

Criminal Law

Crime: A crime is an act or omission prohibited by law for the protection of the public, the violation of which is prosecuted by the state in its own name, and punishable by a fine, incarceration, other restrictions upon liberty, or some combination of these.

I: Criminalization, Definition and Classification

1. Sources of Criminal Law

- A. Constitutions/Treaties.
- B. Statutes.
- C. Common Law.
 - (a). referring back to England
 - (b). The decision of the Judges

2. Theory of Punishment

- A. Retribution
- B. Deterance.
- C. General deterance
- D. Protect society
- E. Protection of self
- F. Rehabilitation.

3. Intent

- A. Two types of intent in criminal law
 - (a) **General Intent: is the intent to commit a crime. Proof of general intent is required in all criminal prosecutions, but does not involve demonstrating that the defendant intended the precise harm, which he caused.** E.g. shooting into a crowd is proof of general intent to commit murder, even though the accused did not intend to injure any person in particular.
 - (b) **Specific intent: is the intent to accomplish the precise act,**

which the law prohibits. Proof of specific intent is essential for certain crimes, such as “assault with intent to rape”

- B. Compare Motive: The perpetrator’s state of mind at the time of acting, differs from motive, which is what causes a person to act or refrain from acting.

II: Offenses Against the Person

1. Homicide: **A homicide is the killing of a human being by another human being.**

- A. **Corpus Delecti:** Lat. **Body of the crime.** The **substantial fact** a crime has been committed; **the thing upon which a crime has been committed coupled with proof a crime has indeed been committed**, e.g. in a murder case, the body of the victim and proof that the victim died by a criminal agency.

a. Three Components

1) The occurrence of the specific kind of injury or loss (as, in homicide, a person deceased; in arson, a house burnt; in larceny, property missing)

2) Somebody’s criminality (in contrast e.g. to accident) as the source of the loss - these two together involving the commission of a crime by somebody.

3) *The accused’s identity as the doer of this crime. (not corpus delecti)

b. **Conviction of crime cannot be upheld based on uncorroborated confession of person accused.**

c. There must be evidence of corpus delecti apart from statements contained in confession.

d. **Downey v. People:** established by either direct or circumstantial evidence.

e. **Circumstantial evidence** is sufficient to establish the corpus delecti in a homicide case if it is such as to prove the essentials there of to a **reasonable certainty**.

f. **Warmke v. Commonwealth:** There does not have to be a body. There just has to be proof of death.

g. **State v. Pyle:** body of missing person or evidence of the means

used to produce death are not essential to the establishment of corpus delicti.

B. Murder

1. At Common Law and traditionally in the United States murder is homicide committed with malice aforethought.

1b. Malice: Mental disposition to commit a wrongful act or injury without legal justification.

1. "Express malice" is deliberate and actual ill will against a person.

2. "Implied malice" is reckless disregard of the consequences of wrongful acts.

1c. Aforethought: Planned; premeditated; thought of beforehand.

1. As a matter of law a killing may be with malice aforethought although it is conceived and executed "on the spur of the moment."

2. Intent to kill or to Inflict Great Bodily Injury.

2b. Every intentional killing is with malice aforethought unless under circumstances sufficient to constitute (1) justification, (2) excuse, or (3) mitigation.

C. Degrees of Murder: At Common law, there are no degrees of murder. Statutes, however, often divide murder into first degree and second degree.

Malice: expressed or implied

Manslaughter

First degree	Second degree	Voluntary	Involuntary
Intent to kill	Intent to kill	Intent to kill	No intent to kill
Premeditation	Serious Bodily Harm	"Provocation" Imperfect right to self defense	Criminal negligence
Torture, Ambush, Poison	Depraved Heart		
Felony Murder: Burglary, Arson, Robbery, Rape and Kidnapping	Felony Murder: felonies other than first degree		

1a. First degree murder:

1b. **Premeditated** killings, intent to kill: with some reflection, deliberation, reasoning or weighing.

1c. Killing during enumerated felonies "**Felony Murder**": Burglary, Arson, Rape, Robbery and Kidnapping. (**BARRK**)

*Note: Not all felony murders will be murder in the first degree. If the killing arises out of a felony that is not enumerated in the applicable statute, and does not otherwise qualify for first degree murder, it is second degree murder.

1d. **Torture, Ambush, Poison**

1e. All co-felons liable for felony murder.

1f. Felony must be "**independent**" - the "**merger**" rule: felony murder rule can apply only where the predicate felony is somewhat independent of the killing. If felony is assault and battery by which the victim's death is caused, the felony "merges" into the killing and thus does not retain sufficient independence to be a predicate felony.

2a. **Second-degree murder** malice aforethought, no premeditation.

2b. **Intent to do serious bodily harm**

2c. **Depraved Heart "unusually high risk that conduct will cause death or serious bodily harm"**

2d. **Felony- murder:** felony's not part of first degree

C. **Manslaughter**

3b. **Voluntary:** A killing that would otherwise be murder but that was committed in response to certain provocation has traditionally been regarded as being without malice aforethought and therefore voluntary manslaughter.

1. There must have been provocation of the kind that would cause a **reasonable person** to lose control and act rashly and without reflection "**heat of passion**"

2. The defendant must have in fact been provoked, and the provocation must have caused the defendant to kill the victim.

3. The interval between the provocation and the killing must not have been long enough for the passions of a reasonable person to **cool**; and

4. The defendant must not have actually **cooled off** during the interval between the provocation and the killing.

3c. **Involuntary Manslaughter:** no intent to kill - an unintended killing is involuntary manslaughter if it is the result of criminal negligence or if it is caused during the commission of an unlawful act that is not a felony or that for some other reason is insufficient to trigger the felony murder.

