIT**

Majority—No FM (Rationale—no deterrence)

Strict Rule—Guilty of FM (dependent intervening act—proximate cause exists)

Intermediate—(follow on MBE)—Guilty as to Innocent bystander only

## CRIMES AGAINST THE PERSON

**Assault and Battery**

**False Imprisonment**

**Rape**

**Statutory Rape**

Kidnapping

Mayhem

Definitions!

**Assault**—is the intentional threatening of another with a battery and the creating of apprehension of imminent bodily harm in the victim

**Battery**—is the intentional and unlawful, harmful or offensive touching of the person of another.

**Rape**—is unlawful sexual intercourse with a woman without her consent

*Issues*—lack of consent is assumed if drunk, unconscious or mentally ill

Slightest penetration suffices

At CL not possible to rape own wife but possible as accomplice or co-conspirator

**Statutory Rape**-- is the unlawful sexual intercourse with a willing female under the age of consent

**False Imprisonment**—is the unprivileged restraint of another person's freedom of movement.

**Kidnapping**—is the unprivileged movement of a person against her will from one place to another

CL—taking out of the country

Modernly—taking out of the jurisdiction

Modernly—asportation of the victim anywhere

**Mayhem**—is the malicious maiming or disfiguring of another

CL—useful body parts for fighting

Modernly—disfigurement suffices

Note: Assault, Battery, False Imprisonment are also torts.

### III. CRIMES AGAINST REAL PROPERTY

#### **Burglary**

#### **Arson**

Definitions!

**Burglary**—is the breaking and entering of the dwelling house of another in the nighttime, with the intent to commit a felony therein.

Elements:

#### Breaking

Issues—constructive breaking—3 methods  
(1) fraud (2) conspiracy (3) violence/threat  
inner breaking doctrine; breaking out  
doctrine

#### Entering

Issue—may be by use of instrument if used to  
commit the crime, e.g. shovel

#### Dwelling House

Issue—at CL not warehouse, unoccupied new house  
Curtilage

#### Of Another

Issue—cannot burglarize own home

#### Nighttime

Issue—when is it nighttime?  
1 hr after sunset until 1 hr before sunrise

#### Intent to commit a felony therein

Issue—intoxication, mistake, etc.

**Curtilage**—is the space necessary, habitually and conveniently used for the household or family purposes (outer perimeter).

**Statutory Burglary**—is any entry into a structure or vehicle with the intent to commit a felony therein, or theft, including petty theft.

(Dispenses with breaking, dwelling house, nighttime)

**Arson**—is the malicious burning of the dwelling house of another.

Issue—burning, charring, and scorching—yes  
blackening, smoke damages—no

**Statutory Arson**—is the malicious burning of any structure

#### **IV. CRIMES AGAINST PROPERTY (THEFT CRIMES)**

##### **Larceny**

##### **Larceny by Trick**

##### **Embezzlement**

##### **False Pretenses**

##### **Receiving Stolen Property**

Definitions! *Under Modern Statutes several types of larceny may be combined.*

**Larceny**—is the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive the owner thereof.

*Larceny is a crime against someone's possessory rights*

Issues—returning is not a defense; you can steal stolen property; attempted larceny is a bad choice on the MBE

**Larceny by Trick**—is larceny created through a constructive trespass where the consent to take and carry away the property of another was obtained by fraud or deceit.

*Lie + Possession = Larceny by Trick*

**Embezzlement**—is the fraudulent appropriation with the specific intent to defraud of personal property by one to whom possession has been entrusted

*Conversion/Transfer of Apparent Ownership + Fraudulent Intent = Embezzlement*

**False Pretenses**—obtaining property by false pretenses is the obtaining of possession and title to the personal property of another through false representations of fact with the intent to defraud

*Lie + Title = False Pretenses (Title must pass)*

Note: Money is its own title

Note the difference between:

Abandoned Property

Lost/Found Property

Mislaid Property

**Receiving Stolen Property**—results from the acquisition of control of stolen property with knowledge at the time of receipt thereof that the same is stolen when such is done with wrongful intent.

Modernly: Known or should have known property was stolen

**V. CRIMES AGAINST THE PERSON AND PROPERTY**

**Robbery**

**Extortion**

Definitions!

**Robbery** is larceny from the person by use of violence or intimidation

*Force or fear*

**Extortion** is the corrupt collection of fees or other such things of value by government officials or those acting in an official capacity, such as lawyers representing a client.

