

**Criminal Law Outline
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Key Terms

Criminal Justice- Criminal justice is the delivery of justice to those who have committed crimes. The criminal justice system is a series of government agencies and institutions whose goals are to identify and catch unlawful individuals to inflict a form of punishment on them. Other goals include the rehabilitation of offenders, preventing other crimes, and moral support for victims. The primary institutions of the criminal justice system are the police, prosecution and defense lawyers, the courts and prisons.

Five Purposes for the Project of Criminal Law

1. Punishment or retribution-the use of criminal law to hurt and humiliate a defendant in response to the defendant's hurtful actions. Marks certain acts as wrong
2. Deterrence-to convince the defendant or others to avoid committing wrongful acts in the future
3. Incapacitation-Affirmatively restrict the freedom of a defendant to prevent further harm
4. Rehabilitation-require a defendant to change bad behavior and underlying causes
5. Restoration-"restore" the relationship between the offender and the community (and the victim if there is one)

Retribution and Punishment

-The idea that causing deprivation, pain or humiliation to a wrongdoer is a proper goal of government.

- Furman v. Georgia

Deterrence

-Goal is to alter future behavior through the use of criminal law in the present

-Specific deterrence is directed at the defendant, while general deterrence seeks to stop future criminals from committing the same crime

-United States v. Walker (Specific Deterrence)

-United States v. Fuentes-Echevarria (General Deterrence)

Incapacitation

-Most common way to achieve this is by incarceration. Essentially, an incarcerated person cannot harm those outside the prison walls.

-Total or near-total incapacitation is achieved through execution or life without the possibility of parole.

-Graham v. Florida

Rehabilitation

-Requires judges to consider certain types of rehabilitative possibilities when sentencing a defendant

-United States v. Bannister

-Tapia v. United States-Sentencing CANNOT be based on rehabilitative purposes

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Elements and The Definitions of Crimes

-Elements are the center of the criminal process

-All elements must be proven

-Statutes define crimes by setting out the elements that comprise that crime

-Common law has become extinct as American jurisdictions have crafted statutes which sharply define the growing number of acts subject to criminal sanctions

-Five Types of Elements:

1. Identification-United States v. Chappell, United States v. Vance
2. Elements that go to actions (actus reus)
3. Elements that go to mental state (mens rea)
4. Elements that go to jurisdiction
5. Other types of elements, including scientific findings, prior criminal history, and facts relating to a victim such as age

Jurisdictional Elements

-Governments burden to show jurisdiction of the court

-First, in all cases the government must show that in some way, the crime occurred within the physical boundaries of a court's jurisdiction.

-Second, in federal cases a particular element often must be proven in order to make the case federal; for example, a bank robbery can only be a federal crime if the bank is insured by the federal bank

-Failure to prove this can be fatal to the governments case

-United States v. McNeal

-United States v. Ivanov

Action Elements (Actus Reus)

-Nearly all crimes require proof that the defendant performed some action

-Exception is for crimes like failure to report a crime in certain situations

-Actus Reus is often proven by the same evidence that proves identity (ex. eyewitness testimony)

-Action elements are often tied up in issues of causation, which combine an action (shooting a gun) with an outcome (the death of a victim who is shot).

-Causation: "Cause-in-fact" and "proximate cause"

-"Cause-in fact" also known as but-for, is one that is necessary for the result to have occurred (ex. in a murder the defendant having fired a gun might be a cause-in-fact, if the murder could not have been accomplished without the firearm")

-Proximate cause is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct

-Inter alia-Among other things

-Paroline v. United States -(Restitution and Deterrence)

-United States v. Jameson-(Possession)

Actus Reus

- Wrongful, voluntary, conduct
 - ↳ Nearly all crimes require proof that the defendant performed some action (think – the verb);
e.g. possessed a drug, took money, fired a gun
 - ↳ Must be voluntary
 - ↳ Drunk in your house and the police drag you into the street can't be arrested for being drunk in public
- Omission to act can itself be an act WHEN there is a DUTY to act
 - ↳ Familial
 - ↳ Contractual
 - ↳ Caregiver when depriving from contact with other who might have rendered aid

Omission:

- Failure to act and also the presence of some duty to take action resting in the law, a relationship, or a contract
- United States v. Park

Involuntary Acts

- Whether the person chose to do the prohibited thing
- Acts considered not voluntary:
 - a) A reflex or convulsion;
 - b) A bodily movement during unconsciousness or sleep;
 - c) Conduct during hypnosis or resulting from hypnotic suggestion;
 - d) A bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.
- United States v. Flores-Alejo

State of Mind Elements (Mens Rea)

- Require the government to prove what a defendant knew, intended, or planned
- Can be proven most easily where a defendant admits that they had a particular state of mind
- Often is the proof of this kind of element comes in through circumstantial evidence such as behavior of the defendant that would comport with a particular thought
- Two most common states of mind elements are knowledge and intent

-Knowledge

- “A person acts knowingly with respect to a material element of an offense when:
 - i. If the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and
 - ii. If the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.”

Intent

-Many statutes explicitly include an express element of intent to commit a specific act, which is sometimes referred to as “specific intent.”

-Statutes mandate that prosecutors prove up what the defendant meant to have happen in the future.

-United States v. Pennington-Knowledge

-United States v. Shaw-Intent via circumstantial evidence

-United States v. Campos-Intent

-United States v. Schreiber-Intent

Model Penal Code

General Terms

-“Act” or “Action” means a bodily movement whether voluntary or involuntary;

-“Omission” means a failure to act;

-“Conduct” means an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;

-“Actor” includes a person on guilty omission;

-“Acted” includes “omitted act”

-“Purposely” is with purpose, design or with design

-“Intentionally” means purposely

Two Principles of Model Penal Code

- 1) The ambiguous and elastic term “intent” is replaced with a hierarchy of culpable states of mind. The different levels in this hierarchy are commonly identified, in descending order of culpability, as purpose, knowledge, recklessness, and negligence.

