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CHAPTER 1. INTRODUCTION

A. **Criminal law** — the study of crimes.

B. **Criminal law** versus **civil law**

1. In a **criminal case**, the government prosecutes a person who is accused of violating a crime. The government becomes the plaintiff, and the accused becomes the defendant. If the defendant is convicted, he may be incarcerated and fined.

2. **Civil law** involves individuals or entities suing each other to resolve legal disputes. In a civil case, if the defendant is found liable, he will usually have to pay money damages, but he cannot be incarcerated.

C. Another difference between criminal law and civil law is **burden of proof**.

1. Burden of proof — the level of proof the party bringing the case must attain in order to prevail.

2. In *criminal proceedings*, the standard for the burden of proof is beyond a reasonable doubt. This means that the prosecution must prove every element of the crime beyond a reasonable doubt in order to get a conviction.

3. In *civil cases*, the party bringing the action generally must prove the case by a preponderance of the evidence, which is a lower burden of proof than that required in criminal cases.

D. **Criminal law** versus **criminal procedure**

A. Criminal law is the study of the crimes themselves, while criminal procedure concerns the process through which the criminal laws are enforced, such as criminal investigations, trials, and sentencing.

E. The **purpose of criminal law** is to help regulate social conduct and to prevent behavior that threatens the health, safety, and welfare of citizens. There are several reasons why society chooses to **punish** an offender. The general theories that justify criminal punishment:

1. Punishment acts as **retribution**.

a. Retribution means that a criminal is punished because they have done some wrong. When a person commits a crime and violates another person's rights, that person should be punished and suffer in a way that is proportionate to the crime they committed. This is punishment in the form of retribution.

2. Punishment is also justified because it acts as a **deterrent**.

a. Punishing an offender discourages the offender from future criminal behavior. Additionally, other individuals will be discouraged from committing an offense when they see that others have been punished for committing that same offense.

3. **Incarceration** is also a theory of punishment, which is designed to remove criminals from society so that they cannot cause harm to the public.

4. Punishment may be in the form of **rehabilitation**.

a. Rehabilitation aims at transforming an offender (by means of therapy or education) to have a useful life. Rather than punishing a criminal, rehabilitation seeks to bring a criminal into a more peaceful state of mind and to be a valuable member of society.

5. Punishment can be in the form of **restoration**.

a. Restoration is a victim oriented theory of punishment that aims to repair any injury inflicted upon the victim or the victim's family. This usually involves the offender apologizing, returning stolen money, or doing community service.

F. Crimes can be classified into 2 categories: **felonies** and **misdemeanors**

1. F**elony** — a more serious offense and is usually punishable by imprisonment for more than one year, and in some jurisdictions by death.

a. Crimes typically classified as felonies — burglary, arson, robbery, rape, and murder

2. **Misdemeanors** — less serious crimes that are punishable by fine only or imprisonment for less than one year.

a. All crimes that are not considered felonies are considered misdemeanors — like traffic violations, petty theft, disorderly conduct, and trespass.

G. Criminal law can be found in statutes and common law

1. The **common law** is a body of rules that has been developed through the courts over time. In other words, common law is judge-made law.

a. Historically, the source of criminal law came from the common law. However, with the advent of legislatures and other law-making entities, the task of creating and defining criminal law has largely been transferred from the courts to the legislature. Today, criminal laws in the United States are established for the most part by local, state, and federal legislatures.

2. Note that many jurisdictions have strayed away from the common law, and have instead adopted portions of the **Model Penal Code** in enacting criminal statutes. (The Model Penal Code was developed by the American law institute in the 1960s in order to update and standardize criminal laws throughout the United States.)

3. Although the Model Penal Code and the common law both serve as a basis for criminal laws, crimes and their definitions vary significantly among jurisdictions. In this outline, we will focus on the **common law** definitions of crimes, and from time to time we will look at modern trends.

H. Although each crime can be broken down into its various elements, generally every crime consists of 2 fundamental elements:

(i) **Actus reus** – *physical act*
(ii) **Mens rea** – *mental state*

CHAPTER 2. ACTUS REUS

A. In order to be convicted of a crime, the defendant must have committed an **actus reus** — either a **physical act** or an **omission** that is of a criminal nature.

B. In order to meet the actus reus element of a crime, the defendant must act **voluntarily**.

1. The actus reus must be a conscious and volitional movement.

2. Therefore, if the defendant acts *involuntarily* (for instance due to a reflex or convulsion, or acts while unconscious or sleeping), the defendant will not be liable.

a. However, a defendant will be criminally liable for involuntary acts in 2 situations:

1) When he is at fault for bringing about his state of unconsciousness.

Example — The defendant drinks too much alcohol, gets in a car, and hits a pedestrian.

2) When he knows there is a chance he may become unconscious, but still chooses to do something that could harm others.

Example — A person who has epilepsy, which causes the person to have random seizures, chooses to drive a car in public, and ends up having a seizure and hitting a pedestrian.

C. While most crimes involve an overt physical act, some crimes are committed when a person **fails to act**.

1. In order to be liable for a failure to act, there must be a **duty to act** in the first place.

2. Generally, a person is under no legal duty to act or come to the aid of another who is in danger.

a. However, in 5 situations, a person will have a duty to act:

(i) Mandated by a statute,
(ii) Special relationship,
(iii) Contract,
(iv) Assumption of care, and
(v) The defendant put someone in danger.

b. A person has a duty to act when it is **mandated by a statute**.

Example — The requirement to file a tax return.

c. A person has a duty to act when they have a **special relationship** with the victim.

1) A special relationship usually exists between *parent and child*, *husband and wife*, and *employer and employee*.

Example — If an infant eats something poisonous, the infant's mother has a duty to get the infant medical attention.

d. A person has a duty to act when there's a private **contract** establishing a duty to act.

Example — A nurse has a contractual duty to help patients; a bodyguard has duty to protect his boss; and a lifeguard has a duty to save a drowning person.

e. A person has a duty to act when they have **assumed caring** for the victim.

1) This occurs when a defendant voluntarily comes to the aid of a victim, and then abandons the rescue attempt and leaves the victim in a worse condition.

2) If a person chooses to help someone who is in peril, that person has voluntarily assumed the care of the victim and now has a duty to follow through.

e. A person has a duty to act when they have **put someone in danger**

Example — Victor pushes Linda into a pool. Linda starts drowning.

→ In this case, Victor has a duty to act and rescue Linda from drowning because he wrongfully put Linda in harm's way.

► In this chapter, we discussed **actus reus**, which is the physical act element of a crime. We learned that the act must be *voluntary* to establish liability. We also learned that the actus reus can be satisfied by a *failure to act* (or an omission) when the defendant has a duty to act. A person has a duty to act in 5 situations: when it is mandated by a statute, when there is a special relationship, when there is a contract, when they have assumed care of another, and when they have put someone in danger.

CHAPTER 3. MENS REA — UNDER THE MODEL PENAL CODE

In addition to an actus reus, most crimes require proof of a **mens rea**. Mens rea refers to the **state of mind** of the defendant at the time of the unlawful act.

In this chapter, we will discuss the 4 different mental states under the *Model Penal Code*, which have been adopted by the majority of jurisdictions. And in the next chapter, we will discuss the traditional categories of mens rea under the *common law*.

A. Under the MPC, a person is not guilty of a crime unless he acted with one of 4 **mental states**:

(i) Purposely,
(ii) Knowingly,
(iii) Recklessly, or
(iv) Negligently.

B. **Purposely** (intentionally)

a. A person acts purposely if it is their *conscious objective to cause a result*.

Example — Sandra wants to kill Bob, her ex-husband, who is currently a bus driver. Sandra decides to plant a bomb on Bob's bus with the intent to kill him. The bomb explodes and kills Bob.

→ In this case, Sandra has purposely killed Bob because she acted with the desire to cause his death.

2. **Knowingly**

a. A person acts knowingly when they are *practically certain that their conduct will cause a specific result*.

Example — When Sandra blew up the bus, not only did Bob die, but 10 passengers also were killed.

→ Although Sandra did not intend to cause their deaths, she knowingly killed the passengers because it was practically certain that the explosion would result in their deaths.

3. **Recklessness**

a. A person acts recklessly when they are *aware of a substantial and unjustifiable risk, but proceed anyway*.

Example — When Sandra blows up the bus, not only do Bob and the passengers die, but a pedestrian, Alfredo, also dies from flying debris that came from the explosion.

→ In this case, Sandra has recklessly killed Alfredo because there was a substantial and unjustified risk that blowing up a bus would result in someone's death or serious injury.

4. **Negligence**

a. A person acts negligently when they are not aware of a substantial and unjustifiable risk, but should be aware. (Negligence essentially means carelessness).

Example — A mother carelessly forgets to close the gate to her swimming pool while her young child is roaming around the house. The child wanders through the gate and drowns in the pool.

→ In this case, the mother has acted negligently because she should have been aware of the substantial risk that the swimming pool posed to her child.

B. *** The definitions of most crimes contain **language that indicates the mens rea** that is required for the crime.

1. However, under the model penal code, if a criminal statute DOES NOT state which mens rea is required, then the defendant must have acted either *recklessly* or *knowingly* or *purposely*, to be convicted of the crime.

► In this chapter, we began discussing the **mens rea** element of crimes. We learned that under the MPC, the defendant must act purposely, knowingly, recklessly or negligently, to be liable for a crime.

CHAPTER 4. MENS REA — UNDER THE COMMON LAW

Under the common law, the mens rea requirements depend on whether the crime is a **general intent crime** or a **specific intent crime**.

A. **GENERAL INTENT CRIMES** — crimes that require the defendant to intend to commit an illegal act.

1. The mens rea for general intent crimes is usually *inferred* simply *from the criminal act*.

a. Therefore, to convict the defendant of a general intent crime, the prosecution need only prove that the defendant performed the criminal act.

2. The major general intent crimes include battery, rape, kidnapping, and false imprisonment. These crimes will all be discussed later in this outline.

B. **SPECIFIC INTENT CRIMES** — require not only an act, but also a specific intent (objective)

1. To convict the defendant of a specific intent crime, the prosecution must prove not only that the defendant *intended to commit an illegal act*, but also that the defendant *intended to achieve a specific goal*.

2. Major specific intent crimes — murder, inchoate offenses, and theft offenses.

a. The inchoate offenses are attempt, solicitation, and conspiracy. The theft offenses are larceny, robbery, burglary, false pretenses, embezzlement, and forgery. All these crimes will be discussed in more detail later in this outline.

C. *Example* — Kramer sees his neighbor Jerry walking down the sidewalk. Kramer notices that Jerry is wearing a pair of sunglasses just like the pair that Kramer lost a week ago. Kramer believes that Jerry stole the sunglasses, he hits Jerry over the head and knocks him out and takes the sunglasses. Unbeknownst to Kramer, the sunglasses actually belonged to Jerry. Kramer is charged with battery and robbery.

(i) The crime of **battery** is a *general intent crime*. Common law battery is defined as the unlawful application of force to another.

In order to convict Kramer of the general intent crime of battery, the prosecution need only prove that Kramer unlawfully made contact with Jerry.

(ii) On the other hand, **robbery** is a *specific intent crime*. Common law robbery is defined as the taking of personal property from another, by force, with the intent to permanently deprive the person of the property.

In order to convict Kramer of the specific intent crime of robbery, the prosecution must prove not only that Kramer forcefully took property from Jerry, but also that Kramer had the specific intent to permanently deprive Jerry of his sunglasses.