**Blackmail**—is the unlawful extraction or communication for extraction of money or other valuables by means of a threat not sufficient for robbery

## VI. INCHOATE CRIMES

**Solicitation**  
**Attempt**  
**Conspiracy**

Definitions!

**Solicitation** occurs when one counsels, incites, urges, encourages, solicits or requests another to commit an unlawful act, with the intent that the act be committed.

Crime of solicitation is complete when solicitation has taken place, crime need not be committed.

Doctrine of merger may apply

**Attempt**—occurs when a substantial step (overt act) towards the commission of a crime comes within close proximity of the crime being committed, coupled with the specific intent to commit that crime

Issue—preparation vs. perpetration

Doctrine of merger may apply

Factual impossibility is no defense

Legal impossibility is a defense

**Conspiracy** results from a combination of two or more persons in an agreement with the specific intent to accomplish a criminal or unlawful act or to do a lawful act by criminal or unlawful means and modernly an overt act is required.

Merger: Conspiracy does not merge with completed offense

Abandonment only a defense if completely, voluntary and thwarts the target crime

Withdrawal may be a defense.

**Wharton's Rule** requires one more person in the agreement than essential to commit the crime (bribery needs 3 persons)

**Rule:** *A party to a conspiracy is liable for all the reasonably foreseeable crimes committed by the co-conspirators during and in furtherance of the conspiracy (Compare: Accomplice—foreseeable only)*

Hub and Spoke Conspiracy vs. Chain Conspiracy

TIP\*\*\*\*SAC-MAC\*\*\*\*

**VII. ACCOMPLICE LIABILITY—Parties to the Crime**

**Principal in the First Degree**—is an actual perpetrator of a crime

**Principal in the Second Degree**—is not the actual perpetrator but is actually or constructively present and qualifies as an accessory

Constructive presence—to be so situated as to render aid, encouragement, aid, facilitate.

**Accessory**—is one who with knowledge does counsel, command, encourage or aid in the perpetration of a crime (aiding and abetting)

At CL: Accessory before the fact (lending pre-crime aid or encouragement) and Accessory to the fact (during the crime).

***Rule: Parties (principals and accessories) are vicariously responsible for any criminal act reasonably foreseeable.***

**Accessory after the Fact**—is one who with knowledge a crime was committed, aids the felon in avoiding arrest, conviction or punishment.

**VIII. DEFENSES—Insanity, Voluntary Intoxication, Involuntary Intoxication, Entrapment, Mistake of Fact, Mistake of Law, Infancy, Necessity, Duress, Crime Prevention, Self Defense, Defense of Others, Defense of Property, Consent, Unconsciousness, Legal Impossibility, Factual Impossibility, Abandonment**

**Definitions!**

**M’Naghten Rule**—a defendant suffering from a mental disease is entitled to the defense of insanity when she does not know what she is doing or does not know what she is doing is wrong. Also, if the defendant suffers from an insane delusion and if the notion embodied in the delusion would excuse the defendant, if the facts would have been if the defendant believed them to be.

**Insane Delusion** is the product of a mental disorder wherein the defendant has a false belief in something that would be incredible to others and those beliefs remain persistent despite proof to the contrary.

**Irresistible Impulse Test** holds a defendant is entitled to the defense of insanity if she, because of a mental disorder, knows that what she is doing is wrong but cannot control her behavior

**Substantial Capacity Test (or Model Penal Code Test)** holds that a defendant is entitled to the defense of insanity if at the time of conduct, as a result of the mental disease, she lacks substantial capacity to appreciate the wrongfulness of her actions, or the capacity to conform her conduct to the requirements of the law.

**Durham Rule (Product Rule)** holds a defendant is entitled to the defense of insanity if because of a mental disease or defect, an unlawful act was committed (but for test).

**Diminished Capacity (Wells-Gorschen Rule)**—is not a complete defense but holds that evidence of mental infirmity, not amounting to insanity, is admissible, and should be taken into consideration on questions of premeditation, deliberation and malice.

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**Voluntary Intoxication** will not be defense unless the intoxication has developed into a permanent mental disorder. It may result in mitigation.

***Note: No defense against general intent crimes; but may be a defense against specific intent crimes***

**Involuntary Intoxication**—will be a defense to the same extent as a mental disorder, if the intoxication was procured by fraud, duress, force, and reasonable mistake. I.e., not self-induced.