1. **Accident:** Someone acting as a reasonable person

2. **Negligence:** someone not acting as a reasonable person. Ex. X knowing that his vision was impaired went hunting with Y. The two separated. Both were in camouflage attire. X saw a flash of movement and fired at it, without first ascertaining what it was. The movement was Y. who was hit by X's shot and killed. These facts showed the extreme negligence required for criminal liability and X is guilty of involuntary manslaughter.

2. Assault and Battery

CRIMINAL BATTERY	TORITOUS BATTERY
<ol style="list-style-type: none"> 1. "general-intent" crime; 2. unlawful application of force to the person of another, resulting from defendant's (1) negligent, (2) reckless, (3) careless or (4) intentional contact; 3. mens rea may encompass (1) negligence, (2) recklessness, (3) carelessness or (4) intention; 4. "transferred intent" doctrine applicable; 5. defenses: where one intentionally touches or injures another in (1) self-defense or (2) defense of others, or (3) to prevent the commission of a crime or (4) where the defendant has the victim's consent. 	<ol style="list-style-type: none"> 1. intentional tort; 2. defendant must act intending to cause on offensive or harmful contact to the person of another and an offensive or harmful contact results; 3. must consist of an intentional act (or where there is a "substantial certainty" that an unpermitted contact will result); it cannot result from defendant's negligent or reckless conduct; 4. "transferred intent" doctrine applicable; 5. defenses: same as criminal battery.

(a) Battery: **Battery is the unlawful application of force to the person of another.**

- (1) No injury required
- (2) Indirect application of force

(b) Assault: Two different kinds of activity may constitute a criminal assault: (i) an **attempt to commit a battery**, or (ii) **intentionally placing another in fear of a battery**.

(1) Attempted battery as assault: Common law criminal assault was apparently limited to attempts to commit a battery.

(2) Intentional placing in fear as assault: A probable majority of states extend the crime of assault to include the intentional putting of another in fear of immediate bodily harm. Hence, in these jurisdictions, an assault can be committed either by an attempted battery or by intentionally putting another in fear.

(c) State v. Jimerson: An assault is an attempt with unlawful force to inflict bodily injury upon another, accompanied with the apparent present ability to carry out the attempt.

(d) Government of Virgin Islands v. Stull: The use of reasonable force to eject a trespasser constitutes neither assault nor battery.

(e) United States v. Jacobs: An assault has not been committed if the victim is placed in apprehension of harm after the bodily harm has been inflicted.

(f) United States v. Bell: There are two types of assault in criminal law: (1) an attempt to commit a battery and (2) an act putting another in reasonable apprehension of bodily harm. Apprehension on the part of the victim is not an essential element of the first type of assault.

(e) Commonwealth v. Matsos: The crime of stalking closely approximates the common law definition of the crime of assault, and may be found where the defendant makes a threat placing another in imminent fear of death or bodily injury, or in reasonable apprehension that force may be used.

3. Other Offenses Against the Person

**(a) Rape: Nonconsensual
Sexual intercourse
With a woman
Not the actor's wife**

(b) False imprisonment: is the unlawful confinement of a person and is an indictable misdemeanor at common law.

(c) Kidnapping: Kidnapping is aggravated false imprisonment.

(d) Abortion, Planned Parenthood of Southeastern Pennsylvania v. Casey: A woman has a right to choose to have an abortion before viability and to obtain it without undue interference from the state.

(e) Rape, Dinkens v. State: Forcible rape does not require a showing that physical force was used to compel sexual intercourse but only that the **act was committed against the victim's will.**

(f) Rape, State v. Walden: Rape criminalizes nonconsensual sexual intercourse regardless of criminal intent or knowledge.

III. Offenses Against the Habitation and Other Protected Entities

1. Burglary: Trespassory

**Breaking
And Entering
The dwelling
Of another
In the night time
With the intent
To commit
A Felony
Or any Larceny
Therein!**

(a) Woods v. State: Burglary requires that a dwelling house be broken into as a material element and this means that the house must actually be occupied as a residence.

(b) State v. Neff: Burglary may be committed upon an uninhabited structure only if it is **“parcel of” and within the same common fence as an adjoining (though not necessarily contiguous) dwelling house.**

(c) Davis v. Commonwealth: “Breaking” for the purposes of burglary (constructive or otherwise), must have resulted in an entrance contrary to the will of the occupier of the “dwelling house” in question.

(d) People v. Gauze: One cannot be convicted of burglarizing his own home.

(e) Stowell v. People: There is no burglary if the person entering has the right to do so, although he may intent to commit and actually commits a felony inside, and although he may enter in such a way that there would be a breaking if he had no right to enter.

(f) People v. Dupree: Breaking and entering is established by entering a dwelling by increasing the opening of an unlocked window.

(g) Nichols v. State: A “constructive breaking” for burglary purposes may be found where entry is effected by means of artifice or fraud or upon pretense of business or social intercourse.

(h) Daniels v. State: Burglary may be accomplished where there is no “breaking” into a building if there is a subsequent “breaking” into of apartments or rooms in that building.

(i) Hebron v. Maryland: There is an entry when any part of the defendant’s person passes the line of the threshold.

(j) Walker v. State: When a person employs an instrument in such a

manner that the instrument not only “breaks” but also effects the only entry contemplated as necessary to the consummation of some criminal intent, such entry is sufficient for purposes of establishing burglary.

(k) Gray v. State: “Nighttime,” for the purposes of burglary, is the time one hour after the setting of the sun on one day, until one hour before the rising of the sun on the next day.

(l) Goldman v. Anderson: In establishing the commission of a burglary, the intent to commit larceny may be inferred from the nature, time, or place of the defendant’s acts before and during the breaking and entering.