→ Since Kramer believed the sunglasses were his own, Kramer didn't have specific intent to deprive Jerry of his property, but rather had the intent to retrieve what he thought was his property. Therefore, Kramer will not be convicted of the specific intent crime of robbery, but will be convicted of the general intent crime of battery.

B. The distinction between general and specific intent crimes is important because certain **DEFENSES** apply to specific intent crimes but do not apply to general intent crimes.

1. In particular, specific intent crimes allow for the defenses of **mistake** and **intoxication**.

a. A defendant who was *mistaken about a material fact*, or who was *intoxicated*, may have a defense to a specific intent crime IF the mistake or intoxication prevented the defendant from forming the requisite mens rea.

Recall that in our previous *example*, Kramer though that the sunglasses were his own, before he took them from Jerry. This mistake of fact prevented Kramer from forming the intent to permanently deprive Jerry of his property, and therefore Kramer had a valid defense to the specific intent crime of common law robbery.

2. Note that a **mistake of the law** is generally never a defense to any crime.

a. If a defendant acts in a manner that he thinks is legal, but in fact he is committing a crime, the defendant's mistaken belief will not be a defense, and he may still be convicted of the crime.

C. **Other mental states recognized by the common law**.

1. For some crimes, a conviction can be based on a mens rea of **recklessness** or **criminal negligence**.

2. In addition, the common law recognizes a mental state known as **malice**.

a. Malice generally requires that the defendant act with intent or with a reckless disregard of an obvious risk.

b. Major malice crimes include common law murder and arson, which we will discuss later in this outline.

D. **STRICT LIABILITY CRIMES**

1. A defendant can be convicted of a strict liability crime even if he did NOT have any mens rea when he was committing the crime.

a. So even if the defendant did not know he was committing a strict liability crime, he can still be convicted of the crime.

2. Statutory rape, bigamy, and selling liquor to minors are common *examples* of strict liability crimes.

► In this chapter, we discussed mens rea under the common law, and we looked primarily at general intent and specific intent crimes. We learned that a defendant can be convicted of a **general intent crime** if he merely intended to commit a criminal act. However, to be convicted of a **specific intent crime**, the defendant must also have had the intent to achieve a specific objective.

CHAPTER 5. CAUSATION

In addition to the actus reus and mens rea, many crimes include an element that **actual harm** must occur. (For instance, homicide requires a death.) For such crimes, the defendant's conduct must have **caused** the harm in order for the defendant to be convicted of the crime.

A. When **causation** is an element of the crime, the prosecutor must generally prove both *actual* and *proximate* causation.

1. **Actual causation** ("but for" causation) — exists when the harm to the victim would not have happened if the defendant did not act.

2. **Proximate causation** — typically exists when the result of defendant's action is *reasonably foreseeable*, and there is *no intervening factor* to break the chain of causation.

a. Note that an **intervening factor** must be set in motion AFTER the defendant has committed the criminal act.

1) Therefore, a **pre-existing condition** CANNOT be an intervening factor and will not break the chain of causation.

B. *Example* — Assume a group of misfits kidnap grandma. During the kidnapping, grandma escapes, and while she is running away, she falls, hits her head, and dies.

→ In this case, even though the misfits never intended to kill grandma, the act of kidnapping her *actually* caused her death because, but for the kidnapping, grandma would not have died trying to escape.

In addition, the act of kidnapping also *proximately* caused grandma's death because it is foreseeable that a victim would run away from her captors. Therefore, in this case, the misfits can be liable for homicide.

C. *Example* — Assume instead that after the misfits kidnapped grandma, they put her in the trunk of a car, and she went into shock and died.

→ In this case, the act of kidnapping *actually* caused her death because but for the kidnapping, grandma would not have gone into shock and died.

In addition, the kidnapping *proximately* caused grandma's death because the result was reasonably foreseeable, and since grandma's old age and health will be considered a pre-existing condition, there was no intervening factor that broke the causation between the act of kidnapping and Grandma's death. Therefore, the misfits can be liable for homicide.

D. *Example* — Assume Wile E Coyote tries to catch the Road Runner by dropping an anvil on him. After many attempts, Coyote finally succeeds. Roadrunner is injured and is rushed to the hospital, where he is examined by Dr. Houser, who determines with medical certainty that Roadrunner will die within the next few hours. Since Roadrunner is in severe pain, Dr. Houser injects him with poison and Roadrunner immediately dies.

→ In this case, both Dr. Houser and Coyote can be convicted of roadrunner's murder because both actually and proximately caused his death.

(i) Coyote *actually* caused Roadrunner's death because but for dropping the anvil, Roadrunner would not have died. Also, Dr. Houser actually caused the death because but for the doctor's actions, roadrunner would not have died so soon.

(ii) In addition to actual cause, both Coyote and Dr. Houser *proximately* caused Roadrunner's death, because it is reasonably foreseeable that hitting someone with an anvil could result in death, and that poison will kill someone.

*** Although Dr. Houser's actions would be an intervening factor, when an intervening factor combines with another's conduct, they are both considered concurrent proximate causes and the chain of causation is NOT broken. Therefore, both Coyote and Dr. Houser may be liable for Roadrunner's murder.

E. Intent can be **transferred** — the defendant can still be liable for a crime when he intends to harm someone or some object, but ends up harming a different person or object.

Example — Goofy intends to shoot and kill Mickey Mouse, but misses and shoots and kills Daffy Duck instead.

→ In this case, even though Goofy intended to kill Mickey Mouse, Goofy can be convicted of the murder of Daffy Duck under the transferred intent doctrine.

*** Goofy may also be convicted of the attempted murder of Mickey Mouse.

► In this chapter, we discussed the **causation** element that is required for certain crimes. We learned that a defendant must be the **actual cause** and the **proximate cause** of harm done to the victim in order to be convicted of certain crimes.

CHAPTER 6. PARTIES TO A CRIME — ACCOMPLICE LIABILITY

A. **Accomplice** — someone who encourages or assists another in the commission of a crime, but does not take part in actually committing the crime.

1. An accomplice is commonly known as an aider and abettor.

B. Most jurisdictions categorize parties to a crime as either **principals** or **accomplices**.

(i) A **principal** is the party who actually engages in the act of committing the crime.
(ii) **Accomplices** are all the other parties involved in the crime.

1. In general, an accomplice is *responsible* for the crime to the same extent as the principal.

a. And in many jurisdictions, an accomplice is ALSO responsible for all other crimes that are a foreseeable result of the original crime.

2. **Accessories after the fact** — a person who knows a crime has been committed and helps the offender escape.

a. Accessories after the fact are not liable for the principal crime, but may be liable for a separate offense of being an accessory after the fact (commonly known as obstruction of justice) which carries a lower penalty than the actual crime.

C. In order to convict a defendant as an **accomplice**, the prosecution must prove 3 elements:

(i) That the defendant acted in a manner that encouraged or helped the principal,
(ii) That he intended to encourage or help the principal,
(iii) That the principal actually committed the crime.

1. The **accomplice must help or encourage the principal** in some way.

a. *Example* — This can be done by driving the getaway car, providing supplies like money or weapons, being a lookout, or distracting a potential witness to the crime.

b. *** Note that a stranger who is present when a crime occurs and who stands by silently and watches the crime occur will not be considered an accomplice.

2. The accomplice must have the requisite **intent** that the crime be committed.

a. Therefore, if a person helps someone commit a crime—but they do not *know* they are helping—they CANNOT be subject to accomplice liability because they do not possess the required mens rea.

3. The principal must have **actually** committed the crime.

a. This does not mean that the principal has to be *convicted* of the crime first — all that is required is that the prosecution prove during the accomplice's trial that the principal committed the crime.

D. **Defenses** to accomplice liability

1. An accomplice may be able to *avoid liability* when he makes an **effective and timely withdrawal**.

a. In certain jurisdictions, if the accomplice has ONLY *encouraged or incited* the principal to commit the crime, the accomplice need only communicate his withdrawal to the principal to avoid accomplice liability.

b. However, if the accomplice did MORE, the accomplice can withdraw only if he renders the prior assistance ineffective.

Example — If the accomplice provided supplies to the principal, he would have to take back the materials or he would have to timely contact the police.

E. Certain people CANNOT be accomplices:

1. Classes of people who are protected based on a criminal statute.

a. *Example* — This includes underage workers and undercover law enforcement.

2. Victims of a crime.

► In this chapter, we discussed **accomplice liability**. We learned that an **accomplice** is a person who assists or encourages the principal in the commission of a crime. An accomplice will be liable for the original crime, and, in many jurisdictions, for other foreseeable crimes that result from the original crime.

CHAPTER 7. INCHOATE OFFENSES — SOLICITATION

A. **Inchoate offenses** — incomplete crimes.

1. They are crimes of preparing for or seeking to commit another crime.

B. There are 3 inchoate offenses: **solicitation**, **conspiracy**, and **attempt**.

1. Note that these three crimes are *specific intent crimes*, and therefore require some specific intent by the defendant.

C. **Solicitation** — the enticing, encouraging, or advising of another person, to commit a crime, with the intent that the other person commits the crime.

(i) In simpler terms, solicitation is asking another person to commit a crime.

(ii) Although solicitation can involve any crime, it is commonly used for prostitution, drug dealing, and when politicians solicit bribes.

1. In order to be convicted of solicitation, the prosecution must prove not only that the defendant asked another person to commit a crime, but that the defendant had the **intent** to cause the solicited individual to commit the crime.

Example — If you say to your friend, "Let's rob a bank," as a joke, you cannot be convicted of solicitation because, even though you performed the actus reus, you did not intend to actually commit the crime.

2. Solicitation occurs once the defendant has the **intent** to commit a crime AND has asked **another person** to commit the crime.

a. At this moment the crime of solicitation has occurred — and anything that happens afterward is irrelevant.

1) Therefore, it is not necessary that the solicited person *respond* to the request or *agree* to commit the crime in order for the crime of solicitation to occur.

2) Also, if the defendant *withdraws* from committing a crime after he has solicited someone to commit the crime, the withdrawal will NOT be a defense to solicitation because the crime has already occurred.

3. If solicitation of a crime has taken place — and then afterwards the crime has *actually* been completed — the crime of solicitation is said to **merge** with the completed crime.

a. This means that the defendant cannot be charged with BOTH solicitation to commit the crime and the crime itself. Rather, the defendant can only be convicted of one of the crimes.

► In this chapter, we discussed the inchoate offense of **solicitation**. We learned that the crime of **solicitation** is completed when one person intentionally encourages another to commit a crime.

CHAPTER 8. CONSPIRACY

A. **Conspiracy** — an agreement, with an intent to enter into the agreement and with an intent to achieve the unlawful objectives of the conspiracy.

1. At *common law*, the crime of conspiracy is completed as soon as an **agreement** is made between 2 or more people to commit a crime.

2. However, *modern statutes* require that there be an **agreement** PLUS an **overt act**.

a. The **overt act** element will be satisfied by any slight act in furtherance of the conspiracy:

1) This includes preparing for the crime, like buying supplies, it includes recruiting others to join the conspiracy, and it includes showing up at the scene to commit the crime.

b. Note that the **agreement** element of conspiracy does not require that there be an *express agreement*.

1) In certain circumstances, intent can be *inferred* from a co-conspirator's conduct.