General Requirements of Culpability

1. **Minimum Requirements of Culpability**- A person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense
2. **Kinds of Culpability Defined:**
 - a) **Purposely (Vermont v. Trombley):** A person acts purposely with respect to a material element of an offense when:
 - i. If the element involves the nature of his conduct or results thereof, it is his **conscious object to engage in conduct that nature or to cause such result**; AND
 - ii. If the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

-(Ex. a person who causes a particular result is said to act purposefully if “he consciously desires that result, whatever the likelihood of that result happening from his conduct.”) (Defendant’s own assertion of self-defense established that he acted with the purpose of inflicting serious bodily injury. It was his primary conscious objective to inflict serious bodily injury.)
 - b) **Knowingly (United States v. Youts):** A person acts knowingly with respect to a material element of an offense when:
 - i. If the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; AND

- ii. If the element involves a result of his conduct, he is aware that it is **practically certain** that his conduct will cause such a result.
- iii. Deliberate ignorance or willful blindness is a proper standard proof of knowledge in a driving while suspended cases.

-(Ex. a person is said to act knowingly if he is aware “that the results is practically certain to follow from his conduct, whatever his desire may be as to that result.”) (Ex. Youts stealing the trains)

- c) **Recklessly (People v. Hall)**: A person acts recklessly with respect to a material element of an offense when he **consciously disregards** a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor’s conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor’s situation.
 - Respondent's excessive speed and lack of control significantly increased the likelihood that a collision would occur and the extent of injuries that might result from such a collision, including the possibility of death
- d) **Negligently (State v. Larson)**-A person acts negligently with respect to a material element of an offense when he **should be aware** of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor’s failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation.
 - (Driving drunk)
 - Parents who do not believe in modern medicine...

Mens Rea

-Identify-What is it? (General Intent, Specific Intent, Model Penal Code, etc.)

-What does it require? (General Intent-knowingly, negligently)

-If there is no “ly” adverb then that most likely requires Strict liability or General Intent

-First Source of Mens Rea: Common Law

-General Intent (Knowledge)

-Specific Intent (intent)

-Model Penal Code: Created to aid confusion of common law

-NC has not adopted this

-Mental States of M.P.C.:

-Purposely (Vermont v. Trombley)

-Knowingly (U.S. v. Youts)

-Recklessly (People v. Hall)

-Negligently (State v. Larson)

*Ranked according to the degree of culpability and punishment associated with the mental state. (e.g. Purposely is the hardest to prove and carries to heaviest punishment)

-Two Types of Defenses to Attack the Elements

-Negation Defense

- Trying to negate one of the elements
- Affirmative Defense
 - Admitting all the elements but did it for valid reason
 - Burden shifts to Defendant to prove and now the Prosecution try to disprove elements of affirmative defense

Public Welfare Offenses: Supreme Court found it permissible for the legislature to enact a law that imposes criminal punishment when the violation involves protection of the public welfare without requiring proof of defendant's conduct.

- This is considered strict-liability crime
- Element needed to prove this is: Proof that the defendant knows that the hazardous item is being possessed.

Prosecutions Burden: When a statute imposes strict liability, then the prosecutor need not prove the defendant's state of mind at the time of the violation. Once Actus Reus is established, then liability is imposed

General and Specific Intent

-A claim of mistake as a defense to a charge must negate an element of the offense, and most often goes to the defendant's intent to commit the crime

-Under the common law, the defendant's claimed mistake for a specific intent crime did not have to be reasonable, only that the defendant has a subjective mistake that negated the intent element of the crime

-For a general intent crime, the defendant's claimed mistake must be a reasonable one, i.e. that a reasonable person would make in similar situations

-A claim of mistake is often called a "defense" to the crime, but in reality it is an assertion by the defendant that the prosecution has not proven the intent element of the offense

Morally Blame Worthy Mindset

Statutory

- Intentionally
 - ↳ Intended the outcome of the actions
- Knowingly
 - ↳ Natural and probable consequences
- Recklessly
 - ↳ Continues disregard of a substantial and unjustifiable risk of harm
 - ↳ "gross deviation from standard of care"
 - ↳ Balancing test
- Negligently
 - ↳ Should have been aware of substantial and unjustifiable risk of harm

Common Law

1. General intent
 - You intended the actus reus
 - I intended to hit "a" and I did.
2. Specific intent
 - "with intent to..."
 - ↳ Higher level of intent
 - ↳ *You intend the outcome of the act*
 - I want to break "a's" nose, to reach that end I punch him

Mistake of Fact / Mistake of Law

Mistake of fact

- Negates the mens rea element of the crime
 - Defendant could not form the required intent because he believed what he was doing was right and just
- Under common law mistake of fact is different for general intent crimes and specific intent crimes
 - General intent- mistake of fact must be objective (reasonable)
 - Specific intent- mistake of fact must be subjective (honest)

Mistake of law

Generally no excuse

- The law is definite and knowable
- Unless bad information was given by a person with authority of enforcing the law

Crimes Causing Death

-Harsh penalties are assigned to those crimes in which the death of a person is caused by the defendant's actions

-We order homicides according to what the defendant was THINKING rather than what she was DOING

-Four Categories of Crimes Involving Death:

- First Degree Murder
- Second Degree Murder
- Voluntary Manslaughter
- Involuntary Manslaughter