(m) State v. Mann: Any place with sides and a floor which is used for storage is a structure and anyone entering with the intent to commit theft is guilty of burglary.

(n) Taylor v. United States: Since the common law definition of burglary has diverged from its contemporary statutory definitions, a person may be convicted of burglary under a statute proscribing any crime, regardless of its exact definition or label, having the basic element of unlawful or unprivileged entry into, or remaining in, a building or structure with intent to commit a crime.

2. Arson: **Malicious
Burning
Of
The dwelling house
Of
Another**

IV. Offenses Against Property

1. Larceny: **Trespassory taking
And carrying away
The personal property
Of another
With the intent
to steal it!**

(a) People v. Caridis: The crime of larceny requires that property alleged to have been stolen have **some value (intrinsic or relative)**, and it is well settled that an obligation which exists in defiance of the law has neither validity nor value.

(b) People ex rel. Doons v. Elling, Sheriff: Though property stolen may be valueless in the sense that it cannot be put to any legal use by

its owner, larceny liability will not be precluded if such stolen property has inherent value, in and of itself.

(c) Bell v. State: Larceny at common law is limited to the stealing of the “personal” property of another; and **growing crops attached to the land do not become “personal” property unless they are taken (severed) and carried away in two separate, distinct acts.**

(d) The Queen v. Townley: The taking and carrying away of property does not cease being “one continuous act” merely because of a temporary abandonment of the property done with the intent to later return and claim it.

(e) State v. Cohen: Larceny may be found where the owner of property wrongfully takes it back from a pledgee or from one who has a lien against it to whom it had been entrusted, if done with the intent to deprive such person of his rights.

(f) People v. Walker: Larceny is committed by a trespassory taking of property by one who has no right to possession.

(g) The King v. Bazeley: Larceny liability cannot be imposed where the property taken is in the lawful possession of the person taking it.

(h) Rex v. Sullens: Property must have been in the custody or possession “of another” (the legal owner) at some time before being taken, for larceny liability to lie.

(i) State v. Brooks: Where a bookkeeper in the course of his employment is responsible for depositing all monies in the bank, there is sufficient evidence to show that he was entrusted with the monies to the extent required to prove a necessary element of **embezzlement.**

(j) Morgan v. Commonwealth: Larceny requires a “trespass in the taking,” and where a taker has maintained control over and, therefore, possession of, property entrusted to him (for the owner), with the consent of the owner, no “trespass in the taking” can occur.

(k) United States v. Bowser: Where an employee who is lawfully in possession of his employer’s property voluntarily hands the property over to another person for the purpose of aiding that person in accomplishing a taking of the property, the “taking of the property of another” required for larceny is present.

(l) Thompson v. State: Larceny requires a taking; and the crime is not committed if the actor fails to acquire such dominion over the

property involved as to enable him to take actual custody or control.

(m) Cummins v. Commonwealth: Larceny liability will be imputed to one who neither personally “takes” actual possession of, nor personally carries away, the personal property of another, if he is found to have somehow induced an innocent third party to do so.

(n) The King v. Pear: Trespass for larceny may be accomplished by fraud where the taking involved is done by a trick to gain possession of property, and with the intent to steal.

(o) The Queen v. Prince: The crime of false pretenses occurs when the owner of property is induced by some misrepresentation of fact (false pretense) to give up his property, with the intent to pass title to that property.

(p) Wilkinson v. State: The crime of “larceny by trick” occurs when **the owner or holder of property is induced by some misrepresentation of fact (trick) to give up his property, with the intent merely to part with possession but not title.**

(q) Regina v. Hands: A “trespass in the taking,” for common law larceny, may be accomplished by the use of any instrumentality, employed for the purpose of taking possession of the owner’s property, contrary to his intent.

(r) Regina v. Thurborn: If a person finds property that has been lost, or is reasonably supposed by him to be lost, and appropriates it with intent to take entire dominion over it, really **believing when he takes it that the owner cannot be found, it is not larceny.**

(s) Brooks v. State: When a person finds goods that have been actually lost, and takes possession with intent to appropriate them to his own use, really **believing, at the time, or having good ground to believe, that the owner can be found, it is larceny.**

(t) State v. Kaufman: Property which is stolen and later abandoned by the thief is lost and appropriation of it constitutes theft.

(u) Cooper v. Commonwealth: When property comes lawfully into the possession of a person, a subsequent appropriation of it is not larceny, unless the intent to appropriate it existed in the mind of the taker at the time it came into his hands.

(v) State v. Langford: One who exploits what he realizes to be errors

by a bank is guilty of theft.

(w) Rex v. Banks: When one has been entrusted with property for a purpose and then appropriates it wrongfully, there is no larceny as there has been no trespass, either actual or constructive.

(x) Regina v. Riley: **If property is acquired unlawfully but without felonious intent, the subsequent appropriation will be larceny as there is a continuing trespass up until the appropriation.**

(y) State v. Coombs: There is a trespassory taking when one borrows property without an intent to steal but with fraudulent deception as to the use to be made of it.

(z) People v. Khoury: Any removal of property from the place where it was placed by the owner, with the specific intent to permanently deprive the owner of his property, whereby the perpetrator obtains possession and control of the property for any period of time, constitutes the element of carrying away sufficient to establish theft.

(aa) People v. Brown: For there to be felonious intent for a larceny, the one who takes another's property must intent to permanently deprive the owner of it.

(bb) State v. Savage: The taking of property for a temporary purpose with the real intention to return the property to the owner is no larceny.

(cc) Regina v. Hall: To take property by trespass for the purpose of "selling" it to the owner is larceny.