Example — If an individual sees a crime taking place and suddenly assists those committing the crime, this can be considered an implied agreement to take part in the crime, and that individual may be convicted as a co-conspirator.

B. The crime of conspiracy, by definition, requires at least **2 people**.

1. Therefore, if one party in a two party conspiracy did not actually intend to enter into the agreement, then neither party will be guilty.

a. This two guilty party requirement is the traditional rule under the **common law**, and is known as the plurality requirement.

2. However, the **model penal code** has adopted a unilateral approach to conspiracy.

a. This means that a conviction for conspiracy does not require that the defendant has made an agreement with another guilty co-conspirator. All that matters is that the defendant himself agreed to take part in a crime.

Example #1 — When the defendant has unknowingly conspired with an undercover police officer, *common law* dictates that the defendant must be acquitted because there are not two guilty parties. However, under the *model penal code* unilateral approach, the defendant can be convicted of conspiracy.

Example #2 — Similarly, when all alleged co-conspirators of the defendant have been acquitted, the defendant must also be acquitted under the *common law*; however, he can be convicted under the *model penal code*.

C. Every member of a conspiracy is **liable** (not only for the crime of conspiracy, but also) for *all reasonably foreseeable crimes* committed by co-conspirators *in furtherance* of the conspiracy.

1. Note that a conspiracy will **end** once all the objectives of the conspiracy have been successfully accomplished.

Example — Ken conspires with Barbie to rob a convenience store. They need a gun to rob the store, so they decide that Barbie will steal a gun from her neighbor. When Barbie sneaks into her neighbor's house, she grabs the gun, and as she is leaving, she shoots and kills the neighbor.

→ In this case, Ken will be liable for Barbie's murder because it was committed in furtherance of the conspiracy and was reasonably foreseeable.

D. After a conspiracy has been formed, members of the conspiracy may be able to **withdraw**.

1. In order for a withdrawal to be effective in most jurisdictions, the member must *tell* all the co-conspirators that he is withdrawing AND the withdrawal must be *timely* (meaning that it must occur in time for the other co-conspirators to withdraw as well.)

2. Once a withdrawal has taken place, the effects of a withdrawal differ among jurisdictions:

a. Under the general **common law** rule, when a member withdraws from a conspiracy, the member will STILL be liable for the crime of conspiracy.

1) However, he will not be liable for any subsequent crimes that are committed by co-conspirators in furtherance of the conspiracy.

b. Under the **Model Penal Code**, a member may use withdrawal as a valid defense to the crime of conspiracy, but only if the member *completely* withdraws from the conspiracy and also, *prevents* the conspiracy from happening, for instance by contacting the police.

Example — Ken and Barbie conspire to rob a convenience store, except this time, Barbie already has a gun. Ken drives to the store to meet Barbie.

*** At this moment, the crime of conspiracy has been *completed*. Ken not only made an agreement with Barbie to rob the store, but by driving to the store, Ken carried out an overt act in furtherance of the conspiracy

Continuing on, once Ken arrives at the store, Barbie gets into Ken's car to discuss how to proceed with the robbery. Suddenly, Ken has a change of heart--he tells Barbie that he does not want to rob the store, and he leaves and goes home.

→ In this case, Ken has withdrawn from the conspiracy; however, he will still be liable for the crime of conspiracy because it had already been completed.

Continuing on, assume that after Ken withdraws, Barbie goes ahead with the robbery and during the robbery she shoots and kills the store clerk.

→ In this case, although Ken can be convicted of conspiracy, he will not be liable for the murder because he effectively withdrew from the conspiracy before the murder was committed.

E. Conspiracy does NOT **merge** into the completed crime.

a. Therefore, defendants who conspire to commit a crime and then actually commit the crime can be convicted of 2 crimes: both conspiracy to commit the crime and the crime itself.

► In this chapter, we discussed the inchoate offence of **conspiracy**, which is an agreement between 2 or more people to commit a crime, with the specific intent to commit the crime. And in most jurisdictions there must also be an *overt act* in furtherance of the conspiracy.

CHAPTER 9. ATTEMPT

A. **Attempt** — the specific intent to commit a crime plus a substantial step towards completing the crime.

1. In other words, an attempt to commit a crime occurs when the defendant makes a substantial but unsuccessful effort to commit a crime.

B. The defendant must make a **substantial step** that is strong evidence of the defendant's criminal purpose, but that is unsuccessful in completing the crime.

1. This generally requires *more than mere planning* or *preparation*.

Example — Bonnie and Clyde agree to rob a convenience store. Bonnie then buys two ski masks to use during the robbery.

→ At this moment, Bonnie and Clyde have entered into a conspiracy because they have agreed to commit a crime and the purchase of the supplies is an overt act in furtherance of the crime. However, Bonnie will probably not be guilty of attempt because she is merely preparing for the robbery.

Example — Assume that after purchasing the ski masks, Bonnie then buys a gun and drives to the store, parks, and stakes out the scene.

→ At this point, Bonnie may be guilty of attempted robbery because driving to the scene and staking it out constitutes a substantial step toward completing the crime.

C. **Defenses** for the crime of attempt

1. **Impossibility**

a. There are 2 categories of impossibility in criminal law: *legal impossibility* and *factual impossibility*.

1. A legal impossibility will be a valid defense to attempt, but factual impossibility will not.

b. **Legal impossibility** is where the defendant attempts to commit a crime, but his actions are actually not illegal.

Example — Willie buys marijuana from someone on the street, thinking it is illegal. Unbeknownst to Willie, marijuana has just been legalized.

→ In this case, Willie has a legal impossibility defense and he cannot be convicted of attempt to possess marijuana.

c. **Factual impossibility** is not a defense to attempt. Factual impossibility is where the defendant tries to commit a crime but, for some reason, it is impossible to actually commit.

Example — Willie buys cocaine from someone on the street. Unbeknownst to Willie, the cocaine is fake and he actually purchased baking powder.

→ In this case, even though it is impossible for Willie to possess cocaine, he can still be convicted of attempt to possess cocaine.

2. **Withdrawal**

a. Under the *common law*, withdrawal is NOT a defense to the crime of attempt.

b. The *Model Penal Code* permits withdrawal to be used as a defense — but only if the withdrawal is *voluntary* and *complete*.

D. The crime of attempt **merges** with the completed crime.

1. So if a defendant attempts to commit a crime and then completes the crime, the defendant can only be convicted of one of the crimes.

2. Recall that *solicitation* also merges with the completed crime, however *conspiracy* does not merge.

► In this chapter, we discussed the crime of **attempt**. We learned that attempt is the specific intent to commit a crime plus a substantial step in furtherance of completing the crime.

CHAPTER 10. HOMICIDE — COMMON LAW MURDER

A. **Homicide** — the unlawful killing of another human being.

(i) *Criminal homicide* — the murder of another person.
(ii) *Justified homicide* — a killing done in self-defense.
(iii) *Excusable homicide* — a killing authorized by law (like when a police officer shoots and kills someone in the line of duty).

*** Under modern statutes, justified and excusable homicides are not punishable — only criminal homicides are punishable.

B. **Murder** (common law) — the unlawful killing of another human being with malice aforethought.

1. The *actus reus* element is the killing of another human being.

2. The *mens rea* element is **malice aforethought**.

C. **Malice aforethought** includes 4 different mental states:

1. **Intent to cause death**

a. If the defendant intended to cause a victim's death when he killed the victim, then the killing is with malice aforethought and the defendant has committed common law murder.

2. **Intent to inflict great bodily harm**

a. If the defendant intends to inflict serious injuries to a victim but the victim ends up dying as a result from the injuries, the death is considered to have been inflicted with malice aforethought and the defendant has committed common law murder.

Example — Dale and his car mechanic get in a heated argument over the car repair bill. After Dale refuses to pay, the mechanic gets mad and he wants teach Dale a lesson. The mechanic grabs a crowbar and hits Dale over the head. Dale ends up dying from this injury.

→ In this case, because the mechanic intended to cause serious bodily harm to Dale, the mechanic acted with malice aforethought.

3. **Reckless disregard for human life** (depraved heart murder)

a. The defendant knows that there is a high risk of causing death or serious bodily harm to someone else, but the defendant ignores the risk and acts anyway.

Example — Assume that once the mechanic gets mad at Dale for not paying his bill, the mechanic grabs his gun and fires angrily into a crowd of onlookers.

→ The mechanic didn't necessarily mean to kill anyone, but also didn't give any thought to the harm that his actions would cause. This demonstrates the mechanic's depraved indifference to human life, and he has acted with malice aforethought.

4. **Intent to commit a felony**

a. If the defendant kills another human being while in the process of committing, or fleeing from, a felony, the defendant is considered to have caused the death with malice aforethought. This is known as the *felony murder rule*, which will be discussed later in this outline.

► In this chapter, we discussed **common law murder**, which is the unlawful killing of another human being with malice aforethought. We also discussed the 4 mental states encompassed under malice aforethought.

CHAPTER 11. FIRST DEGREE MURDER AND SECOND DEGREE MURDER

Most jurisdictions today have abandoned the common law definition of murder, and have instead developed homicide statutes with different categories of homicide.

Although the definition of each type of criminal homicide varies among jurisdictions, each homicide requires the same *actus reus*, which is the killing of another human being. However, the requisite *mens rea* is what separates each category of homicide.

In other words, the **intent** of the defendant will determine which type of criminal homicide has been committed. Note that each type of homicide also carries a different punishment — and the more culpable the defendant, the more severe the punishment.

A. Modern criminal statutes typically separate **criminal homicide** into 2 broad categories:

1. **Murder** is typically divided into *first degree murder* and *second degree murder*.

2. **Manslaughter** is typically divided into *voluntary manslaughter* and *involuntary manslaughter*.

B. **First Degree Murder** is a premeditated killing.

1. When a person has formed an intent to kill another human being, and then does so, his actions are *premeditated* and he has committed the crime of first degree murder.

a. Note that premeditation does not require any specific amount of time. So if the defendant suddenly realizes that he wants to kill another person and does so, he has committed first degree murder.

C. **Second Degree Murder** (similar to common law murder)

1. Second degree murder is typically any killing committed with malice aforethought that is not specifically designated as first degree murder.

a. In most jurisdictions, second degree murder includes 3 types of killings:

(i) A killing that is done impulsively but without premeditation,
(ii) A killing that results from a reckless disregard for human life (depraved heart killing), and
(iii) A killing that is done with the intent to cause serious bodily injury.

Example — Jack wants to kill Jill. Jack buys a gun and goes to Jill's workplace with the intent to kill her. When Jack gets to Jill's office, she is in a meeting. Jack walks into the meeting room and from across the room shoots several rounds at Jill. Most of the bullets hit Jill, but one bullet misses and hits a co-worker who was standing next to Jill. Both Jill and the co-worker die.

→ In this case, Jack will be convicted of the first degree murder of Jill because his actions were premeditated as he acted with the intent to cause Jill's death.

However, Jack will be convicted of the lesser charge of second degree murder for the death of the co-worker because Jack acted with reckless disregard to those who were standing next to Jill.

D. Note that many jurisdictions have created a separate category of murder called **capital murder**, for which the death penalty may be imposed.

a. Capital murder is generally first degree murder plus an aggravating factor.

1) *Aggravating factors* include killing a police officer while on duty, multiple killings, and murder for hire.