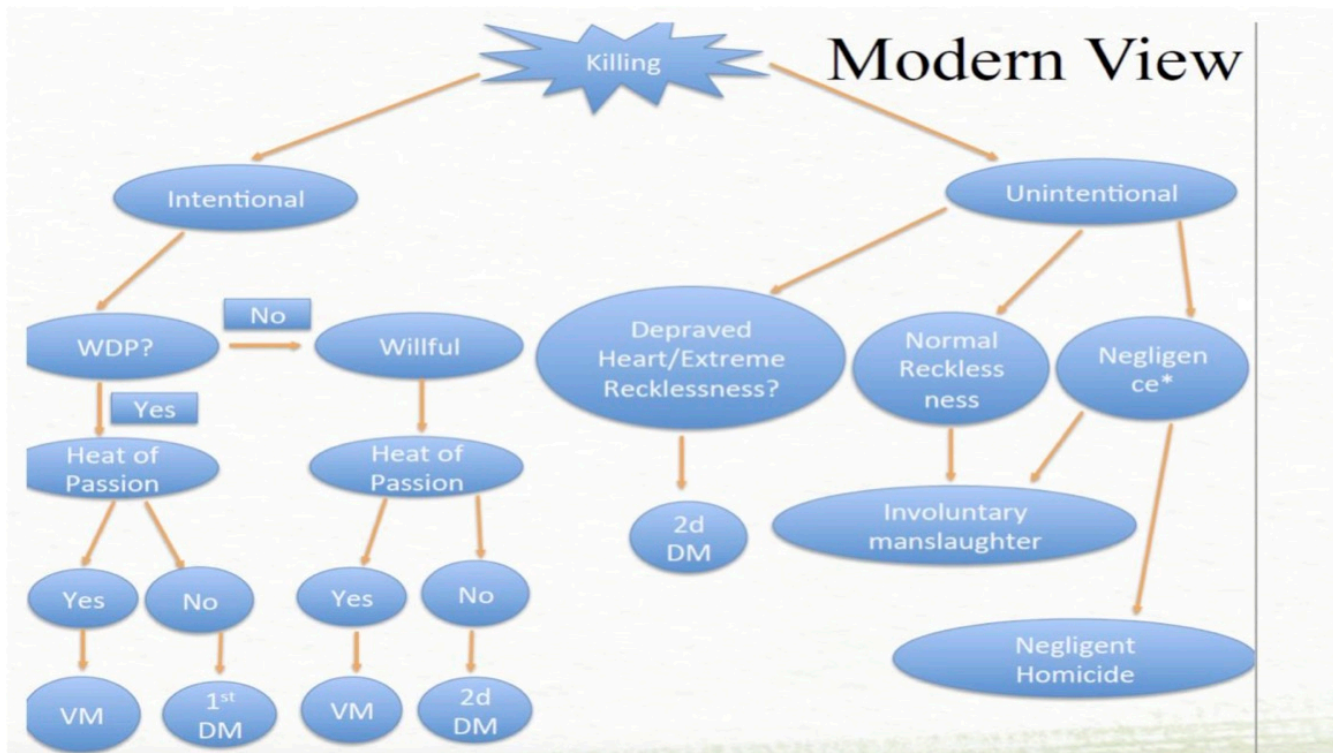
-Additional Crimes:

- Capital murder
- Third Degree Murder
- Negligent Homicide

-Elements in Common:

- Identification of actual killer
- Actual death of a victim
- Causation of the death

-Categories differentiated by state of mind elements and elements relating to the circumstances surrounding the killing



Second Degree Murder

-1) Within the special maritime and territorial jurisdiction of the United States; 2) Identification of the killer; 3) Actual death; 4) Causation of the death by the defendant; 5) Unlawfulness; and 6) Malice aforethought.

-Unlawfulness means that the killing was not justified under the law

-**Malice aforethought** can be established by evidence of conduct which is “reckless and wanton, and a gross deviation from a reasonable standard of care, of such nature that a jury is warranted in inferring that defendant was aware of a serious risk of death or serious bodily harm. (U.S. v. Milton)

-Jury can convict a defendant of second-degree murder under an “extreme disregard” theory even if the acts causing the victim’s death were reckless only toward the victim herself. (U.S. v. Houser)

First Degree Murder

-1) Within the special maritime and territorial jurisdiction of the United States; 2) Identification of the killer; 3) Actual death; 4) Causation of the death by the defendant; 5) Unlawfulness; and 6) Malice aforethought

(Deliberate and Intentional);

7) At least one of the following must be proven:

-Premeditation (*requires premeditation*)

-That the death was caused in the course of committing *arson, escape, murder, kidnapping, treason, espionage, sabotage, sexual abuse, burglary or robbery (**ALL ENUMERATED FELONIES-Felony Murder**).

-Perpetrated as part of an assault or torture against at least one child, OR

-That the death was caused during a premeditated attempt to kill someone other than the actual victim. (*requires premeditation*)

*Proof of premeditation is often circumstantial

*Enumerated felony

Felony Murder

-That the death was caused in the course of committing arson, escape, murder, kidnapping, treason, espionage, sabotage, sexual abuse, burglary or robbery. Or as part of an assault or torture against at least one child.

-Charged as first-degree murder

-Intent, recklessness, or negligence don't need to be shown

-Other issues such as proximate cause can be important

-Enumerated felony

-Intent to commit underlying felony and not intent to kill

-Allows defendant to be found guilty of 1st or 2nd Degree Murder

-Enumerated usually leads to 1st Degree Murder

-Inherently dangerous leads to 2nd Degree Murder

-(Smoking crack is inherently dangerous)

In Furtherance Of...

-Government will argue "death was in furtherance of the felony"

-The act needs to be in furtherance of the felony

-In furtherance of and the **proximate cause**

-(Ex. Paul's presence in the apartment, the act which caused Pete's death, was in furtherance of the felony. But, to prove proximate cause, the government must establish that Pete's death was a foreseeable result of Paul entering into the apartment. Absent additional facts, it was not foreseeable that Pete would have had a heart attack.)

Voluntary Manslaughter

-Manslaughter is a category of crime resulting in death that is less severely punished than murder.

-Two distinct crimes:

-Voluntary Manslaughter

-Involuntary Manslaughter

-Manslaughter is distinct from murder because it is a killing "without malice."