**2. Robbery: Wrongful taking
of property
from victim's
person
or
presence
by violence
or
intimidation
with the intent
to steal it!**

(a) Robbery is basically aggravated larceny. It requires proof of all of the elements for larceny plus two other things:

(i) The property must be taken **from the victim's person or presence;**

(ii) The taking of the property must be accomplished **by means of violence or intimidation.**

3. Embezzlement:

**Wrongful conversion
By one in proper possession**

**4. False Pretenses: Wrongful taking
of title
to property
by
misrepresentation
to the owner
with knowledge
of falsity
of the misrepresentation
and intent
to defraud
owner of possession**

LARCENY	EMBEZZLEMENT
<ul style="list-style-type: none"> • trespassory taking and carrying away the property of another • requires only a taking and an asportation • moving the property a short distance will do • requires an intent to steal which must concur with the larcenous conduct 	<ul style="list-style-type: none"> • property must be in the embezzler's lawful possession when he misappropriates it • requires a conversion (i.e., a serious act of interference with the owner's rights) • the mere act of moving the property a short distance will not do • requires a specific intent to defraud

***illustrative distinctions:**

<p>(a) an employer who hands his property to his servant (employee) retains possession of it, the servant having mere custody, so that the servant who misappropriates the property is guilty of larceny; (b) generally minor employees (such as caretakers, janitors, nightwatchmen) are considered as having custody of their employers' property, and so guilty of larceny when they steal</p>	<p>(a) an employee who receives his employer's property from a third person (to return to his employer) acquires possession, so that the servant who misappropriates the property is guilty of embezzlement, (b) employees delegated with greater authority (such as office managers, corporate officials, public officials) are deemed to have possession, and so guilty of embezzlement when they fraudulently convert;</p>
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5. Theft

6. Receiving (or Concealing) Stolen Property:

acceptance of property
after it has wrongfully
been taken
from another
with the intent
to deprive owner
of property
known to be stolen

7. Computer Crime

8. Malicious Mischief

9. Forgery and Uttering a Forged Instrument

10. Counterfeiting

11. Extortion: Obtaining

Or

Attempting to obtain

Property

By threats

Not sufficient

To constitute robbery

V. Other Offenses

1. Offenses Against Morality and Decency

2. Offenses Against the Public Peace

3. Offenses Affecting Sovereignty or the Administration of

Governmental Functions

VI. IMPUTABILITY

1. The Necessity of an Act

a. **State v. Quick:** Criminal liability must be based upon some overt act by the criminal actor.

b. **State v. Rider:** Criminal liability requires concurrence of the criminal act with the criminal intent to commit it.

2. What Constitutes an Act

***In general there is no duty to act to save someone, but under certain**

circumstances there is

- A “**special relationship**” mandates affirmative acts (parent-child, common carrier-patron);
- A **statute** creates a duty, for example, that a driver must assist someone injured in an accident in which the driver is involved;
- A **duty based on voluntary assumption of care**; (e.g., by beginning to aid, or stopping others from doing so);
- A duty arising from the **creation of the peril**;
- A **duty to control the conduct of others**, for example, the parent’s duty to control a child, and
- A **duty of a landowner to care for invitees**.

a. **State v. Taft**: Criminal liability may only be based upon voluntary acts.

b. **People v. Decina**: Criminal liability may be based upon an otherwise involuntary act where the voluntariness element is provided by the actor’s prior knowledge that the condition causing this act presented a threat of harm under the circumstances.

c. **State v. Kimbrell**: A defendant charged with cocaine trafficking is entitled to an instruction that mere presence at a transaction is insufficient to sustain a conviction.

3. Attempt and Kindred Problems

a. **Moffet v. State**: To establish an attempt to commit a crime, it need only be shown that the defendant performed a direct act toward the commission of the crime, beyond mere preparation.

4. Negative Acts

a. **Biddle v. Commonwealth**: A murder has been committed if death is the direct consequence of the malicious **omission of the performance of a duty**. If the omission is negligent and not willful, it is manslaughter.

b. **Commonwealth v. Teixeira**: A conviction for neglect in child support requires proof that a defendant was able to pay.

c. **Walker v. Superior Court**: Although remedial prayer constitutes one of the multiple necessities a parent must provide for the welfare of their attendance, in cases where the child requires medical treatment, subjects the parent to liability for involuntary manslaughter and punishes a compelling state interest under the Free Exercise Clause of the First Amendment.

d. **Jones v. U.S.**: **A person cannot be held criminally liable for a failure to act unless it is shown that the person owed a legal duty which was breached by his omission.**

e. **Davis v. Commonwealth**: To support a conviction of involuntary manslaughter, an accused’s conduct must be criminally negligent, i.e., of such reckless, wanton, or flagrant nature as to indicate a callous disregard for human life in the probable consequences of the act.

(1). **A legal duty** is one either “**imposed by law, or by contract.**”

When a death results from an omission to perform a legal duty, the person obligated to perform the duty may be guilty of culpable homicide.

f. Rex v. Russell: Failure to prevent the criminal act of another where there is a legal duty to do so carries the quality of participation in the act itself (by a “negative act”).

g. Van Buskirk v. State: One who negligently places another in a position of peril where it is reasonably foreseeable that the victim would be injured by subsequent acts of others is criminally culpable if such injuries occur.

h. Moreland v. State: Failure of a party to prevent the criminal act of someone under that party’s control and in his presence is intentional neglect (a negative act) upon which criminal liability may be imputed.

i. Commonwealth v. Putsch: Failure to control one’s agent, where there is a legal duty to do so, may be the basis for imputing liability for that agent’s conduct.

j. State v. Hanks: Participation in a single act in furtherance of the conspiracy is enough to sustain a finding of knowing participation.