► In this chapter, we discussed the crime of **first degree murder**, which is a premeditated killing; and the crime of **second degree murder**, which is a killing that is not premeditated but is done with malice aforethought.

CHAPTER 12. FELONY MURDER RULE

A. Under the **felony murder rule**, any death which occurs during the commission of a felony, or while fleeing from the felony, is classified as murder.

1. In most jurisdictions, felony murder is classified as *first degree murder*, but other jurisdictions classify felony murder as *second degree murder*.

B. A felony murder occurs when there is any killing committed during the course of a felony, even if it is **accidental**.

1. This means that the prosecution does not have to prove intent to kill in order to convict the defendant of felony murder. All the prosecutor need to show is that the defendant *intended to commit the felony* and *a killing occurred*.

C. Note that when there are several criminals involved in a felony, **all of the co-felons can generally be guilty of a felony murder**, even when only one of the co-felons does the killing.

D. **Defenses** to the felony murder rule — (may vary among jurisdictions)

1. If the defendant has a **defense to the underlying felony**, then that will also be a defense to the crime of felony murder.

2. A defendant may have a defense to felony murder when the victim's death came about in an **unforeseeable** manner.

Example — A gun goes off during a bank robbery. No one is shot but a hostage is startled, has a heart attack and dies.

→ In this case, the hostage's death will most likely be considered an unforeseeable event and the felony murder rule will not apply.

3. A defendant may have a defense to felony murder when the felony committed was **not inherently dangerous**.

a. In most jurisdictions, felony murder only applies to inherently dangerous felonies — these typically include burglary, robbery, arson, kidnapping, and sex crimes.

b. Therefore, if a death results from a non-dangerous felony, like the crime of fraud, felony murder will not apply.

4. A defendant may, in most jurisdictions, have a defense to felony murder when one of the **co-felons** themselves is killed during the commission of the felony as a result of resistance from the felony victim or the police.

Example — Wallace and Gromit rob a bank. While entering the safe, the guard shoots and kills Wallace. → In most jurisdictions, Gromit will not be guilty of felony murder.

5. A defendant may, in many jurisdictions, have a defense to felony murder when a **bystander is killed by someone other than a** felon or any agent of a felon.

Example — If a police officer accidentally kills a bystander while he is trying to break up a felony, or if a resisting victim accidently kills a bystander, in many jurisdictions, the felons will not be guilty of felony murder.

D. Note that once a felony has been committed, and the defendant reaches a point of temporary *safety*, the felony is considered to be **complete**.

1. Therefore, any deaths caused *thereafter* will not be subject to the felony murder rule.

► In this chapter, we discussed the **felony murder rule**, which classifies a killing committed during the commission of a felony as a murder.

CHAPTER 13. VOLUNTARY MANSLAUGHTER

A. **Manslaughter** is the unlawful killing of a human being that does not rise to the level of murder because of the circumstances of the killing.

1. Manslaughter can be either voluntary or involuntary.

a. the main difference between the two is that *voluntary manslaughter* requires an intent to kill, while *involuntary manslaughter* does not.

B. **Voluntary manslaughter** — an intentional killing of another human being, committed in the heat of passion, and after there has been adequate provocation.

1. The typical *example* is the husband coming home to discover his wife with another man, and the husband ends up killing the man or his wife.

a. When a killing is committed in response to such provocation, criminal charges will usually be reduced from murder to voluntary manslaughter.

C. In order for a killing to be classified as voluntary manslaughter, 4 elements must be met:

1. There must have been **provocation** that would cause a reasonable person to suddenly feel an intense passion and lose control,

2. The defendant must have been **actually provoked**,

3. There **cannot be sufficient time** between the provocation and the killing for the passions of a reasonable person **to cool off**, and

4. The **defendant did not cool off** before the killing.

Example — Homer comes home from work one evening and finds Ned in bed with his wife, Marge. Homer is so enraged that he pulls out a gun he keeps in his bedside table and shoots Ned, killing him instantly.

→ In this case, the charges against Homer will be reduced from murder to voluntary manslaughter, since all 4 elements are present:

(i) When Homer saw Marge in bed with another man — that was provocation that would cause a reasonable person to lose control.
(ii) Homer did lose control.
(iii) The period of time between the provocation and the killing was only a few seconds, not nearly enough time for a reasonable person to cool down,
(iv) Homer himself did not cool down.

Example — Let's instead assume that after Homer walked in on Marge and Ned, Homer left the house and took a few minutes to collect himself and calm down. Homer then got his gun and shot and killed Ned.

→ In this case, Homer can be convicted of murder. Even though there was adequate provocation, and even though a few minutes is probably not long enough for a reasonable person to cool down in Homer's situation, Homer himself did in fact cool off, and therefore, his killing of Ned will be classified as murder rather than manslaughter.

D. Situations that generally constitute **adequate provocation** for purposes of voluntary manslaughter:

1. When a defendant *reasonably believes their spouse is committing adultery*, that is adequate provocation.

2. When an *injury occurs to someone close to the defendant*, like their spouse, child, or parent, and especially when the injury occurs in the defendant's presence — that will generally be considered reasonable provocation.

3. When *two people enter into a fight and one of them dies*, the fight will usually be considered adequate provocation and the killing will be classified as voluntary manslaughter.

4. A *severe assault or a sever battery* to the defendant will usually be considered adequate provocation.

a. Note, however, that minor contact will never constitute adequate provocation.

b. And also, words or gestures alone (even if they are extremely offensive and insulting) can never constitute adequate provocation.

► In this chapter, we discussed the crime of voluntary manslaughter. We learned that **voluntary manslaughter** is the intentional killing of another human being, committed in the heat of passion, after there has been adequate provocation, and before the defendant cooled down.

CHAPTER 14. INVOLUNTARY MANSLAUGHTER

A. **Involuntary manslaughter** — an unlawful killing of another human being without intent.

1. Involuntary manslaughter is a criminal homicide that is either done **negligently**, or, in some jurisdictions, done **recklessly**.

a. *Examples* of involuntary manslaughter include the accidental death of a small child, death resulting from being at a crowded nightclub that catches fire, and death resulting from the negligent operation of a motor vehicle or drunk driving.

Example — A mother carelessly forgets to close the gate to her pool. Her young child wanders through the gate and drowns in the pool.

→ In this case, the mother can be guilty of involuntary manslaughter.

Example — The defendant excessively speeds through a neighborhood and strikes and kills a pedestrian.

→ In this case, the defendant accidently killed the pedestrian while acting negligently and he may be convicted of involuntary manslaughter.

B. Note that many states today have created **vehicular manslaughter**, which specifically applies to deaths from the negligent or unlawful operation of a motor vehicle, including death that results from drunk driving.

C. Note that in certain jurisdictions, a defendant can be charged with involuntary manslaughter when a victim is killed during the commission of a misdemeanor, or during the commission of a felony that is not included under the felony murder rule. This may be known as **misdemeanor manslaughter**.

► In this chapter, we discussed the crime of involuntary manslaughter. **Involuntary manslaughter** is the unintentional killing of another human being while acting criminally negligent.

CHAPTER 15. CRIMES AGAINST THE PERSON — BATTERY

There are several crimes that result in some type of *harm* to the victim. Aside from homicide, the traditional crimes against the person include battery, assault, kidnapping, false imprisonment, and rape. We will discuss these crimes over the next several chapters. In this chapter, we will look at battery.

A. **Battery** — the unlawful, application of force, to another person, that results in bodily injury or an offensive touching.

1. The actus reus involved in battery is that the defendant must use **force** against another person.

a. Force can be applied *directly*, like by touching the victim.

b. Force can also be applied *indirectly*; for instance, by throwing an object at the victim, by poisoning the victim's drink, or by forcing a third party to make contact with the victim.

2. The second element required for a battery to be committed is that the contact must either cause **injury** to the victim, or it must be **offensive**.

a. Therefore, even if the victim does not suffer physical harm, the defendant may still be liable for battery if there has been an offensive touching, like an unwanted grope or an unwanted kiss.

3. As far as the mens rea of battery is concerned, the defendant must **intend** to perform an act that results in an injury or offensive touching.

a. *** Note that because battery is a *general intent crime*, a defendant can be convicted of battery not only if he intends to make contact with the victim, but also if he recklessly or negligently causes a victim to be touched in a manner that results in bodily injury or an offensive contact.

4. Note that the application of force must be **unlawful**.

a. This means that any justified force used by a police officer in the line of duty against another person will not constitute a battery.

B. Note that most jurisdictions recognize the crime of **aggravated battery**.

1. Aggravated battery typically occurs when a battery is committed with a *deadly weapon,* when the *victim suffers serious harm,* or when the *victim is a police officer or other public servant*.

2. Aggravated battery may also include the common law crime of *mayhem* — which is the act of maliciously disabling or disfiguring another person.

C. Note that **consent** of the victim may be a <u>defense</u> for the crime of battery.

1. If the victim agrees to being touched—for instance by participating in an athletic event or choosing to undergo surgery—that consent will be a valid defense to the crime of battery.

2. However, if the defendant exceeds the scope of the consent given, he will have no defense. Also, consent as a defense will not usually be allowed when the defendant causes or intends to cause serious bodily injury.

► In this chapter, we discussed criminal battery. **Battery** is defined as <u>the unlawful, application of force, to another person, that results in bodily injury or an offensive touching</u>.

CHAPTER 16. ASSAULT

A. There are essentially 2 categories of criminal **assault**:

1. **Common law** definition, which defines assault as the attempt to commit a battery.

2. Under **modern statutes**, defines assault as intentionally placing another person in apprehension of imminent bodily harm.

*** Note that this resembles the civil *tort* definition of assault.

B. At **common law**

1. The *actus reus* of **assault** will be met when the defendant attempts to commit a battery.

a. In other words, the defendant must take a step towards applying force to another person. This commonly occurs when the defendant attempts a battery but fails.

Example — If the defendant tries to punch the victim but misses, there has been an assault.

2. As far as the *mens rea* of common law assault is concerned, the defendant must have specifically intended to make contact with the victim.

C. **Modern statutes** define **assault** as the intentional placing of another person in fear of a battery.

1. Under this definition, the *actus reus* is met when the defendant acts in a way that puts the victim in apprehension, or causes the victim to become fearful of immediate bodily harm.

Example — Pointing a gun at someone and telling them you are going to shoot them constitutes an assault under modern statutes.

2. Words alone are not enough to qualify as assault; however, like in the previous example, **words coupled with an action** can be an assault.

Example — Merely telling someone you are going to shoot them without making any movements would not be an assault.

3. As far as the *mens rea* of modern assault is concerned, the defendant must **intend** to put another person in fear.

a. This means that, in order to convict the defendant of this kind of assault, the prosecution must prove that the victim was actually aware of the threat and that he actually experienced fear of imminent bodily harm.

D. Note that most jurisdictions recognize the crime of **aggravated assault**.

1. Aggravated assault typically occurs when there has been an assault with a deadly or dangerous weapon, an assault with the intent to kill, and an assault against a police officer or other public servant.

► In this chapter, we discussed criminal assault. **Assault** is defined as an attempt to commit a battery, or acting with the intent to put someone in apprehension of immediate bodily harm.

CHAPTER 17. FALSE IMPRISONMENT

A. **False imprisonment** — the unlawful, confinement of a person, to a bound area, without their consent.

1. The *actus reus* element of false imprisonment is the **confinement of another person**.

a. This occurs when the defendant forces a victim to remain in a place he does not want to be in, or go to a place he does not want to go.