(a) Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

-Voluntary: Upon sudden quarrel or heat of passion

-Involuntary: In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, or a lawful act which might produce death.

(b) Within the special maritime and territorial jurisdiction of the United States.

Elements:

- 1) Committed within the maritime or territorial jurisdiction of the United States,
- 2) Identification of the killer,
- 3) Actual death,
- 4) Causation of the death (upon a sudden quarrel or heat of passion), and
- 5) Unlawfulness

-"Upon a sudden quarrel or heat of passion" is a fact that defense will often raise in order to reduce the charge from murder. (ex. could be 2nd degree murder, but Defendant raised this defense, so the burden shifts to prosecutor to prove it wasn't sudden quarrel or heat of passion)

***Defense will try and mitigate 1st or 2nd Degree Murder down to voluntary**

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Sudden Quarrel or Heat of Passion

-Sudden quarrel or heat of passion are simply not essential elements of voluntary manslaughter, and therefore, they need not be proven by evidence beyond a reasonable doubt.

-The defendant attempts to negate the malice element by claiming, in essence, that she was not acting maliciously because some extreme provocation, beyond what a reasonable person could be expected to withstand, severely impaired their capacity for self-control in committing the killing.

-Once the issue is introduced, burden shifts to government to prove beyond a reasonable doubt the ABSENCE of sudden quarrel or heat of passion.

-It is NOT the burden of the government to also prove the presence of sudden quarrel or heat of passion before a conviction for voluntary manslaughter can stand in a murder trial

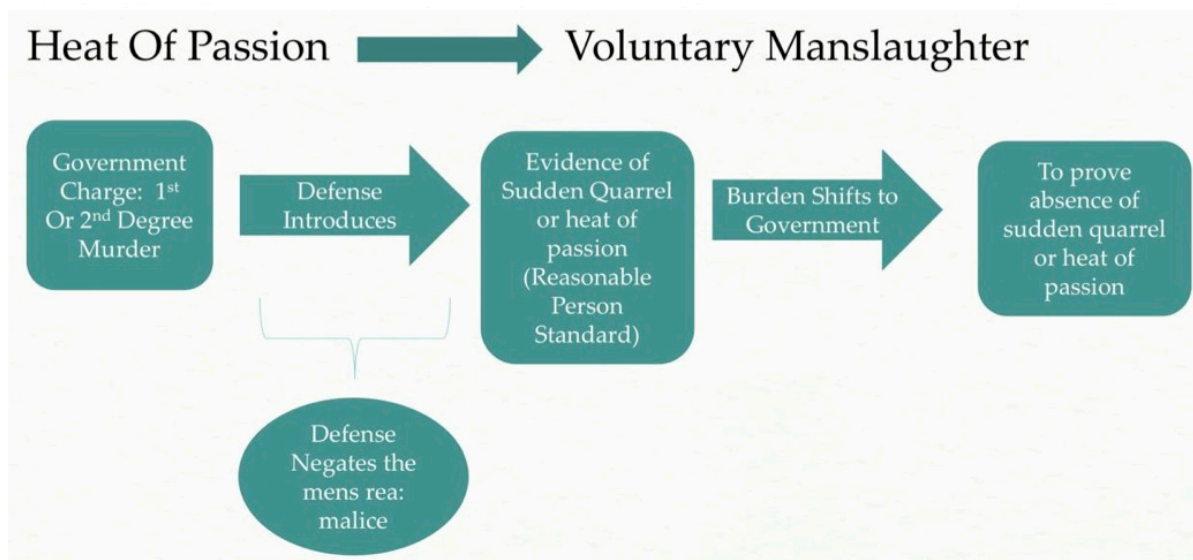
Involuntary Manslaughter:

-Manslaughter is the unlawful killing of a human being without malice.

-Involuntary Manslaughter: In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might product death.

-Elements:

- 1) Committed within the maritime or territorial jurisdiction of the United States,
- 2) Identification of the killer,
- 3) Actual death,
- 4) Causation of the death,
- 5) Unlawfulness, and
- 6) At least one of the following:
 - a. The killing occurred during the commission of a misdemeanor.
 - b. The killing occurred during the commission of a lawful act without due caution or circumspection. (Most common and some level of negligence must be proven)
 - c. The killing occurred during the commission of a lawful act in an unlawful manner.



Robbery

- 1) Identification of the defendant,
- 2) The use of force or threat of force,
- 3) To take the property of another from the person or presence of the victim
- 4) With the intent of depriving the victim of that property.

-Bank robberies are often taken as federal crimes, though they are also illegal under state laws

-When there is no physical force or threat emphasized or cleanly shown, the violent crime of robbery may look similar to non-violent crimes including burglary and extortion.

Assault:

-Federal system has different culpability levels for assault ranging from simple assault (can be a misdemeanor) to aggravated assault that involves weapons and/or injury.

-Simple Assault-Does not require physical contact, but just the threat of injury

-Assault statutes cover “battery”

-The crime of harmfully using physical force against another person.

-Modern assault statutes incorporate both physical contact based battery and causing the fear of such physical contact

-Many jurisdictions no longer refer to “battery” in their criminal codes

-“Simple Assault”-Either a willful attempt to inflict injury upon the person of another, or by a threat to inflict injury upon the person of another which, when couple with an apparent present ability, causes a reasonable apprehension of immediate bodily harm.”

Elements of Simple Assault:

- 1) Identification of the defendant as the actor,
- 2) That the defendant either:
 - a) Attempted to inflict injury on another, or
 - b) Made a threat to inflict injury, and
- 3) That the action or threat caused a reasonable apprehension of immediate bodily harm.