5. Conspiracy: A conspiracy is an unlawful criminal combination between two or more persons who enter into an agreement with the specific intent to commit an unlawful act or a lawful act by unlawful means. The essence of the conspiracy is the agreement (actus reus). Feigned agreement is insufficient. Actual agreement is required. Traditionally no “overt act” is required, although modern statutes do require such an act in furtherance of the conspiracy in about half the states. Unlike attempt, conspiracy is a separate and distinct offense which does not merge upon completion of the target crime, since criminal combinations are deemed to be dangerous apart from the underlying crime itself.

a. Scope of the Conspiracy: Each co-conspirator is liable for the crimes of all the other co-conspirators where the crimes were both a foreseeable outgrowth of the conspiracy and committed in furtherance of the conspiratorial goal. It is the agreement which determines whether there is a single or a multiple conspiracy: in a “chain” relationship where several crimes are committed under one large scheme in which each member knows generally of the other parties’ participation and there exists a community of interest, one single conspiracy results. Alternatively, in the so-called “hub-and-spoke” relationship, where one common member enters into a series of independent crimes with different individuals, multiple conspiracies exist.

b. Procedural Issues: An acquittal of one co-conspirator results in the acquittal of a single remaining co-conspirator, since at least two guilty parties are required for a conspiracy conviction. To be distinguished from this situation is the **Wharton Rule which states that in crimes where two or more people are necessary for commission of the offense, there is no conspiracy unless the agreement involves an additional person who is not essential to the definition of the crime.** Since a corporation and its agent are considered one

person, no conspiracy can exist between them. A member of a legislatively protected class likewise cannot be guilty of conspiracy to commit that crime (a minor female cannot conspire with a male to commit statutory rape) nor of being an accessory to that crime; however, a person can be guilty of conspiracy to commit a crime she could not commit herself (a woman can conspire to commit rape).

c. Defenses: Impossibility is no defense to conspiracy. At common law withdrawal was not recognized as a valid defense to conspiracy. Under the Model Penal Code withdrawal by a co-conspirator may be a valid affirmative defense where the renouncing party gives timely notice of his plans to all members of the conspiracy and performs an affirmative act to thwart the success of the conspiracy. In this case, not that **withdrawal serves as a defense to subsequent crimes by the other co-conspirators, but not as a defense to the charge of conspiracy itself.**

SOLICITATION	CONSPIRACY	ATTEMPT
<ol style="list-style-type: none"> 1. Defendant entices, advises, encourages, orders or requests another to commit a crime 2. the crime solicited 	<ol style="list-style-type: none"> 1. Consists of (a) an agreement between two or more persons to commit a crime and (b) an intent to achieve the criminal objective; 2. The agreement is the 	<ol style="list-style-type: none"> 1. Consists of (a) an intent to commit a crime and (b) an act in furtherance or a “substantial step” toward the commission of the

<p>need not be committed;</p> <p>3. The crime requires no agreement or action by the person solicited;</p> <p>4. Defenses: at common law no defenses were recognized; under Model Penal Code, however, renunciation is an affirmative defense.</p>	<p>“essence” or “gist” of the crime;</p> <p>3. Unlike attempt, the crime does not require a “substantial step” in the commission of the crime;</p> <p>4. Solicitation merges into conspiracy;</p> <p>5. If the conspiracy is successful, a conspirator may be subject to conviction for both the conspiracy and the completed crime;</p> <p>6. Defenses: At common law withdrawal was not a valid defense; under the Model Penal Code, however, withdrawal is recognized as an affirmative defense if the defendant “thwarted the success of the conspiracy.”</p>	<p>offense;</p> <p>2. The act in furtherance of the crime must go beyond mere preparation;</p> <p>3. “Specific-intent” crime, i.e., the defendant must have the specific intent to commit the designated crime;</p> <p>4. Defenses: at common law legal impossibility but not factual impossibility was a defense to a charge of attempt; under the modern view, however, impossibility is no defense when the defendant’s actual intent (not limited by the true fact unknown to him) was to do an act proscribed by law.</p>
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A. COMMON LAW CLASSIFICATIONS:

1. Principal in the First Degree: The actual perpetrator who performs the criminal act with the requisite mental state is known as the principal in the first degree. More than one person can perpetrate the same crime.

2. Principal in the Second Degree: One who is present at the scene of the felony and aids, abets, or otherwise encourages the commission of the crime with the requisite intent is guilty as a principal in the second degree. Mere presence without assistance or assistance without intent are insufficient. A principal in the second degree may be punished to the same extent as the perpetrator.

3. Accessory Before the Fact: One who aids, abets, counsels, or otherwise encourages the commission of a felony, but is not present at the scene, is guilty as an accessory before the fact. An accessory before the fact may be punished to the same extent as a principal for all crimes committed within the scope of the conspiracy. At common law, conviction of the principal was required for

conviction of an accessory, although this is no longer the majority rule under modern law.

4. Accessory After the Fact: Whereas modern law has abolished the distinction between parties, one who is **an accessory after the fact is not an accomplice** nor is he punished to the same extent as prescribed for the parties to the felony. The following three requirements must be met for one to be an accessory after the fact: (1) a completed felony must have been committed; (2) the accessory must have known of the commission of the felony; (3) the accessory must have personally given aid to the felon to hinder the felon's apprehension, conviction, or punishment. At common law, an accessory after the fact could only exist as to a misdemeanor.

B. ACCOMPLICE LIABILITY

1. ELEMENTS: An individual is criminally liable as an accomplice if he gives assistance or encouragement, or fails to act where he has a legal duty to oppose the crime of another (actus reus), thus purposefully intending to effectuate commission of the crime (mens rea). Some modern statutes create accomplice liability with a lower mental state, that of knowingly assisting or encouraging a crime, such as to supplier cases where a seller, knowing of the buyer's intent to commit arson, sells him explosive device.