1) A defendant can confine a victim either by *physical confinement*, or by *threatening the victim with immediate physical force*.

Example — If the defendant locks the victim in a room, this is physical confinement that constitutes a false imprisonment.

Example — If the victim is standing in the middle of an intersection, and the defendant threatens to shoot the victim if he leaves the intersection, the defendant has confined the victim with threats and has committed false imprisonment.

2. The victim must be confined to a **bound area**.

a. An area is bounded when freedom of movement is limited in all directions. This means that if there is a *reasonable means of escape* from the bounded area, that the victim is *aware* of, the area is not bounded and there is no false imprisonment.

3. As far as the mens rea of false imprisonment is concerned, the defendant must **intentionally**, or **knowingly**, confine the victim.

Example — Jonas is angry with Gilligan and wants to teach him a lesson. Jonas comes up with a plan and invites Gilligan to go on an island retreat in the middle of the ocean. Gilligan asks if he can bring his friend Ginger, and Jonas agrees. The three sail to the island. Once they arrive, Jonas takes the boat and leaves Gilligan and Ginger stranded on the island.

→ In this case, Jonas can be convicted of falsely imprisoning Gilligan because he intended to imprison Gilligan on the island. In addition, Jonas can be convicted of falsely imprisoning Ginger. Even though Jonas did not intend to imprison Ginger, he acted with the knowledge that his actions would imprison Ginger along with Gilligan. Therefore, Jonas can be convicted of falsely imprisoning both Ginger and Gilligan.

4. Confinement must be **unlawful**.

a. This means that a justifiable arrest by a police officer will not constitute false imprisonment.

b. Also, parents may be allowed to reasonably restrict and control the movement of their children.

► In this chapter, we discussed the crime of false imprisonment. **False imprisonment** is the unlawful confinement of a person to a bound area without their consent.

CHAPTER 18. KIDNAPPING

A. **Kidnapping** — the unlawful, confinement of a person, against that person's will, that involves either movement of the person or hiding the person.

(i) Kidnapping is essentially false imprisonment plus additional factors. Note that kidnapping laws vary widely among jurisdictions.

1. The actus reus of kidnapping is the **confinement of a person** coupled with either **moving the person** or **hiding the person**.

a. Although kidnapping laws vary widely among jurisdictions, in most jurisdictions, any *slight movement* of the victim will be sufficient for a kidnapping conviction. However, other jurisdictions require that the defendant *substantially* move the victim.

b. *** Note that many jurisdictions have kidnapping laws that require that the taking or confinement must be done for some specific unlawful purpose — such as for demanding a ransom, for extorting the victim, or for the facilitation of a crime. These actions may be classified as *aggravated kidnapping*.

c. *** Jurisdictions may specify that any unlawful detention or physical movement of a *child* will constitute a kidnapping. Therefore, a parent without legal custody rights who takes his or her own child, may be convicted of kidnapping in certain circumstances.

2. As far as the mens rea of kidnapping is concerned, the defendant must **intend to confine or move the victim**.

a. *** Note that if the kidnapping statute requires an *aggravating* circumstance to accompany the confinement or movement, then the defendant must have intended that specific purpose as well, to be convicted under the kidnapping statute.

3. Confinement or movement must be **unlawful**.

a. A *justifiable arrest and jailing* by a police officer will not constitute a kidnapping.

► In this chapter, we discussed the crime of kidnapping. **Kidnapping** is the unlawful, confinement of a person, without their consent, coupled with either moving the person or hiding the person.

CHAPTER 19. RAPE AND OTHER SEX OFFENSES

A. **Rape** (common law) — the unlawful, forcible, sexual intercourse, with a female, by a man, without her consent.

(i) Today, jurisdictions have expanded upon the common law crime of rape and have enacted modern statutes that include differing degrees of rape as well as other sex crimes, such as sexual assault and statutory rape. Note that the crime of rape and all sex offenses vary widely among jurisdictions.

1. Under the common law, the actus reus of rape is that a **man must have sexual intercourse with a female**.

a. *** Note that sexual intercourse is completed the moment there has been any slight penetration of the female genitalia.

b. *** Note also that only a female can be the victim of a rape.

c. Today, modern sex offense statutes cover all kinds of non-consensual sexual acts, other than sexual intercourse; and they also permit both men and women to be victims of rape, and to be liable for rape.

2. The mens rea element for common law rape is that the defendant must have the **general intent to have sexual intercourse with a woman against her will**.

a. In most jurisdictions, if the defendant has sexual intercourse with a woman who does not want to, but the defendant reasonably believes that the woman does, then the defendant will not be convicted of rape because his reasonable mistake of fact eliminates the requisite intent.

Example — A pimp threatens a prostitute with death unless she has sexual intercourse with the customer. The prostitute and the customer have sexual intercourse and she acts completely normal around the customer and he has no reason to believe that she is acting against her will.

→ In this case, even though the prostitute did not consent to the intercourse, the customer will not be guilty of rape because he did not intend to have sexual intercourse with her against her will.

3. In order for common law rape to occur, the sexual intercourse must be done **without consent** by the female. This is the most disputed element of rape as it can be difficult to determine in certain cases whether or not consent has been given.

a. In general, consent does not exist when the sexual intercourse is brought about *by force or by threats of harm*.

1) Note, however, that *economic threats will not be sufficient*.

Example — Mr. Boss threatens to withhold Ms. Secretary's paycheck unless she has sex with him. If she has intercourse with him under these circumstances, she validly consented to the intercourse and no rape has occurred.

b. In addition, consent will not be effective when the female victim is *legally incapable* of giving consent, or *unable* to give consent.

1) Therefore, if the defendant has sexual intercourse with a woman who has a mental deficiency, who is intoxicated, or who is unconscious, in each case no consent can be given and the defendant can be convicted of rape.

4. The last element of common law rape is that the sexual intercourse must be **unlawful**.

a. This means, under common law, a husband cannot be convicted of raping his wife.

b. Today, however, modern statutes may define rape to allow men to be convicted of raping their wives.

B. **Statutory rape**

1. In general, statutory rape is committed when an adult has sexual intercourse with a minor under the age of consent.

2. *** Statutory rape is a crime even when the minor has *consented* to the sexual intercourse

3. The crime of statutory rape is a **strict liability crime**. This means that no mens rea is required. Therefore, the defendant can be convicted of statutory rape even if he didn't know the age of the minor, and even if he believed the minor was over the age of consent.

► In this chapter, we discussed the crime of rape and other sexual offenses. We learned that **common law rape** is defined as the unlawful, forcible, sexual intercourse, with a female, without her consent.

CHAPTER 20. CRIMES AGAINST PROPERTY — LARCENY

Crimes against property occur when a person unlawfully takes money or property from another. There are several traditional common law property crimes: larceny, embezzlement, false pretenses, robbery, extortion, and receipt of stolen property.

Note that several states and the Model Penal Code organize larceny and other property crimes under the classification of *theft*; however, other states retain the traditional common law distinctions of property crimes.

A. **Larceny** (common theft) — under the common law, the wrongful, taking, and carrying away, of another's personal property, with the intent to permanently deprive the owner of the property.

1. Larceny is concerned with **property**. Under the common law, only tangible personal property could be the subject of larceny. However, modern statutes permit real property, intangible property, as well as services, to be the subject of larceny.

2. The property in question must belong to **another**. This means that the victim must have a greater right to possess the property than the defendant.

Example — Susan rents a truck from Dave. During the rental period, Dave steals the truck back so he can rent it to a higher paying customer.

→ In this case, even though Dave is the owner of the truck, he can be convicted of larceny because Susan had a greater right to possess the truck than Dave.

3. The defendant must have **carried the property away**. The carrying away element requires moving property from one location to another. Note that even the slightest movement of the property will be sufficient.

4. There must be a **taking** of the property. This means that the defendant must have obtained *possession* of the property.

a. *** Note that a taking does not have to be done directly by the defendant himself. If the defendant causes an *agent* or an *innocent person* to take another's property, the defendant can still be convicted of larceny.

5. The taking must be **wrongful**.

a. A taking will be wrongful when it is done *without consent*.

b. A taking will also be wrongful when the defendant has *deceived* the victim in order to obtain consent.

1) **Larceny by trick** — the defendant makes false representations or lies in order to obtain possession of the victim's property.

a) *** Note that, in most jurisdictions, the false representations must be about *past or present facts*. A prediction about a future event or an opinion (like sales talk) is not sufficient for a conviction.

Example — A customer at a watch store tells the store clerk that he would like to just try on a watch. In fact, the customer intends to steal the watch. After trying it on, the customer runs out of the store with the watch.

→ In this case, the customer can be convicted of larceny by trick, because he lied about trying on the watch in order to obtain possession.

6. The defendant must act with the **specific intent to permanently deprive the owner of the property** (mens rea).

a. This means that if the defendant *borrows* an item without permission, there is no larceny.

b. This also means that if the defendant takes *property that the defendant believes is his own*, there is no larceny.

c. *** Once the defendant has taken another's property with the intent to permanently deprive, the crime of larceny has been completed, and the defendant will not escape liability if he later changes his mind and offers to return the property or pay for it.

B. Note that the crime of **joyriding**, which is stealing someone's car to drive around the neighborhood and then returning the back to its original location, does not constitute common law larceny because there is no *intent to permanently deprive the owner of his property*.

1. For this reason, the model penal code and many modern statutes have eliminated the mens rea requirement for larceny so that joyriders can be convicted of the crime.

► In this chapter, we discussed the theft crime of larceny. **Larceny** is the wrongful, taking, and carrying away, of another's property, with the intent to permanently deprive the owner of the property.

CHAPTER 21. EMBEZZLEMENT

Generally speaking, embezzlement is the stealing of assets by a person who is in a position of trust or responsibility over those assets. Financial advisors can embezzle assets from investors, bank tellers can embezzle cash from the bank, and a spouse can even embezzle funds from his or her partner.

A. **Embezzlement** (common law) — the fraudulent, conversion, of another's property, by someone who is in lawful possession of the property.

1. Embezzlement is concerned with the **property of another**.

a. Many types of property can be the subject of embezzlement — including personal property, real estate, and intangibles like stocks, bonds, copyrights and patents.

b. A person can only embezzle the property of another. This means that if a defendant co-owns property, and the defendant misappropriates the property, there is no embezzlement because *co-owned property is not considered the property of another*.

1) Note that this same rule also applies to larceny.

2. There must be a **fraudulent conversion**.

a. This occurs when the defendant wrongfully interferes with the owner's rights to the property. It requires a use of the property by the defendant that goes against the terms of the arrangement by which the defendant has the property.

b. *** Note that there will be a fraudulent conversion even if the defendant *does not use the property for himself*.

Example — If defendant donates embezzled funds to a charity or gives the funds to another person, the defendant has still committed the crime of embezzlement.

3. The defendant must have had **lawful possession** of the property **at the time he fraudulently converted the property**.

► In this chapter, we discussed the property crime of embezzlement. **Embezzlement** is the fraudulent conversion of the property of another by a person who is in lawful possession of the property.

CHAPTER 22. FALSE PRETENSES

A. **False Pretenses** (under the common law) — the obtaining of title to property, of another, by false representation, with the intent to defraud the victim.

1. The crime of false pretenses occurs when someone tricks an owner of property to convey title to the property.

2. The defendant must acquire **actual title** to another's property.

Example — A customer buys a watch from a store with a fake check.