Assault



-Simple Assault=No Contact

Armed Robbery

- Trespassory taking;
- And carrying away;
- Personal property;
- of another;
- With intent to permanently deprive from the possessor;
- From the person or presence of the possessor;
- With violence or threat of violence;
- With a dangerous weapon

Property Crimes:

- Larceny
- Burglary
- Embezzlement
- Fraud

Less Prominent Property Crimes:

- Extortion
- Money Laundering

Larceny:

-Taking someone else's property without their consent

-Elements:

1. Identification of the offender;
2. The taking of a thing of value (general intent);
3. Without the consent of the owner; and
4. With the intent to deprive the owner of the value of that thing (specific intent)*

* Some criminal codes will omit the fourth element

-Mistake of Fact Defense=Negating the specific intent element; would have to prove the subjective standard

-Typically end up in state court

-Unless, it is a taking of a post office, federally insured bank, theft of computer data, and even a person's identity

- Knowledge that a vehicle is stolen can be established via evidence. (*Uder*)

-Taking? Common law states the "carrying away"

-To constitute a "carrying away" the property need not be actually removed from the place or premises where it was kept. **Asportation** of the property with the intention to appropriate it is sufficient to constitute larceny even though the property may subsequently be returned to the owner

-“Taking” in common law is the trespassory (wrongful) taking and carrying away

Burglary:

- Usually a crime involving property but doesn't have to be
- Requires proof that the defendant illegally entered a building with the intent to commit a crime
- In some places, intent can be formed after the illegal entry
- Intent to commit the felony therein
- Does not require completion of the underlying crime-just that the person enter (or, under some statutes, unlawfully remain within) a building with the intent to commit a crime. Under some laws, it is not necessary to show that the entry itself be illegal.
- (Ex. The federal law covering both robbery and burglary of a bank does not require that the entry be illegal, so long as **the intent to commit a crime exists at the time of the entry.**

-Entry of a building

- Entry into a dwelling at night
- Higher form of larceny; gets more punishment
- Common Law:

1. Breaking and entering (general intent)
 - Breaking a window and unlocking the door
 - Entering without permission
2. Of a dwelling of another,
3. In the nighttime,
4. With intent to commit felony therein (specific intent) (e.g. murder, rape, aggravated assault, etc.)
 - Any felony
 - Larceny, rape, etc. would be underlying felony
 - Breaking into neighbors home, who are out of town to smoke crack.
 - Breaking into the home to smoke crack would be burglary

Embezzlement:

- Normally requires that the defendant converted his or her own use of property that was entrusted to them
- Converted to personal use

Fraud:

- Taking someone's property through false pretenses
- It is common for the victim to consent to the taking of property; the key is that they granted this consent because of misrepresentation by the defendant
- Distinctive element in fraud cases is deception
 - Some jurisdictions call this "larceny by trick" and "larceny by false pretenses"
- Intention use of wrongful deception for personal gain
- Good faith can serve as a defense to fraud charges. If a defendant truly believed what they were saying to be true-even if it was in fact misleading-this sometimes will be seen as something other than a fraudulent statement, and the proofs going to that element will fail
- "Defraud" or the wronging one of his property rights by dishonest methods or schemes
- The intent requirement targets a "willful act by the defendant with the specific intent to deceive or cheat, usually for the purpose of getting financial gain for one's self or causing financial loss to another."
- Elements:
 - (1) There was a scheme to defraud;
 - (2) Wires were used in furtherance of the scheme; and
 - (3) Defendant participated in the scheme with the intent to defraud. (specific intent)
- Intent to defraud may be established by circumstantial evidence and by inferences drawn from examining the scheme itself that demonstrate that the scheme was reasonably calculated to deceive persons of ordinary prudence and comprehension.
- Fraudulent intent may be proven by showing that the defendant made misrepresentations with knowledge that the statements were false.

Theft of Non-Physical Property:

-Modern federal criminal law protects things like trade secrets and personal property, which can have financial value just as physical property might

-Customer lists may be a trade secret where “it is the end result of a long process of culling the relevant information from lengthy and diverse sources, even if the original sources are publicly available.

Identity Theft

-Person’s identity can be stolen for access to money, the privileges of citizenship, and other things of value

-The government must prove that the defendant knew that he or she was stealing an actual person’s identity

-Elements:

(1) The defendant knowingly transferred or used a means of identification of another person without legal authority.

(2) The defendant knew the means of identification belonged to a real person; and

(3) The defendant did so in relation to one of the crimes enumerated in...

Evidence of a defendant’s repeated submission of false identifying information as part of successful applications to a government agency is sufficient to permit a reasonable jury to find that the defendant knew that the information belonged to a real person. (*Doe*)

Extortion

-Extortion is an unlawful act that can be carried out by lawful means

-A proposed trade of one public act in return for another does not constitute extortion under color of official right. (*Blagojevich*)

-Gaining property through fear and threats

Narcotics

-Focuses on the action taken (i.e. possession or distribution), the type of drug involved, and the amount of the drug

-Nearly any type of drug case can be taken to either state or federal courts for prosecution

-Elements:

(1) Identity

(2) Action (possession, distribution, etc.)

(3) Intent

(4) Knowledge (that a controlled substance involved)

(5) Chemical composition of the substance at issue

-Not in common law

-Cannot be illegal to addicted to drugs

Action Elements

-The action elements in a drug crime (possession, manufacturing, distributing, dispensing, and possessing with intent) are distinct and important to define (ex. sentencing)

Simple Possession

-Less serious charge

-Simple possession cases do not require proof any action beyond mere possession of the illegal drugs, but that can still be challenging

-“Knowingly or intentionally”

-**Constructive Possession:** Easiest possession cases for the prosecution are those where the defendant is found holding the drug in their hand or pocket. When a defendant is not actively holding the narcotics when found by the police, prosecutors often rely on the theory of “constructive possession”

- A conviction for the constructive possession of illegal drugs requires proof that the defendant knew of and was in a position to exercise dominion and control over the contraband.
- Beyond a reasonable doubt
- A potentially expansive concept and some courts limit its reach

Constructive Possession

- A conviction for the constructive possession of illegal drugs requires proof that the defendant knew of and was in a position to exercise dominion and control over the contraband.
- Dominion and Control: sole occupant, shared space but has to be in plain view, or close proximity

Distribution and Dispensing Narcotics

-Statute:

(a) Unlawful Acts

- Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally-
- (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or
 - (2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance

-“Counterfeit substance” is defined as knock-offs of legal pharmaceuticals

-Distribution of narcotics is distinct from mere possession on the action element alone, and requires different proofs

-The concept of intent to distribute illegal drugs includes sharing drugs with a third party. The intent to share the illegal drugs with others is sufficient for a court to find that defendant possessed drugs with intent to distribute.