2. Scope of Liability: A defendant is responsible for the criminal acts of another whom he aided, abetted, or facilitated, provided the criminal consequences are **reasonably foreseeable** in terms of the acts defendant intended to aid or abet. A defendant may be guilty as an accomplice for crimes he could not commit alone; however, neither a victim nor a member of a legislatively protected class can be liable as an accomplice. Withdrawal may be valid defense where an accomplice makes a timely repudiation and takes sufficient steps to neutralize any assistance or material he has provided before the commission of the crime can no longer be prevented. An individual is not liable as an accomplice for the acts of a "false accomplice" (secret agent).

6. Imputability

A. The Necessity of an Act: **It is not enough to have a bad state of mind there needs to be an overt act by the criminal actor. There has to be a marriage between the men rea and the act.**

B. The act requirement: The traditional view has been that the defendant cannot be convicted of an attempt to commit a substantive crime unless he performed acts that came very close to commission of the substantive crime itself. **But the modern view is that almost any sort of overt act that represents a *substantial step* towards the offense, and that is strongly corroborative of the defendant's intent to commit the substantive crime, will suffice.**

C. Model Penal Code's "substantial step" test: The Model Penal Code incorporates aspects of both the "**proximity**" test and the "**unequivocality**" test. Yet the aspects of each that it incorporates are

relatively unstringent, so that almost any conduct meeting any of the variations of either of these tests would be sufficient under the Code, and many acts that would fail some or all of these tests would fail also be sufficient under the Code.

- (i). **“Substantial step” test:** Conduct meets the act requirement under the Code if, **IF under circumstances as the defendant believes them to be, there occurs “...an act or omission constituting a substantial step in a course of conduct planned to culminate in [the defendant’s] commission of the crime.”**

(ia) **“Strongly corroborative” requirement:** However, the Code adds that conduct meeting this “substantial step” test will not suffice unless, in addition, **“... it is strongly corroborative of the actor’s criminal purpose.”**

Model Penal Code
Article 5. Inchoate Crimes

§ 5.01 Criminal Attempt

(1) Definition of Attempt. A person is guilty of an attempt to commit a crime if acting with the kind of culpability otherwise required for commission of the crime he:

(a) Purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be;
or

(b) When causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part;
or

(c) Purposely does or omits to do anything which, under the circumstances as he believed them to be, is an act or omission constituting a *substantial step* in a course of conduct planned to culminate in his commission of the crime.

(2) Conduct Which May Be Held Substantial Step Under Subsection (1)(c). Conduct shall not be held to constitute a substantial step under Subsection (1)(c) of this Section unless it is **strongly corroborative of the actor's criminal purpose**. Without negating the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law:

- (a) Lying in wait, searching for or following the contemplated victim of the crime;
- (b) Enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;
- (c) Reconnoitering the place contemplated for the commission of the crime;
- (d) Unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;
- (e) Possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances;
- (f) Possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, where such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;
- (g) Soliciting an innocent agent to engage in conduct constituting an element of the crime.

PURE LIPS

- **Possession of materials**
- **Unlawful entry**
- **Reconnoitering**
- **Enticing**
- **Lying in wait**
- **Possession, collection**
- **Soliciting**

D. What Constitutes an Act

E. Attempt and Kindred Problems

- (a) If you see a fact pattern that looks like criminal attempt you must write

about:

- Specific Intent
- Preparation v. Perpetration
- Impossibility (factual (historically not a defense) and legal (historically a defense))
- Abandonment *change of heart*

SPIT

- Specific Intent
- Preparation v. Perpetration
- Impossibility (factual (historically not a defense) and legal (historically a defence))
- Transformation of heart

(b) Four Major tests for determining where preparation ends and perpetration begins. If you need to use one you use substantial step test stated in model penal code.

- (i) Substantial step (m.p.)
- (ii) Probable desistance
- (iii) Equivocality
- (iv) proximity

Preparation					Perpetration
Solicitation	Conspiracy	Substantial Step (M.P.)	Probable Desistance	Equivocality	Proximity

G. Conspiracy

(a) **People v. Swain:** Conspiracy is a specific intent crime requiring an intent to agree or conspire, and a further intent to commit the target crime.

H. Agency

(a) **Rex v. Huggins:** Criminality is only imputable to one who either (1) immediately does a criminal act, or (2) permits it to be done by an agent with his consent or at his direction.

(b) **Parnell v. State:** An individual is criminally culpable for causing an intermediary to commit a criminal act even though the intermediary has no criminal intent and is innocent of the substantive crime.

I. Incorporation

(a) **United States v. George F. Fish, Inc.:** Criminality will be imputed to a corporation for the criminal acts of its agents, within the scope of the agents' employment.

J. Parties to Crime

(a) **People v. Beeman:** **An aider and abettor must have rendered aid with an intent or purpose of committing or encouraging the commission of the target offense.**

(b) **People v. Prettyman:** To convict a defendant as an accomplice for an offense other than the act principally committed, the jury must find that 1) the defendant aided or encouraged the commission of the target offense with the intent to aid or encourage and with knowledge of the actor's unlawful purpose, and 2) the additional offense be a "natural and probable consequence" of the crime assisted or encouraged.

K. Causation

(a) **In tort we are trying to make innocent person whole/ in criminal law we are trying to figure out whom to punish.**

(b) Most have a Factual causation, need only be a cause, does not have to be only cause. **Causation has to be a substantial factor.**

(i) **Direct cause: Produces harm with no intervention.**

(ii) **Indirect cause: Creates a risk upon which an intervening cause operates.**

*if an intervening cause is **foreseeable** there will be no cut off of **liability**.

*If an intervening cause is **unforeseeable** then it will be considered **superseding**, superseding cause makes the original cause remote. Original actor would have **no liability**.