→ In this case, the customer can be convicted of false pretenses, because he fraudulently obtained title to the watch.

a. *** Note that *title* is different than *possession*.

1) Recall that if the defendant fraudulently obtains mere possession of property, the offense is *larceny by trick*. However, if the defendant fraudulently obtains title to property, the offense is *false pretenses*.

3. The defendant must obtain title to the **property of another**.

a. Personal property, as well as real and intangible property, can be the subject of false pretenses.

4. The defendant must make a **false representation**.

a. The false representation must be of a *past or present material fact*.

b. This means that if the defendant makes a false promise to do something in the *future*, there will be no liability.

Example #1 — George pretends to be a car expert and tells Martha that her old rusty car is a piece of junk worth only $100. In fact, George knows the car is extremely valuable. Relying on George's representation, Martha sells the car for the $100 and signs the title over to George. A few weeks later, Martha finds out that her car was a rare antique car worth a million dollars, and Martha wants George prosecuted for false pretenses.

→ In this case, George will be guilty of false pretenses because he obtained title to Martha's antique car through false representations that pertained to a present material fact about the value of the car.

Example #2 — Instead, assume that George asks Martha to transfer title of her car over to George, and George promises that he will donate the car to charity the next day. In fact, George actually intends to keep the car for himself. Martha conveys title to the car over to George, and a few days later, she sees George driving the car. Martha wants George prosecuted for false pretenses.

→ In this case, George cannot be convicted of false pretenses because he merely made a false promise to donate the car to charity at some point in the future.

5. The defendant must **intend to defraud** the victim (mens rea).

6. In addition, the defendant must **know** that the representation he is making to the victim is false.

Example — In our previous example, if George truly believed that Martha's car was a piece of junk, he couldn't be convicted of false pretenses if the car was valuable.

► In this chapter, we discussed the property crime of false pretenses. **False pretenses** is the obtaining of title to property, of another, by false representation, with the intent to defraud the victim.

CHAPTER 23. ROBBERY

A. **Robbery** (common law) — the taking, of property, of another, from the person's presence, by force or by threats, and with the intent to permanently deprive the owner of the property.

1. Robbery is basically the crime of *larceny plus force*.

a. In order to convict a defendant of robbery, the prosecution must prove all the elements of larceny, plus 2 additional elements:

(i) The defendant must take the property from the person's presence, and
(ii) Defendant must take the property by violence or by the threat of violence.

B. **Elements of Robbery**

1. In order for a robbery to take place, property of another must be **taken** from the person's presence.

a. This means that the property must be *close enough to the victim so that it is within his control*.

1) For instance, any item being held or worn by the victim, or any item within the victim's reach, will be in his presence.

2) However, if the victim puts an item down and walks 20 feet away, the item is no longer in his presence.

2. In order for a robbery to take place, there must be **force**.

a. The force necessary for there to be a robbery *must be more than just taking and carrying away* property. However, it does not mean that there has to be an injury or even physical contact.

1) For instance, pickpocketing is typically not considered a robbery unless the victim notices it and resists.

2) However, if the defendant grabs something out of a victim's hand, or tears something off the victim's body, like a necklace, this will usually be considered a forceful taking.

b. Other than force, *threats or intimidation* can also be the basis for robbery.

(i) For instance, if the defendant points a gun at a victim and demands that the victim hand over her purse, the defendant has committed a robbery.

1) *** The threats must be of *imminent harm* for there to be a robbery.

Example — Assume that the defendant tells the victim to hand over her purse or else the defendant will find the victim the next day and shoot her.

→ In this case, the defendant will not be guilty of robbery because the threat is not of imminent harm. Note that the defendant may be guilty of the crime of extortion, which we will discuss in the next chapter.

3. As far as the mens rea of robbery is concerned, the defendant must have the same specific intent that is required for the crime of larceny. That is, the **defendant must intend to permanently deprive the owner of their property**.

a. Therefore, a defendant cannot be convicted of robbery if he takes the property *with the intent to return it*, or if he takes another's property *with the honest belief that the property is his own*.

C. Note that many modern statutes have developed the crime of **aggravated robbery** or **armed robbery**.

1. Typically defined as robbery with a dangerous weapon.

► In this chapter, we discussed the crime of robbery. **Robbery** at common law is defined as the taking, of property, of another, from the person's presence, either by force or intimidation, with the intent to permanently deprive the owner of the property.

CHAPTER 24. EXTORTION, FORGERY, AND RECEIVING STOLEN PROPERTY

A. **Extortion** (essentially blackmail) — the unlawful obtaining of another's property by means of a future threat.

1. Unlike robbery — which requires threats that are of imminent harm — extortion can be committed by threats of future harm, like *threats to disgrace the victim* and *threats to expose a secret* that would adversely affect the victim.

a. For instance, if the defendant demands money from the victim and threatens to send pictures of infidelity to the victim's spouse, this is extortion.

2. *** Note that most jurisdictions will convict a defendant of extortion even if he never obtains the property, so long as he threatens a victim with the intent to obtain the victim's property.

B. **Forgery** — the fraudulent making of a false writing with apparent legal significance, with the intent to defraud.

1. The crime of forgery generally refers to making a fake document, changing an existing document, or making a signature without authorization.

a. Forgery can include the fraudulent alteration of checks, contracts, identification cards, licenses, historical papers, and art objects.

2. *** Note that a forgery must be done with the *intent to defraud*.

a. For instance, famous paintings can be replicated without any crime being committed; however, if the defendant intends to sell the replica as an original, then it becomes an illegal forgery.

C. **Receiving Stolen Property**— knowingly receiving stolen property with the intent to permanently deprive the owner of the property.

1. In order to be guilty of this offense, the property must have been stolen *before* the defendant received the property.

2. In addition, defendant must have *known* that the property was stolen when he received it.

a. Therefore, if the defendant receives stolen property that he has no reason to believe was stolen, he will not be criminally liable.

► In this chapter, we discussed the property crimes of extortion, forgery, and receiving stolen property.

Extortion — the using of future threats to obtain property from a victim.

Forgery — the fraudulent making of a false legal document with the intent to defraud.

Receipt of stolen property — knowingly receiving stolen property with the intent to permanently deprive the owner of the property.

CHAPTER 25. CRIMES AGAINST THE HOME — BURGLARY

A. **Burglary** (common law) — the breaking, and entering, of the dwelling, of another, at night, with the intent to commit a felony within.

1. There must be a **breaking**.

a. Breaking does not require that anything be broken in terms of physical damage. All that is required is that the defendant *creates an opening* that was not there before.

1) So for instance, if the defendant comes uninvited through an open door or a wide open window, that is not a breaking under the common law.

2) However, if the defendant pushes open a door or window that is already partially open, that constitutes a breaking for purposes of burglary.

b. *** Note that a breaking can be classified as either *actual* or *constructive*:

1) *Actual* breaking — involves some force, however slight, such as by pushing a door open.

2) *Constructive* breaking — defendant uses fraud or threats to create an opening; for instance, by pretending to be the cable repair man.

2. There must be an **entering**.

a. The entering element is met when the defendant *physically enters the dwelling*.

1) Entering occurs when any part of defendant's body crosses into the dwelling.

2) Note that an "entering" may also occur when the defendant inserts an instrument into the dwelling, but the instrument must have been inserted to

accomplish the felony itself. (If instead the instrument is inserted simply to gain entry, then the "entering" element will not be satisfied.)

Example — The act of using a rifle to break open the window of a home in order to shoot someone inside would constitute an "entering" for purposes of burglary. However, the act of breaking a window with a rifle for the purpose of unlocking the window from the inside would not satisfy the "entering" element.

3. There must be a breaking and entering of a **dwelling**.

a. Under common law, dwelling means a place that is regularly used for sleeping.

1) This includes not only primary residences, but also places that are occupied only temporarily, like vacation homes.

2) *** Note that buildings that are not used for habitation (like office buildings or barns) cannot be burglarized under the common law.

4. The dwelling must be that **of another**.

a. This means that the defendant cannot burglarize his own dwelling.

b. However, defendant can burglarize own property if doesn't have right to live there.

1) For instance, if the defendant owns an apartment, but rents it out to a family, the apartment is considered to be the dwelling of the family and not the owner.

5. It must occur **at night**.

a. *** Note that the breaking and entering do not have to occur on the same night.

1) Defendant can create an opening one night and use it to gain entry on the next night. All that's required is that a breaking and entering are done at night.

6. The defendant must **intend to commit a felony at the time of the breaking and entering**.

a. Therefore, if the defendant enters the dwelling with *no specific intent*, and then LATER forms the intent to commit a felony in the dwelling, there is no burglary.

Example — A homeless man breaks and enters a home on a cold night to warm up. The next morning, he is confronted by the resident, who is wearing a wool coat. The homeless man forcefully steals the coat from the resident and runs off. → In this case, the homeless man will not be guilty of burglary because he did not intend to rob the homeowner when breaking and entering into the home. However, he can be convicted of robbery.

B. The crime of burglary is **completed** as soon as the defendant has actually entered the dwelling with the requisite intent. Anything that happens afterward will not affect the defendant's liability.

Example — The defendant breaks into a home with the intent to murder someone, and then, once inside, he has a change of heart and decides not to kill his victim.

→ In this case, the defendant can still be convicted of burglary because it was completed once he entered the home with the intent to commit the murder.

C. If the defendant **actually commits the felony** he intended to commit when entering the dwelling, he can be convicted of both the burglary and the felony.

Example — Using previous example, assume defendant murdered the victim in the home.

→ In this case, the defendant can be convicted of two crimes, burglary and murder.

D. Up till now, we have discussed burglary as it is defined under common law. Today, however, **modern statutes** have changed the requirements for burglary.

1. While the definition of burglary varies among jurisdictions, most modern statutes do not require the *breaking element*. Therefore, a defendant may be convicted of burglary just for entering another's home with the intent to commit a crime inside.

2. Also, many jurisdictions have done away with the elements of *dwelling* and *night*. In these jurisdictions, burglary is considered to be the entering of any structure, at any time, with the requisite intent.

3. Modern statutes also do not require the defendant to have intended to commit a felony at the time of entering. Today, the requisite *intent can be to commit any crime*, including a misdemeanor theft crime.

► In this chapter, we discussed the crime of burglary. Under the common law, **burglary** is the breaking, and entering, into the dwelling, of another, at night, with the intent to commit a felony within.

CHAPTER 26. ARSON

A. **Arson** (common law) — the malicious burning of the dwelling of another.

1. The mens rea element of arson requires that the defendant act **maliciously**.

a. **Malice** — the defendant acted intentionally, knowingly, or with a reckless disregard of an obvious risk.

Example — Carson burns a pile of leaves in his backyard on an extremely dry day, and the fire ends up spreading to other homes nearby.

→ In this case, Carson acted with malice because he created a high risk that someone else's house would burn by setting fire to the pile of leaves.

2. The **burning** element

a. Under the common law, burning means causing damage with **fire**.

1) Includes *charring* to any part of structure, however small the charring may be

2) *** Note, however, that the burning of surface coverings, like carpet and wallpaper, will not be arson.

3) *** In addition, mere discoloration and other damage from smoke is not a burning sufficient for an arson conviction.

3. The defendant must burn **the dwelling of another**.

a. This means that a person will not be guilty of arson when they burn their own dwelling, only when they burn the dwelling of another.

b. Also, the defendant must burn a structure that is a dwelling to be guilty of arson under common law. Therefore, burning an office building or a barn would not suffice.

