

## GENERAL PRINCIPLES

### ◆ Elements of a crime:

1. Unlawful Act – Actus Reus
2. Criminal intent – Mens Rea
3. Concurrence of criminal intent and act
4. Causation of injury
5. Are there any defenses?

### ◆ Actus Reus

- Act must be voluntary.
- Act must be the proximate cause of the crime.
- Includes possession (e.g., stolen merchandise).
- Does not include thoughts.
- Does not include omissions. Exception: where there is a legal duty to act (e.g., Nurse at a hospital).
- Does not include involuntary acts. Exception: where a prior voluntary act (e.g., getting drunk) leads to an involuntary act (e.g., not knowing what you are doing).

### ◆ Mens Rea

- General intent crimes – D purposefully did the unlawful act (actus reus).
- Specific intent crimes – Not only did D purposefully do the unlawful act, but D intended to do something more. e.g., Assault – Not only must D intend to raise his fist, but D must intend to batter V or intend to cause fear in V.
- Strict liability crimes – D is guilty no matter his intent.

### ◆ Accomplice liability

- An accomplice aids, abets, encourages or assists the carrying out of a crime.
- Specific intent crime: D intend to aid in the commission of the crime committed by C.
- An accomplice is liable for the crime itself.
- Under common law, D is guilty of additional crimes C commits if those additional crimes are the natural and probable consequence of the original crime and the additional crimes are committed in furtherance of the original crime.
- The model penal code rejects that D is automatically guilty of additional crimes unless D intended to aid in the additional crimes.
- D can only withdraw from accomplice liability if he can undue the assistance and repudiates any past encouragement.

### ◆ Accessory after the fact

- Knowingly giving assistance to a criminal, after the criminal commits a felony in order to assist the felon in avoiding apprehension.

### ◆ Conspiracy to Commit Crime

- Act: An agreement between two or more persons to do an unlawful act.
- Agreement can be through words or actions alone.
- D can be guilty of conspiracy even if he only agrees to assist with preparations to commit the unlawful act.
- Specific intent crime: intent to complete the unlawful act.
- Under cover agent: Under the common law, a person who conspires with an undercover agent is not guilty of contempt since there is no agreement with the undercover agent. Under the model penal code conspiring with an undercover agent is conspiracy.
- Additional crimes of co-conspirators: Common law view is that D is guilty of all crimes committed by his co-conspirators during the conspiracy. Model Penal Code view is that D is not automatically guilty.

### ◆ Solicitation

- Asking another to commit a crime.
- It makes no difference whether the other person agrees to D's request.
- Under the model penal code, even if the request is not received the crime is completed. (e.g., D sends an email to S telling S to kill X, the email is never received by S. D is still guilty of solicitation.
- D can withdraw his request if the crime has not already been completed.

### ◆ Attempted Crimes

- Act: D must have committed an overt act which was a substantial step in completion of the crime. Thoughts are not enough.
- Specific intent crime: D must have intended to commit the crime for which attempt is charged.
- Impossibility is typically not a defense.
  - e.g., D pours what he believes is gasoline all over a building, he tries to light the liquid, but unbeknownst to D the liquid is water and will not light. D is still guilty of attempt.
- However "legal impossibility" is a defense.
  - e.g., D has sex with a female he believes is only 17, it turns out she is 23. D is not guilty of attempted statutory rape
- Renunciation. If D voluntarily abandons his attempt to commit a crime he will not be guilty of attempt. D's renunciation will generally not be considered voluntary if he abandons his plan only because police are present.

## DEFINITIONS OF CRIMES

- ◆ **Assault:** Either attempted battery or intentionally placing another in fear of imminent bodily harm.
  - Specific intent crime: D intended to batter V.
- ◆ **Battery:** Unlawful application of force to the person of another that results in physical harm or an offensive touching.
  - General intent crime: D intended to swing his arm or swing a pole and it hit V.
- ◆ **Murder:** Unlawful killing of a person with malice aforethought.
  - General intent crime: D intended either to kill a person; to cause serious bodily harm; or had reckless indifference to the value of human life.
  - Felony-Murder: D intended to commit a felony and during the commission of the felony someone accidentally dies (if it is not accidentally, then it is regular intent to kill).
  - Under the common law, a fetus is not a human being for the purposes of murder. The fetus must be born alive to be murdered.
- ◆ **Voluntary Manslaughter:** Unlawful killing of a person committed in the heat of passion.
  - Mental State requires all four of the following:
    - 1) D was in a situation where a reasonable person would lose control;
    - 2) D actually did lose control;
    - 3) There was not enough time for a reasonable person to cool off before the killing;
    - 4) D did not cool off before the killing. If D cools off before the killing, the killing becomes premeditated.
- ◆ **Involuntary Manslaughter:** Unlawful killing of a person through gross negligence OR during the commission of a misdemeanor.
  - General intent crime: D intends to do the negligent act or misdemeanor.
- ◆ **Rape:** Common law -- Unlawful sexual penetration of a female, who is not one's wife, without her consent. Modern law -- Forced intercourse without consent.
  - If V is drunk, drugged or unconscious V cannot consent.
  - General intent crime: D intended sexual intercourse with V.
- ◆ **Kidnapping:** Unlawful confinement and moving of victim OR unlawful confinement of victim in secret.
  - General intent crime: D intended to unlawfully confine V.
- ◆ **False imprisonment:** Unlawful confinement of a person without his valid consent.
  - General intent crime: D intended to confine V.