Distribution for No Remuneration

-A sale requires proof of two actions: providing the product, and payment

-Distribution can only involve one: the provision of the product from one person to another

-Distribution includes transfer or delivery either directly or by means of another person. The transfer may be the result of a joint venture, in which the distributee engages the distributor to obtain the drugs for their mutual use

-The concept of intent to distribute illegal drugs includes sharing drugs with a third party

-Not limited to the sale of controlled substances

-*United States v. Washington*: The concept of intent to distribute illegal drugs includes sharing drugs with a third party. The intent to share the illegal drugs with others is sufficient for a court to find that defendant possessed drugs with intent to distribute.

Intent

-The action element must be intended rather than accidental

-Most often at issue in possession with intent to distribute cases, especially where the defendant argues that the drug amount found was for personal use rather than distribution

-Contextual facts are important in distinguishing these cases

-Always look at the quantity to see if there is the intent to distribute

-*United States v. Burkley*: The context in which illegal drugs were found can establish whether the defendant intended to distribute the drugs or possessed them for personal use.

Knowledge

-The government bears the burden of proving that the defendant knew that that substances they were possessing or distributing or manufacturing was a controlled substance

-A conviction for possession with intent to distribute a controlled substance requires proof beyond a reasonable doubt that the defendant knew contraband in his possession to be a controlled substance, rather than contraband of some other sort.

- It isn't always required to prove that they knew *which* controlled substance was at issue
- The knowledge element refers to a general intent crime, i.e., awareness that substance possessed was a controlled substance of some kind.
- A conviction for possession with intent to distribute a controlled substance requires proof beyond a reasonable doubt that the defendant knew contraband in his possession to be a controlled substance, rather than contraband of some other sort (*Louis*)
- The knowledge element refers to a general intent crime, i.e., awareness that substance possessed was a controlled substance of some kind.
- Must prove that the defendant knew contraband in his possession to be controlled substance, rather than contraband "of some sort"

-*United States v. Louis*: A conviction for possession with intent to distribute a controlled substance requires proof beyond a reasonable doubt that the defendant knew contraband in his possession to be a controlled substance, rather than contraband of some other sort.

Defenses to Distribution

- Mistake of Fact
 - "I did not know I possessed"
 - Would negate the mens rea of "knowingly"
 - This defense would not to be both objective and reasonable
 - "Would a reasonable person know that marijuana was in their car?"
- Purpose: Distribution carries a higher punishment
 - This higher punishment is a deterrence factor for future criminals
- If it is not a drug involved
 - This would negate the actus reus
- *Can be charged with heroin distribution even if you sell cocaine that you thought was heroin

Attempt

- Allows an uncompleted crime to be prosecuted by eliminating the action-outcome (death) usually necessary in proving homicide.
- "Inchoate" crime **doesn't require the completion of the crime itself**
- Allows us to catch and prosecute criminals before they actually do harm
- Some jurisdictions have a catch-all provision that applies to all crimes
- How much "action" is required to toward the goal of accomplishing the crime?
- Common law requires "that some act must be done towards carrying out the intent."
 - Substantial step must be taken; goes beyond mere preparation**
 - The crime would not have occurred without this step
 - Mere intent to violate a federal criminal statute is not punishable as an attempt unless it is also accompanied by significant conduct**
- Mere preparation=no attempt; preparation=attempt
- Requires:
 1. Intend to commit the crime (mens rea)
 2. Substantial step (actus reus)

-*United States v. Resendiz-Ponce*: Mere intent to violate a federal criminal statute is not punishable as an attempt unless it is also accompanied by significant conduct

Criminal Steps:

1. Actor conceives the idea to commit a crime
2. Evaluates idea to decide whether to proceed
3. Fully forms the intention to go forward
4. Prepares to commit the crime by getting necessary tools (ATTEMPT COMPLETED HERE)
5. Begins commission of crime
6. Completes Crime/Achieves Goal

Withdrawal, Abandonment, and Renunciation

-This defense is sometimes phrased as an affirmative defense but as a way of showing reasonable doubt as to the action element or intent.

-In some jurisdictions, this defense is not allowed where attempt is charged and an overt act was completed

-Abandonment Defense: (1) can apply to uncompleted attempt crimes, and (2) has been rejected as a defense to completed crimes other than attempt.

-Purpose: Government wants to incentivize potential criminals to abandon their illegal activity

*Not a valid defense in common law

-Model Penal Code allows the affirmative defense: After you pass the threshold and are guilty of an attempt, you can claim an abandonment defense if you VOLUNTARILY AND COMPLETELY renounce the attempt.

-A person is NOT guilty of attempt if:

(1) He abandons his effort to commit the crime or prevents it from being committed, AND

(2) His conduct manifests a complete and voluntary renunciation of his criminal purpose

- Not voluntary if it is partially or wholly motivated by "circumstances, not present or apparent at the inception of the actor's course of conduct, that increase the probability of detection or apprehension or that make more difficult the accomplishment of the criminal purpose."
- Not complete if it is "wholly or partly motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim."

-*United States v. Young*: After a defendant has evidenced the necessary intent and has committed an act constituting a substantial step toward the commission of the offense, he has committed the crime of attempt, and can withdraw from the commission of the substantive offense.