B. Many **modern statutes** have changed the requirements for arson.

1. Most modern statutes do not limit arson to the dwelling of another, but allow an arson conviction for the burning of any structure including those owned by the defendant himself.

2. Also, most modern statutes do not require fire damage for an arson conviction; all that is required is that the defendant started a fire with the intent to damage a structure.

► In this chapter, we discussed the crime of arson. Under the common law, **arson** is the burning of the dwelling of another with malice.

CHAPTER 27. DEFENSES TO CRIMES — INSANITY

When a defendant has a valid defense to a crime, the defendant will not be punished and he will be acquitted of the crime. There are several defenses to crimes: insanity, intoxication, infancy, self-defense, necessity, duress, consent, mistake, entrapment, crime prevention, and arrest.

The **insanity defense** is based on the principle that punishment is justified only if a defendant is capable of controlling his behavior and understanding that he has done something wrong. Because some people who suffer from a mental disorder may not be capable of knowing/choosing right from wrong, the insanity defense prevents them from being criminally punished. *** Note that insanity is a defense to all crimes.

If a defendant commits a crime while he is legally insane, the defendant will be **acquitted** of the crime. An acquittal here generally means that the defendant will be found "not guilty by reason of insanity." Defendants that are found not guilty by reason of insanity are typically committed to a mental institution, where they will remain until experts decide they are ready to rejoin society.

State courts use one of four established legal tests to determine whether someone was insane at the time they committed the crime.

A. **THE M'NAGHTEN RULE**

1. Under **M'naghten Rule**, defendant will not be held responsible for his criminal actions if he did not know right from wrong or did not know the nature and quality of his criminal act.

Example — A woman with schizophrenia kills her grandma, and then waits calmly for the police. In court, mental health experts testify that the woman was too psychologically ill to understand that her criminal acts were wrong.

→ In this case, the woman will be found not guilty by reason of insanity under the m'naughten test.

B. **The Irresistible Impulse Test** (very few jurisdictions recognize this test)

1. Under the **Irresistible Impulse test**, a defendant will not be held responsible for his criminal actions if he was unable to control himself.

a. Note that even if the defendant knew that what he was doing was wrong, he will be acquitted under this test.

Example — After a father finds out that his child had been murdered, he gets so angry that he shoots and kills the murderer.

→ In this case, the father can argue that he was so enraged that he became mentally ill and incapable of exerting self-control. And even though he knew that his actions were wrong and illegal, the father may be found not guilty by reason of insanity under the irresistible impulse test.

C. **THE DURHAM RULE** (rarely used today)

1. Under the **Durham rule**, a defendant will not be held responsible for his criminal actions if his unlawful act was a product of his mental impairment and would not have been committed but for the mental impairment.

2. The Durham rule is the most broad and liberal of the 4 tests in terms of allowing defendants to escape liability based on a defense of insanity.

D. **THE MODEL PENAL CODE** (the most commonly used in the majority of jurisdictions)

1. The **model penal code** states that a defendant will be found not guilty by reason of insanity when, because of a mental defect, he was unable to either "appreciate the criminality of his conduct" or to "conform his conduct to the requirements of law.

a. In other words, under the model penal code, a defendant will not be held responsible for his criminal actions if he has a mental impairment, which is typically established by a court-appointed mental health professional, and the defendant either did not know right from wrong or lacked the ability to control an impulse that led to the incident.

Example — Maurice, who's been diagnosed with schizophrenia, is charged with assault and battery after beating up a stranger in the mall. As a result of his condition, Maurice occasionally hears voices urging him to attack certain individuals. Maurice knows it was wrong to attack the stranger, but claims he was unable to control the impulse to do so.

→ In this case, a court using the model penal code test will likely find Maurice not guilty by reason of insanity because he was unable to control himself to conform his conduct to the law.

► In this chapter, we discussed the criminal defenses of **insanity**. Under the **M'Naughten rule**, a defendant is legally insane if he does not know right from wrong. Under the **irresistible impulse test**, a defendant is insane if he has an impulse that he is unable to control. Under the **durham rule**, a defendant is insane if his mental illness caused him to commit the crime. Under the **model penal code test**, a defendant is insane if he has a mental impairment and either does not know right from wrong or lacks substantial capacity to conform his conduct to the law.

CHAPTER 28. INTOXICATION

Intoxication means being under the influence of drugs or alcohol. Intoxication may be a defense to a crime when it prevents the defendant from forming the requisite *mens rea*.

A. In criminal law, there are 2 types of intoxication:

1. **Voluntary intoxication** — self-induced intoxication.

a. Typically, voluntary intoxication will not be a defense to a crime; however, for specific intent crimes, it can serve as a defense, but only when it negates the specific intent requirement.

b. *** Note that in these situations—while the defendant may be acquitted of the specific intent crime—he will usually still be liable for another crime that doesn't require specific intent.

Example — After a night of drinking, Harry gets so drunk that he wanders into a home. Once inside, he discovers a woman and he decides to rape her. Afterwards, Harry is charged with burglary and rape.

→ In this case, Harry may be able to use his voluntary intoxication as a defense to the burglary, since burglary is a specific intent crime, but he will not be able to use his voluntary intoxication as a defense to rape.

c. *** Note that if a defendant *gets intoxicated to get courage to commit a crime*, his voluntary intoxication will not serve as a defense.

Example — In our previous example, if Harry had seen the woman in the home, and then had decided to drink in order to get courage to burglarize and rape her, Harry could be convicted of rape as well as the specific intent crime of burglary.

2. **Involuntary intoxication** — an individual unknowingly becomes intoxicated, or becomes intoxicated under duress.

a. Unlike voluntary intoxication, involuntary intoxication is a defense to ALL crimes.

b. Involuntary intoxication is treated as a *mental illness*, and therefore is considered to be a form of insanity.

Examples of involuntary intoxication can arise when someone has slipped a drug into the defendant's drink, and when someone has forced the defendant to drink something or take a drug.

In addition, involuntary intoxication can be asserted when the defendant has responsibly taken drugs or alcohol, but has reacted unexpectedly and become more intoxicated than normal. This is known as *pathological intoxication*.

► In this chapter, we discussed the defense of **intoxication**. We learned that, in general, **voluntary intoxication** will only be a defense to specific intent crimes, while **involuntary intoxication** is similar to insanity and can be a defense to all crimes.

CHAPTER 29. INFANCY

The defense of **infancy** is based on the principle that, based on age, certain people do not always have sufficient mental capacity to be held legally responsible for their actions.

A. Under the *common law*, a **child under the age of 7** is unable to commit a crime.

1. The reason being, there is a conclusive presumption that children under the age of seven are incapable of forming criminal mens rea.

B. For a **child between the ages of 7 and 14**, it is also presumed that they are incapable of forming criminal mens rea; however, this presumption may be rebutted.

1. This means that a child between the ages of 7 and 14 could be convicted of a crime if the prosecution proves that the child knew what he was doing and knew that it was wrong.

C. Children who are **14 years of age or older** are treated as adults under the common law.

D. Today, many jurisdictions have statutes that reflect the common law rules. However, several jurisdictions have raised the minimum age for criminal liability. And other jurisdictions have eliminated the conclusive presumption for children under the age of seven and replaced it with a rebuttable presumption.

► In this chapter, we discussed the defense of **infancy**. We learned that, under the common law rule of sevens, children under the age of 7 cannot be liable for a crime, children between the age of 7 and 14 may be liable for a crime if the presumption is rebutted, and children older than 14 can be treated as adults.

CHAPTER 30. SELF-DEFENSE

When a defendant commits a crime, he may have a *valid justification* for doing so—which will relieve the defendant of any criminal liability. There are several justification defenses recognized in criminal law, that we will discuss in the remaining chapters of this outline. In this chapter, we will discuss self-defense.

A. **Self-defense**

1. Typically used as a defense to the crime of battery, assault, or murder, but it can be used as a defense to other crimes as well.

B. **Non-deadly force** versus **deadly force**

1. **Non-deadly force** — justified anytime a victim reasonably believes that unlawful force is about to be used on him.

2. **Deadly force** — justified only when the victim believes that deadly or serious bodily force is about to be used on him.

a. *** Note that, under the common law and in a minority of jurisdictions, a victim may not use deadly force in self-defense when there is an **opportunity to retreat**.

1) This means that a victim who is being threatened with death is required to retreat if it is safe to do so.

2) *** Note that there will never be a duty to retreat for someone who is in their own **home**.

Example — While Pauli is walking down an alley, Joe, who is handicapped and in a wheelchair, pulls a gun on Pauli and begins shooting at her. Pauli can escape the danger by running around the corner. However, Pauli pulls out a gun and shoots and kills Joe.

→ In a common law jurisdiction, Pauli will not be able to claim self-defense because Pauli had an opportunity to safely retreat.

3) Today, many jurisdictions have abandoned the common law duty to retreat and do not require a person to retreat before using deadly force in self-defense.

→ Therefore, in these jurisdictions, Pauli would be justified in shooting and killing Joe.

C. The **initial aggressor** of any fight is usually not allowed to claim self-defense.

1. There are 2 exceptions to this rule:

a. If the initial aggressor *physically removes himself from the fight* and tells the other person that he no longer wants to fight but the other person continues fighting, the initial aggressor may then use whatever force is necessary to defend himself.

b. If someone involved in a minor fight *escalates* the fight and uses deadly force on the initial aggressor, the initial aggressor may then use whatever force is necessary, including deadly force, to protect himself.

► In this chapter we discussed the defense of **self-defense**. Under the self-defense doctrine, a defendant is justified in using reasonable force against another person to prevent immediate unlawful harm to himself.

CHAPTER 31. DEFENSE OF OTHERS AND PROTECTION OF PROPERTY

A. **Defense Of Others**

1. A defendant has the right to **defend another person** if the defendant reasonably believes that the victim has the right to use force in his own defense.

2. Generally, *a defendant may use the same amount of force as the actual victim would be justified in using*.

a. Therefore, like self-defense, the use of deadly force in the defense of another person will only be justified when the defendant reasonably believes that deadly force is about to be used on the victim.

Example — Clark is driving in his car and sees Lex accelerating towards Lois, who is walking across the road. Clark immediately rams into Lex's car to prevent him from hitting Lois.

→ In this case, since Clark reasonably believed that Lex was going to run over Lois, Clark will be justified in his actions.

3. *** Note that in most jurisdictions, a defendant may use reasonable force in defense of **any** third person. However, some jurisdictions require a **special relationship** between the defendant and the victim, such as parent-child relationship or husband-wife relationship.

B. **Defense of Property**

1. In the defense of any property— including personal property and one's own home—the general rule is that a person is allowed to use **reasonable, non-deadly force to protect property** so as to prevent someone else from interfering with the property.

2. *** Note that any force used to protect property must be used either **at or near the time** of the wrongful interference.

a. Therefore, if a significant amount of time has passed after an owner has been deprived of his property, he will not be justified in using force to repossess the property.

3. Recall that **deadly force** may never be used to defend property.

a. However, note that many modern statutes permit the use of deadly force *in defense of a dwelling* if, and only if, the defendant reasonably believes that the intruder is intending to commit a felony or cause harm to someone in the dwelling.

b. And note that other jurisdictions permit the use of deadly force against any intruder of the home as long the defendant is inside the home (known as the *castle doctrine*).

c. *** Note that a person cannot use deadly force to defend their home when they are away. This includes the use of *deadly mechanical devices*.