**Entrapment**—is a defense when a law enforcement agent solicits, induces or encourages a defendant to commit a crime, which the other would not have committed.

*Issue—Was the defendant predisposed to commit the crime charged? (objective v. subjective test)*

Defense of entrapment is not applicable if crime involves serious bodily harm

**Mistake of Fact**—may be a defense to a general intent crime if honestly entertained and based upon a reasonable belief, and is of such a nature that the conduct would have been lawful had the facts been as they were believed to be. May be reasonable or unreasonable belief as to a specific intent crime.

**Mistake of Law**—is not a valid defense except in rare circumstances. (Ignorance of the law is no excuse).

Exception: Relying on then-current interpretation of law by an authoritative body (not a lawyer)

**Infancy**—is a defense if the child is under age 7. There is a rebuttable presumption that a child between age 7 and 14 is incapable. Over age 14, a rebuttable presumption he is capable of committing a crime as an adult.

**Necessity**—a defense if the person acted in an emergency and if the harm created is less than what would have been suffered but for the person's actions.

**Duress**—a defense if the person acted as a result of coercion by another.

*Never a defense to murder*

**Crime Prevention**—holds a defendant can use reasonable force to prevent a crime. Such force can be deadly force if reasonably necessary to prevent a dangerous felony such as burglary, arson, rape, robbery, murder, and mayhem.

**Self Defense**—is a defense if a defendant is without fault, and is attacked or in imminent fear of being attacked and may use reasonable force to defend herself. Deadly force is allowed if reasonable under the circumstances.

*Minority Rule—requires retreat if safe to do so—exception—if in his “castle” (home) —exception—if a member of the household*

**Defense of Others**—is a defense if a person defends another in good faith, in ignorance of the other's fault when acting upon reasonable appearances. Exception—step in shoes

jurisdiction: a person is not allowed the defense of others unless that person had the right of self-defense.

*Discuss both theories*

**Defense of Property**—a person is allowed reasonable force in defense of property, short of deadly force.

**Consent**—may be a defense if the consent given was voluntary, knowing and before the criminal conduct.

*Watch out for exceeding scope of consent, consent after the fact (ratification) and withdrawal of consent (can be withdrawn at any time); express vs. implied*

**Unconsciousness**—holds that one who is unconscious does not have capacity to commit a crime (sleep walking).

*Watch out for reckless disregard of dangerous likely situations (e.g. driving with knowledge of epileptic seizures)*

**Legal Impossibility**—is impossibility due to the fact that what the defendant intended to do is not illegal.

*Legal Impossibility is a defense to the crime of intent.*

**Factual Impossibility**—is impossibility due to the fact that the illegal act cannot physically be accomplished.

*Factual Impossibility is not a defense to the crime of intent*

**Abandonment of Conspiracy**—will be a defense to crimes committed afterwards but will not be a defense to crimes already committed.

**Alibi**

**Temporary Insanity**

**Repentance/Foregiveness**—never a defense

## **OTHER CRIMES**

### **Crimes against the Public/Justice/Government/Morals**

Misprision of a Felony—was at common law the nondisclosure of a known felony of another, but modernly it is concealment of a known felony of another

Compounding the Crime—involves acceptance of anything of value under an unlawful agreement not to prosecute a known offender, or to limit or to otherwise hinder the prosecution of his or her case

Perjury—false oath or affirmation in a judicial proceeding in regard to a material matter

Subornation of Perjury—procurement of perjury of another

Embracery—improper influencing a juror by corrupt or unlawful means

Bribery—is the corrupt payment or receipt of private consideration for official action.

Escape/Rescue of Prisoner

Breach of the Peace—can result from any willful act which unreasonably disturbs the peace.

Unlawful Assembly—meeting of three or more people with a common plan, which if carried out, would result in a crime or breach of the peace

Rout—movement of unlawful assemblers for purpose of carrying out their common plan.

Riot—Tumultuous disturbance of the peace by three or more persons acting together to commit a crime by open force to to carry out a common enterprise.

Dueling

**Forgery**—is the false making or material alteration of any writing of legal significance with the intent to defraud.

**Uttering**—is to pass or make use of a forged instrument, knowing it is forged, with the intent to defraud

### **Crimes against Morality**

Bigamy—entering into a marriage while already married

Incest—intercourse or marriage to a close blood relative

Sodomy—deviate or unnatural sexual practice

Adultery—sexual intercourse between married person and someone not his/her spouse

Fornication—sexual intercourse between unmarried persons