Conspiracy

-The distinctive essential element of conspiracy is *agreement*-that two or more people agreed to work together in some way to commit a crime

-Seen in narcotics crimes, fraud, and other business-centered crimes

-Conspiracy is a frequently used charge that can exert great leverage on defendants to plead guilty and cooperate with the government in prosecuting others

-**Non-narcotics conspiracy**-require an overt act in furtherance of the conspiracy be proven by the government; does not apply to federal narcotics conspiracy

-Two kinds of intent are required: the intent to agree with another person, and the intent that underlying crime be committed

-Those convicted of conspiracy are generally held liable for the foreseeable acts of co-conspirators

(1) That the defendant agreed with at least one other person to commit an offense; (2) the defendant knowingly participated in the conspiracy with the specific intent to commit the offenses that were the objects of the conspiracy; and (3) that during the existence of the conspiracy at least one of the overt acts set forth in the indictment was committed by one or more of the members of the conspiracy in furtherance of the objectives of the conspiracy

-Conspiracy complete at the moment of the agreement

-Elements:

1. Agreement (actus reus)-intent to enter the agreement

2. 2 or more people

3. To commit a criminal offense (mens rea)

-**Conspiracy carries the same punishment as the completed crime**

-**Requires an overt act**

Agreement

- The essence of conspiracy is agreement, a meeting of the minds
- Often agreement is proven only by circumstantial evidence
- The further away an actor is from the center of a conspiracy, the more difficult it may be to show that there was agreement
- Intend to enter the agreement (general intent)

-*United States v. Burton*: A conviction for conspiracy can be based on pieces of circumstantial evidence which, viewed independently, can be interpreted innocently, but which, in the aggregate, support an inference of guilt.

Intent

- Two kinds of intent are required: **the intent to agree with another person**, and the **intent that underlying crime be committed**
- Evidence must be convincing
- A defendant's knowledge of a conspiracy and his association with the conspirators, in combination with independent additional circumstantial evidence, may support his conviction for conspiracy, but knowledge and association alone are not enough
- To be guilty of conspiracy, the defendant needs to be part of the agreement**

-*United States v. Grassi*: One does not become a coconspirator by virtue of knowledge of a conspiracy and association with conspirators

(Ex. Guy carrying cooler full of drugs. Cooler guy had no idea drugs were in cooler)

- One would argue willful blindness

Overt Act Requirement

- Not all statutes require this
- Like attempt, non-narcotic conspiracies charges usually require proof of an "overt act"
 - (Ex. one statute requires that an overt act was completed by the conspirator in furtherance of the conspiracy)
- If the statute does NOT require an overt act, you have the "conspiracy" once you have the agreement with the intent
- Overt act completed once ONE person in that conspiracy performs an overt act in furtherance of that conspiracy
 - Conspiracy complete for ALL members of that conspiracy
- (Ex. Other members of the conspiracy going out and getting guns for the crime would be considered an overt act)

Pinkerton Rule

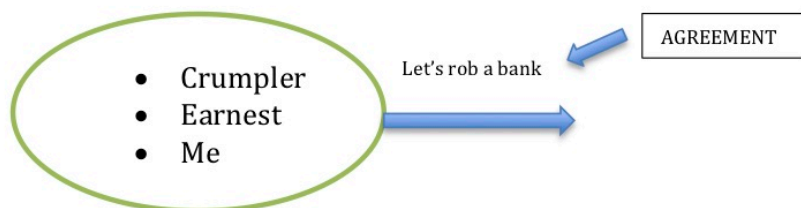
- The United States Supreme Court held that a conspirator is liable for what others in a conspiracy do, so long as two criteria are satisfied: (1) **that the criminal act was reasonably foreseeable and**, (2) **that the act was committed in furtherance of the conspiracy**
- Expands the scope of liability and holds conspirators liable for a crime they did not commit
- Co-conspirators lack both mens rea and actus reus
- If separate crime committed by one member of the conspiracy, and that crime was not reasonably foreseeable/in furtherance of the conspiracy by the other members of the conspiracy, the other members will not be liable for that crime

- Have to establish that there is a conspiracy
 - Need to look at each crime those members of the conspiracy committed to see if all members should be held liable for those crimes

Withdrawal

- To withdraw from conspiracy, it often requires an affirmative act rather than simply backing away
- Must confess to authorities or “communicate to each his conspirators that he has abandoned the conspiracy and its goals.”
- This makes withdrawal a difficult defense in conspiracy cases
- Creates incentive and reward for withdrawing
- Cant leave open the possibility of returning to an overall broad agreement

AGREEMENT=CONSPIRACY; NO AGREEMENT=ACCESSORY LIABILITY



Aiding and Abetting

*CANT BE CHARGED WITH THIS IF ONLY ROLE WAS AFTER

- Helping someone else commit a crime or evade responsibility for a crime
- Someone who “aids, abets, counsels, commands, induces or procures” a crime
- Accomplice faces the same sentences as principals (those who directly cause the crime to be completed)
- Aiding and abetting does **NOT require proof of agreement**
- The actions of the aider and abettor become those of a principal violation
- Held guilty of the substantive offense (ex. bank robbery)
 - Same punishment
- Giving legal advice or encouraging a crime
- Actus Reus=encouraging, aiding, abetting
- Mens Rea=Intent for other to commit a crime (bank robbery, etc)
- (Ex. If actor commits murder during robbery, the aider/abettor will not be guilty of murder, only the bank robbery)
- Requires: 1. Providing Assistance; and 2. Intending for them to commit the crime
- Agreement=Conspiracy; No Agreement=Accessory Liability

-*United States v. Simpson*: One who aids and abets the commission of a crime is punishable as a principal in that commission.