Example — Billy is going on vacation and worried about people breaking into his house. So he sets up a mechanical device, a spring loaded gun at the door to his bedroom so that when the bedroom door is opened, the gun will go off and shoot toward the door. While Billy is on vacation, Frank breaks into his home and is killed by the spring loaded gun.

→ In this case, Billy will be charged with murder and defense of his property will not serve as a valid defense.

► In this chapter, we discussed **defense of others** and **defense of property**. We learned that the defense of others justifies a person to protect a victim with reasonable force against another person who is threatening to inflict force upon the victim. We also learned that the defense of property permits a person to use reasonable non-deadly force to protect his property so as to prevent interference with the property.

CHAPTER 32. NECESSITY

A. The defense of **necessity** is available when a defendant acted under the reasonable belief that committing the crime would prevent a greater harm from occurring.

1. Necessity applies when there is **pressure from natural forces** (like a tornado, flood, or fire)

Example — A fire breaks out in the forest and begins spreading to a nearby town. Bernard sees the fire and decides that, in order to prevent the whole town from burning down, he should burn the house that borders the forest to create a firewall that will prevent the fire from spreading. After Bernard checks to make sure no one is inside the home, he sets fire to the home. Bernard is charged with arson.

→ In this case, Bernard can use the necessity defense because he reasonably believed that burning the house was necessary to protect the rest of the town from the fire.

B. There are several **requirements** that must be met in order for the defendant to use necessity as a defense:

1. The defendant must *reasonably believe that an actual threat exists*.

a. So even if there is no actual threat, the defendant can still use the necessity defense if he truly believed that there was a threat.

2. The threatened harm must be *imminent*.

3. There *cannot be another, less harmful way to avoid the threatened danger*.

Example — In our previous example, if Bernard could have poured water on the fire to prevent the fire from spreading, but he still burned the house down, Bernard will not be able to use necessity as a defense.

4. The defendant must believe that the *threat* he is trying to prevent *is greater than* the *damage* that will result from his actions.

5. The *defendant must not have created the natural threat* in the first place.

Example — In our previous example, if Bernard happened to cause the forest fire, and then burned the house to prevent the fire from spreading, Bernard will not be able to use necessity as a defense.

5. *** Note that *deadly force* is NEVER allowed for the defense of necessity.

► In this chapter, we discussed the defense of **necessity**. We learned that **necessity** will justify a defendant's criminal act when, in response to natural forces, he acted under the reasonable belief that committing the crime would prevent a greater harm from occurring.

CHAPTER 33. DURESS

A. The defense of **duress** will be a valid defense when the defendant is forced by another person to commit a crime under an imminent threat of death or serious bodily harm.

1. So while the defense of necessity involves *physical pressure from natural forces*, duress involves *threats made by another person*.

B. Duress may be used—not only when the defendant himself is threatened—but also when threats of harm are made to **third persons**.

Example — Members of a drug cartel kidnap Jim's wife. They tell Jim that they will kill her unless Jim smuggles drugs across the border. Jim does as he is told and is arrested for drug smuggling.

→ In this case, Jim will have a valid defense because he committed the crime under duress.

C. There are several **requirements** that must be met in order for the defendant to use duress as a defense:

1. The defendant must *actually have been threatened*.

2. The threatened harm *must be imminent*, and it *must be of death or serious bodily harm*.

a. *** Note, however, that modern statutes may allow the defense of duress even if the threat was of some lesser bodily harm.

3. If the defendant had any *opportunity to avoid the threat*, he CANNOT use duress as a defense.

D. Note that duress (like necessity) is a defense to all crimes except homicide.

1. *** Note, however, that duress may be used to establish a lack of premeditation, which could reduce criminal charges from murder to manslaughter.

E. Note that the defense of duress will not be available if the defendant **intentionally or recklessly put himself in a position** in which he should have foreseen that he would have been subject to duress.

Example — Donnie Brasco loans money to the mob, and later he cannot pay the money back. The mob kidnaps Donnie and threatens to kill him unless he pays the money back in a week. Donnie then robs a bank.

→ In this case, Donnie will not be able to use duress as a defense to a charge of robbery, because he intentionally placed himself in a position in which he should have foreseen that he would be subject to duress.

► In this chapter, we discussed the defense of **duress**. We learned that **duress** will be a valid defense when the defendant is forced by another person to commit a crime under an imminent threat of death or serious bodily harm.

CHAPTER 34. CONSENT

A. **Consent** — permission, given by one person, to another person, to act in an illegal way.

B. Consent by a victim will be a **valid defense** for crimes of rape, and minor assaults and batteries. For most other crimes, however, consent will NOT be a defense.

1. Courts will generally allow a defendant to use consent as a defense, only for crimes that do not involve serious bodily injury or the threat of serious bodily injury.

C. Consent will be valid only when it has been given **voluntarily**.

1. This means that consent will not be valid when it has been *induced by fraud or mistake*.

2. Also, note that consent cannot be given by people who are *not legally capable of consenting* — which includes minors, those with mental impairments, and those who are intoxicated.

D. Consent may be **express** or **implied**:

Example of express consent — A woman tells a stranger to kiss her. The stranger kisses her. The woman then wants the stranger prosecuted for battery.

→ In this case, the stranger will have a valid defense because the woman gave him express consent to kiss her.

Example of implied consent —During a tackle football game in the park, Richard tackles the running back, who gets injured from the tackle.

→ In this case, Richard will have a valid defense to the crime of battery because by playing in the tackle football game, the running back gave implied consent to being tackled.

► In this chapter, we discussed the defense of **consent**.

CHAPTER 35. MISTAKE

A. There are 2 types of **mistake defenses** that can be asserted by a defendant when charged with a crime. A *mistake of fact* and a *mistake of law*.

B. **Mistake of Fact**

1. If a defendant is reasonably mistaken as to a material fact when he commits a crime, the defendant may have a defense to the crime if the mistake prevented the defendant from forming the requisite *mens rea*.

Example — Ross and Phoebe meet for lunch, and Ross notices that Phoebe is wearing a hat just like one that Ross lost a week ago. After Phoebe sits down at the lunch table, she places the hat on the table. Ross immediately grabs the hat and runs away. Unbeknownst to Ross, Phoebe owned the exact same hat. Ross is charged with larceny.

→ In this case, since Ross was mistaken as to the owner of the hat, he did not have the specific intent to permanently deprive Phoebe of the hat. Rather, Ross intended to reclaim his own hat. Since Ross' reasonable mistake of fact negated the requisite mens rea of larceny, he will not be convicted of the crime.

2. *** Note that mistake of fact is never a defense for *strict liability crimes*.

a. So if a man has sexual intercourse with a girl, and the man reasonably believes the girl is an adult, the man can still be convicted of statutory rape.

C. **Mistake of Law**

1. Mistake, or ignorance, of law is NOT a defense.

2. In most jurisdictions, if the defendant acts in a certain way that is criminal, but he does not know that his actions are illegal, he can still be convicted of the crime, because mistake of law is not a valid defense.

► In this chapter, we discussed the criminal defense of **mistake**. We learned that mistake of fact may be a defense when it negates the requisite mens rea of the crime. And we also learned that mistake of law is typically not a valid defense.

CHAPTER 36. ENTRAPMENT

A. **Entrapment** — a governmental agent, who is usually undercover, uses fraud or undue persuasion to induce someone to commit a crime.

B. In general, entrapment will be a valid defense to a crime if 2 elements are met:

1. When *law enforcement creates the intent to commit the crime in the mind of the defendant*, and

2. When the *defendant was not predisposed to commit the crime*.

Example — While Justin is walking home, he is approached by Doug, who tries to sell him drugs. Justin has never tried drugs before and does not want to. However, Doug repeatedly offers the drugs and Doug is so persuasive, that Justin decides to buy the drugs to try them out. Unbeknownst to Justin, Doug is an undercover police officer. Justin is arrested and charged for buying illegal narcotics.

→ In this case, Justin can use the defense of entrapment because Doug created the intent to commit the crime in Justin's mind, and Justin was not predisposed to commit the crime.

*** Note that, in our example, if Justin had accepted the drugs after Doug first offered them, this would indicate a predisposition to commit the crime, and the defense of entrapment would not be available.

*** Note also that, in our example, if Justin happened to be a drug addict who frequently bought narcotics, Justin could not use the entrapment defense because he would be predisposed to commit crimes of this nature.

C. Note that entrapment is usually used as a defense to *victimless crimes* — like buying illegal narcotics or soliciting prostitution.

1. A defendant cannot typically use the defense of entrapment for violent crimes like murder or robbery.

► In this chapter, we discussed **entrapment**. We learned that a defendant can use the defense of entrapment when law enforcement created the intent to commit the crime in the mind of the defendant, and the defendant was not predisposed to commit the crime.

CHAPTER 37. CRIME PREVENTION AND ARREST

Police officers, as well as private citizens, have the right to use force to attempt to prevent a crime, and to attempt to arrest a suspect. Therefore, is someone is charged with criminal assault, battery, or homicide, they may defend themselves by arguing that the force was used to prevent a crime or to arrest a suspect.

Note, however, that these defenses apply somewhat differently between police officers and private citizens. Note also that these rules differ among jurisdictions.

A. In general, a **police officer** is allowed to use any *non-deadly force* that is reasonably necessary to prevent any crime, or to make an arrest for any crime. However, a police officer may use *deadly force* ONLY to prevent the commission of a dangerous felony or to arrest a suspect that the police officer reasonable believes has committed a dangerous felony.

1. So if a police officer reasonably believes that a suspect has committed a felony such as murder, manslaughter, rape, burglary, or kidnapping, he can use deadly force to effectuate an arrest. However, for victimless felonies that do not involve a risk of harm to others, deadly force may not be used.

2. *** Note that a police officer is allowed to use force based on his own reasonable belief.

a. So, if the police officer reasonably believes that a suspect has committed a rape, but the suspect is in fact innocent, the police officer is still justified in using deadly force to arrest the suspect.

B. **Private citizens** are also permitted to use force to prevent crimes and make arrests.

1. A private citizen is generally allowed to use *reasonable non-deadly* force to prevent any crime that amounts to a "breach of the peace", if the private citizen reasonably believes that the crime is about to be committed in his presence or it is being committed in his presence.

2. A private citizen is justified in using *deadly force* only to prevent a dangerous felony from occurring. And a private citizen may use deadly force to arrest or apprehend a suspect, but only if the suspect has actually committed a dangerous felony.

a. Unlike police officers, who only need to have a reasonable belief that the suspect has committed a felony, private citizens can only use deadly force if the suspect actually committed the dangerous felony.

1) So, if a private citizen uses deadly force to apprehend a suspect that he reasonably believes has committed a rape, and it turns out that the suspect did not commit the felony, the private citizen will not have a defense to his use of force on the suspect.

► In this chapter, we discussed the defenses of **crime prevention** and **arrest**. We learned that a police officer or private citizen may use deadly force if reasonably necessary to prevent the commission of a dangerous felony. We also learned that a police office or private citizen may use deadly force if reasonably necessary to apprehend or arrest a dangerous felon, however, while police officers are allowed to use deadly force upon a reasonable belief, private citizens can only use deadly force if the suspect is actually guilty of the dangerous felony.