(c) **You look at**

(i) **But/for**

(ii) **Direct**

(iii) **Indirect: if indirect you look at foreseeability.**

(d) **State v. Hallett:** A party's wrongful conduct which creates a condition of peril may be the proximate cause of a resulting injury even though later events which combined to cause the injury may also be negligent so long as the later act was a reasonably foreseeable result of the former conduct.

7. Responsibility: In General

A. Mens Rea: "Mens rea" is traditionally defined as the "nonphysical element" of a crime. **CULPABLE MENTAL STATE**. This usually addresses what the defendant must have been thinking at the time she committed the actus reus, although for some crimes, a showing of something less--- criminal negligence---will suffice. Most crimes require a mens rea. Some-

“strict liability” offenses- do not, or require only a limited mens rea, although there is clearly a constitutional limit on the extent to which conduct may be made criminal without requiring a criminal intent.

*** **B. Criminal Negligence (General Intent):** For some crimes, liability can be based on a showing of criminal negligence, in which event the defendant may be convicted for an act done without awareness of the facts but with a “gross” lack of care. A.K.A.: Objective fault, criminal recklessness and criminal negligence. e.g. Depraved heart murder, Involuntary manslaughter, battery, and rape. Voluntary act but an act which is a deviation from what a reasonably prudent person would do.

(a) Gian-Cursio v. State: Criminal negligence exists where a person who undertakes to cure another exhibits gross lack of competency, or gross inattention, or criminal indifference, to the patient’s safety regardless of whether such person acted in good faith.

(b) State v. Howard: In order to show negligent homicide, it must be shown the defendant was unaware of a substantial risk that the victim would be killed, of which he should have been aware.

*** **C. Specific Intent:** Voluntary act plus/// Intent plus an additional intent. A.K.A.: Subjective fault [intentional], Purpose and Knowledge. Intent to do something further: Certain crimes require-in addition to general intent-an intent to do some further act or cause some additional consequence beyond that which must have been committed or caused in order to complete the crime. These are so-called specific intent crimes, and the additional mens rea required is referred to as a “specific intent.”

- BURGLARY
 - ATTEMPT
 - FORGERY
 - FALSE PRETENSES
 - LARCENY
 - EMBEZZLEMENT
-
- PREMEDITATED MURDER
 - ASSAULT
 - CONSPIRACY
 - SOLICITATION

(a) **Dobbs’ Case:** Burglary requires the specific intent to commit a felony.

(b) **Thacker v. Commonwealth:** Criminal attempt requires that the act be done with the specific intent to commit the particular crime allegedly attempted.

D. Other Particular State of Mind:

*****E. Strict Liability:** A.K.A.: No Fault. e.g. statutory rape. No mens rea requirement. Criminal liability without a mens rea requirement (or with a limited mens rea requirement) is called “strict liability.” It is an exceptional type of criminal liability and constitutional considerations limit the extent to

which it can be imposed.

(a) **Commonwealth v. Olshefski: Crimes which are merely mala prohibita (bad because the legislature says they are) do not have mens rea as a necessary element, and proof of them may be made on a strict liability basis.**

F. Unlawful Conduct:

G. "Transferred Intent":

H. Motive: Always relevant but never an element.

I. Concurrence of Mens Rea and Actus Reus: Act is a manifestation of the bad state of mind. The defendant's criminal intent must not only occur at the time he commits the criminal act, but the mental state should also actuate, or put into action, the act or omission. Thus, in burglary, the intent to commit a felony or larceny therein, must exist at the time of the breaking and entering.

8. Responsibility: Limitations on Criminal Capacity

A. Immaturity (Infancy): A complete defense, due to incapacity, existed for children under seven years of age. Children between the ages of seven and fourteen were rebuttably presumed to lack criminal capacity. Children over age fourteen were held responsible as adults.

B. Mental Disease or Defect (Insanity):

(a) **M'Naghten Test:** The Majority of jurisdictions follow this test whereby a defendant is relieved of criminal responsibility upon proof that **at the time of commission of the act, he was laboring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, he did not know that what he was doing was wrong.** "Disease of the mind" includes all mental abnormalities, but not a psychopathic personality. **Didn't know the nature and quality of the act or didn't know it was wrong.**

(b) **Irresistible Impulse Test:** In almost half of the jurisdictions following the M'Naghten test, the "irresistible impulse" test has also been adopted such that if a defendant is found to meet the requirements of either test, he will be found insane. Under the "irresistible impulse" test a defendant will be found not guilty where he had a **mental disease which keeps him from controlling his conduct.**

(c) **Durham (Product test) Test:** Under the Durham rule, or the "product" rule, **a defendant is not criminally responsible if his unlawful act was the product of mental disease or defect.** A crime is a product of a mental disease if it would not have been committed "but for" the defect or disease. The product test is the least used test.

(d) **The Model Penal Code Test – "Substantial Capacity": Combines the M'Naghten test and irresistible impulse test.** Developed by the American Law Institute this test combines the **M'Naghten** and the **irresistible impulse tests, whereby a person is not responsible for criminal conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity to appreciate the criminality (wrongfulness) of his conduct, or to conform his conduct to the requirements of law.** Here "mental disease or defect" again does not include abnormalities manifested only

by repeated criminal or otherwise antisocial conduct. Note that this test considers both a cognitive and a volitional capacity.

C. Drunkenness (Intoxication): Voluntary or involuntary intoxication (whether brought about by alcohol or by narcotic drugs) is a defense to crime when it negates the existence of an element of the crime. However, under the prevailing view, a lack of awareness of a risk that would otherwise negate the element of recklessness is immaterial if this unawareness is due to voluntary intoxication.