Accessory After the Fact

- Allows for one-half the criminal liability of a principal for anyone who “knowing that an offense against the United States has been committed, receives, relieves, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment
- *Knowledge that an offense has already been committed by the principle
- A conviction for being an accessory after the fact requires proof that the defendant, knowing that another person has committed a crime, assists that person in evading arrest, trial, or punishment.
- Defendant must have knowledge that the victim was dead or dying at the time of his decision to act as an accessory after the fact to murder
- Mens rea-has to be known to the defendant that the offense has been committed. The offense that the principle has been charged with

-*United States v. Calderon*: A conviction for being an accessory after the fact requires proof that the defendant, knowing that another person has committed a crime, assists that person in evading arrest, trial, or punishment.

-Calderon knew of the drug deals but it could not be shown that she knew that the victim was dead or dying at the time of her decision to act as an accessory after the fact to murder

Types of Defenses

-Negation Defense

-Mistake of Fact

-Negates the mens rea... "Well I didn't know..."

-Voluntary Manslaughter

-Negates the malice in murder

-Mitigating

-Lowers offense by attacking the level of the mens rea

-"Mitigate down from 2nd Degree Murder to Voluntary Manslaughter by invoking heat of passion"

-Failure of Proof

-Government didn't present proof of...(ex. Jurisdiction)

-Affirmative Defense

-All elements of the crime are proven and/or admitted

-But I did this because...

-Has elements that defense must prove

Self-Defenses

-Justification for many shootings by both civilians and police

-Requires courts to answer: How serious was the threat? Was a lethal response necessary? Were there other options for safety?

-Self-defense can be countered if the prosecution can show either that the defendant was the aggressor or had the reasonable ability to retreat from the situation without resorting to lethal force

-Some jurisdictions bar or limit the use of self-defense if the defendant had the reasonable ability to retreat to safety rather than use lethal force

-The "Castle Doctrine" allows the use of lethal force within one's home without the duty to retreat

-Some jurisdictions have extended this to allow for the use of lethal force within the home to prevent a felony even if there is no threat to the inhabitants

-The Castle Doctrine, which provides that a person may stand his ground if he is attacked in his home or its curtilage, does not apply if the person was the initial aggressor (can't be your own doing)

-The "Stand Your Ground" law allows for the use of lethal force outside of the home without a duty to retreat to safety

-If statute silent, the burden is on the government to prove this

-COMMON LAW=DUTY TO RETREAT

-DOES NOT APPLY IF YOU ARE AT HOME, UNLESS YOU ARE AGGRESSOR

-STATE STATUTES= "Stand Your Ground"

-Elements for Self-Defense:

-Must be a threat, actual or apparent (ex. water bottle threat won't count)

-Of the use of deadly force against the defendant

-The threat was unlawful and immediate

-Defendant must believe that he was in imminent peril or serious bodily injury (subjective)

-Response was necessary to save himself therefrom

-These beliefs must not only have been honestly entertained; but

-Also, has to be objectively reasonable in light of surrounding circumstances

-Rule for Aggressor: The affirmative defense of self-defense may be unavailable to a defendant who initially **provoked** his victim's use of force. Self-defense justifies the defendant's conduct, or the conduct of others who go to his aid, **only if** the victim responded to the defendant's provocation with such force that the defendant reasonably believed himself to be in danger of death or great bodily harm, **and then only if** the defendant exhausted every reasonable means to escape the danger before turning to the use of deadly force.

Duress

-This defense rests on the assertion that one was forced to commit a criminal act by another through threat of death or injury.

-The defendant bears the burden of proving duress.

-This is an **affirmative defense**..."I did it but I was forced to"

-Duress goes to whether an action was voluntary or not

-Often requires the defendant to bring in significant evidence

-In common law, Defendant bears the burden of production and burden on persuasion

-Burden of production-Enough evidence for the jury to **consider** the possibility of duress

-Burden of persuasion-After defendant meets the burden of production, he or she will need to persuade the jury that there is actually duress

-Duress will excuse criminal conduct only if:

(1) a threat of imminent death or serious bodily injury led the defendant to commit the crime,

(2) the defendant had no reasonable, legal alternative to breaking the law, and

(3) the defendant was not responsible for creating the threat

-If the statute is silent, then we are in common law. In common law, the defendant bears the burden of production and persuasion

-Dixon v. United States: Under federal law, the defendant bears the burden of proving duress

Necessity:

-The defense of necessity is aimed at whether the action is wrong in the first place

-This defense is available where a defendant can make a strong case that she avoided a greater evil by committing the crime she is charged with

-Affirmative defense that must be proved by a preponderance of the evidence by the defendant

-Often requires the defendant to bring in significant evidence and prove that he had no alternative to violating the law

-This defense is limited to rare situations

-The defendant must establish that:

(1) either he or a third party was under threat of imminent danger that reasonably induced apprehension of death or serious injury;

(2) he had not recklessly or negligently placed himself in a situation in which he would likely have to act criminally;

(3) he had no reasonable alternative to the illegal conduct;

(4) there was a reasonable and direct causal relationship between the criminal conduct and avoidance of the harm; and

(5) he ceased the criminal action as soon as possible.

-United States v. Ridner: A defendant is not entitled to present a necessity defense if he engaged in the alleged criminal conduct for longer than necessary to avoid the threatened harm.

Competence and Insanity

-Competence is the ability of a defendant to understand the legal process and work with an attorney, and is determined by a **judge**

-If the defendant is found NOT legally competent, the legal proceeding cannot proceed

-Competence has to do with the defendant's mental health or ability **at the time of the court** appearance

-Not an affirmative defense

-Either party can move for this

-You can be sane at the time of crime

-Insanity has to do with the defendant's mental health **at the time of the crime**, and is determined by the **jury**

-Affirmative defense that usually serves to negate the defendant's guilty state of mind

-Requires the defendant to be deemed competent at the time of trial

-Defendant bears the burden of proof; clear and convincing evidence

-Can negate specific intent

-Elements:

1. At the time

2. As a result of a severe mental disease; and

3. Defendant was unable to appreciate the nature and quality