(a) Involuntary Intoxication: Involuntary intoxication is a defense to crime, even though it does not negate an element of the crime, under the same circumstances as insanity. The excessive use of alcohol or drugs may bring about real insanity, in which case the rules concerning insanity as a defense to crime govern.

D. Coverture:

9. Responsibility: Modifying Circumstances

A. Ignorance or Mistake:

B. Impelled Perpetration: Necessity (escaping the forces of nature” and Duress.

(a) 5 element of the “rule of necessity”

- **Harm to be avoided is imminent and serious, from a natural or physical force;**
- **Harm done by violating the law is less serious than alternatives**
- **Intention in violating law is to avoid greater harm;**
- **No better alternative exists; and**
- **Person asserting rule of necessity was not cause of bringing on the harm**

AILING

Alternatives unavailable

Less serious

Imminent harm

Not cause

Greater harm avoided

(b) Duress: When the actor acted due to another’s threat or use of force, that a reasonable person would view as creating an immediate threat of harm to the actor or his family if he does not comply.

- Duress is not a defense to homicide
- Threat must be of immediate harm; future harm will not suffice.
- A crime performed under duress is considered excusable, not justifiable.

C. Consent of the Other Party: Consent of the victim is no defense to a crime, except where it negates a specific element of the offense, such as rape or kidnapping.

- D. **Guilt of the Injured Party:**
- E. **Conduct of the Injured Party:**
- F. **Condonation by Injured Party:** **Subsequent forgiveness by the victim is generally no defense to commission of a crime. Neither is guilt of the victim a defense to the criminal conduct of the defendant.**

V. SPECIAL DEFENSES

A. Public Authority

(a) Public Duty: A public officer, policeman, or private citizen offering assistance, is justified in using reasonable force against another or in taking the property of another, provided the officer is acting within his authority pursuant to a law, court order, or process which is valid or which he reasonably believes to be valid.

B. Domestic Authority: The parents of a minor child, or one “in loco parentis,” may justifiably use reasonable force to promote the child’s welfare. “Reasonableness” is determined in light of the child’s age, sex, health, and particular misconduct base on the totality of the circumstances. This defense is available in some other situations where similar responsibility lies – a ship captain for his crew, a warden for his prisoners, but not a husband using force on his wife.

C. Prevention of Crime

(a) Police

i. A police officer may use that amount of non-deadly force which he reasonably believes necessary to effect a lawful arrest or prevent the escape of the arrestee.

ii. Deadly force may not be used to arrest or prevent the escape of a misdemeanor. A police officer may use deadly force to prevent the commission of a dangerous felony or to effectuate an arrest where it reasonably appears necessary to the officer to arrest a person reasonably believed to have committed a felony.

(b) Private Citizens

i. A private citizen is privileged to use that amount of non-deadly force which reasonably appears necessary to prevent the commission of a felony or a misdemeanor amounting to a breach of the peace. A private citizen may use non-deadly force to make an arrest if the crime was in fact committed and he reasonably believes the person against whom he uses the force committed the crime.

ii. A private citizen may use the same amount of deadly force as a police officer only if a dangerous felony is involved and the person against whom he used the force is actually guilty of the crime.

(c) Resisting Unlawful Arrest: A defendant may use reasonable non-deadly force to resist an unlawful arrest. An individual may only resist a lawful arrest by a police officer where the individual does not know that the other person is a police officer (this presents a situation of self-defense).

D. Self-Defense: **If a person has a reasonable belief that he is in**

imminent danger of unlawful bodily harm he may use that amount of force which is reasonably necessary to prevent such harm, unless he is the aggressor.

(a) Deadly v. Non-Deadly Force: Deadly force is that which threatens death or serious bodily harm. Non-deadly force threatens only bodily harm.

(b) Rights of the Aggressor: An aggressor is one who strikes the first blow or commits a crime against the victim. The aggressor can regain the right of self-defense in either of two ways: (1) upon complete withdrawal perceived by the other party, or (2) escalation of force by the victim of the initial aggression.

(c) Duty to Retreat: A defendant has no duty to retreat before using non-deadly force. Regarding deadly force, the majority view is that there is no duty to retreat. In jurisdictions that do follow a retreat rule, one need not retreat unless it can be done in complete safety, and retreat need not be made in one's home.

E. Defense of Other: A defendant is justified in defending another person with reasonable force only if he reasonably believed the victim had a right to use such force. Some jurisdictions limit this defense to situations where a special relationship exists between the defendant and the victim, while other jurisdictions view the defendant as "standing in the shoes" of the person defended.

F. Defense of the Habitation

(a) Non-Deadly Force: Reasonable non-deadly force is justified in defending one's property from theft, destruction, or trespass where the defendant has a reasonable belief that the property is in immediate danger and no greater force than necessary is used. The use of non-deadly force is improper where a request to desist would suffice. Non-deadly force is proper when used to re-enter real property or regain possession of wrongfully taken personal property upon "immediate pursuit".

(b) Deadly Force: Deadly force may never be used merely to defend property. However, by virtue of other defenses (self defense, defense of others), deadly force may be used where unlawful interference with property is accompanied by a threat of deadly force or where the defender reasonably believes an entry will be made or attempted in his dwelling by one intending to commit a felony therein.

G. Entrapment: The defense of entrapment exists where the criminal plan is the product of creative activity originating with law enforcement officials and the defendant is in no way predisposed to commit the crime.

The government officials can however, encourage criminal activity by providing the opportunity or the equipment for the commission of a crime. Procedurally, a defendant may not raise the issue of entrapment if he has denied his participation in the crime. A defendant's past criminal record is relevant in proving predisposition, even though such potentially damaging evidence may prejudicially affect the judge.

- **The sole test for entrapment is whether the defendant was PREDISPOSED to commit the offence.**