- ◆ **Arson:** Malicious or reckless burning of the dwelling of another. The dwelling must be burned, not simply furniture.
  - General intent crime: D acted with malice or recklessness.
- ◆ **Theft/ Larceny:** The taking and carrying away of personal property of another without consent and with intent to steal.
  - Specific intent crime: D must specifically intend to steal a particular item.
- ◆ **Robbery:** A larceny where the personal property is taken in the presence of the owner by force or threat of force.
  - Specific intent crime: D must specifically intend to steal a particular item.
- ◆ **Extortion:** Taking of property of another with the threat of future harm.
  - Specific intent crime: D must intend to take property of another.
- ◆ **Embezzlement:** Conversion of property of another by one who is already in lawful possession of it.
  - Specific intent crime: intent to defraud
- ◆ **False Pretenses:** Knowingly falsifying or concealing a material fact to fraudulently induce another to pass or receive title to property.
  - Specific intent crime: intent to defraud.
- ◆ **Forgery:** Materially altering a document with intent to defraud.
  - Specific intent crime: intent to defraud.
- ◆ **Burglary:** The breaking and entering of the home of another at night with the intent to commit a felony inside.
  - Specific intent crime: intent to commit a felony inside.
- ◆ **Receiving Stolen Property:** Taking possession of stolen property, knowing the property is stolen.
  - Specific intent: intent to deprive the true owner of his property.

## DEFENSES

- ◆ **Self Defense:** D has a right to defend himself against the present or imminent use of unlawful force by another.
  - The force used in self defense must be reasonable. Deadly force is only reasonable when faced with deadly force.
  - D must not have been the initial aggressor.
  - D must not have been able to retreat.
- ◆ **Defense of Others:** D has the right to defend another against the present or imminent use of unlawful force. The same analysis of self defense is used.
  - At common law, D could only defend relatives. The modern rule is that D can defend anyone.

- ◆ **Defense of Property:** D has the right to use non-deadly force to defend his property against an unlawful taking.
  - The force used must be reasonable and usually cannot be deadly. If D can simply shout at the thief to make him stop he must do so and not use force.
  - If the thief counter-attacks D then D may use self defense including deadly force if appropriate.
  - If the thief breaks into D's home, D may use deadly force if D believes that the thief is armed and a threat to persons in D's home.
  - D can use mechanical non-deadly devices to protect his property. (i.e., no spring guns)
  - D can use reasonable non-deadly force to re-take his property immediately following the unlawful taking.
- ◆ **Necessity:** The lesser of two evils: D has been compelled to commit a criminal act to avoid bodily injury or property damage. There is no alternative which would avoid the harm and be non-criminal. And the situation was not created by D's negligence or recklessness.
- ◆ **Mental Illness:** D must show that he was insane at the time he committed the criminal act.
  - M'Naghten rule: D suffered a mental disease where he did not know the nature and quality of his act or he did not know that his act was wrong.
  - Irresistible impulse standard: D suffered a mental disease where he was unable to control his conduct and acted under an irresistible impulse.
  - Federal standard: As a result of a severe mental disease, he was unable to appreciate the nature and quality or the wrongfulness of his acts.
  - Model Penal Code: As a result of a mental disease or defect, D lacks substantial capacity to either appreciate the criminality of his conduct or the ability to conform his conduct to the requirements of the law.
- ◆ **Duress:** A threat by a third person which produces a reasonable fear of imminent bodily injury.
  - Not a defense to murder.
- ◆ **Mistake of Fact:** A mistaken belief by D which negates the intent required for the crime.
  - e.g., D picks up a digital phone, mistakenly believing that it is his. D is not guilty of larceny.
  - If D is charged with a specific intent crime, mistake of fact is always a defense.
  - If D is charged with a general intent crime (e.g., one requiring only recklessness), mistake of fact is never a defense.
  - If D is charged with a strict liability crime (e.g., statutory rape) mistake of fact is never a defense.
- ◆ **Intoxication:** Voluntary, self-induced intoxication is generally not a defense to a crime criminal act, but may be a defense to a crime which requires a specific intent. e.g., Drunk D walks off with someone else's cell phone believing it is his. D is not guilty of larceny as he does not have the specific intent at the time he committed the act.
  - Intoxication does not excuse recklessness.
  - Involuntary intoxication is a valid self defense. However, most courts have determined that addiction is not involuntary intoxication.
- ◆ **Automatism:** A mental or physical condition prevented the act from being voluntary (e.g., epileptic seizure).
- ◆ **Consent:** The fact that a victim of a crime has consented does not bar criminal liability.
  - Unless consent is an element of the crime (e.g., rape).
  - Or unless consent makes the conduct lawful (e.g., a boxing match).
- ◆ **Infancy:** Under common law, under age 7, incapable of committing a crime. Age 7-14, rebuttable presuming that D is incapable of committing a crime. Over age 14, treated as adult.
- ◆ **Entrapment:** Defense exists when a law enforcement official (or someone working with law enforcement) induces D to commit a crime which D was not predisposed to commit.
 

E.g., Undercover cop gives marijuana to a foreign tourist telling the foreign tourist marijuana is legal in the U.S.
- ◆ **Law Enforcement Defenses:** A law enforcement officer may violate the law when reasonable.
  - Arrest: A law enforcement officer may use reasonable non-deadly force to arrest someone, to stop someone from fleeing, to prevent a crime.
  - Deadly force: A law enforcement officer may only use deadly force if the person poses a serious threat to the safety of the officer or of others.
  - Arrest without warrant: A police officer may make an arrest without a warrant for:
    - (1) a felony committed in his presence,
    - (2) a felony committed outside his presence with reasonable cause to believe a felony was committed by the person being arrested,
    - (3) a misdemeanor committed in his presence.
  - At common law, a police officer could not make an arrest for a misdemeanor committed outside his presence without a warrant.
  - Citizen's arrest: A citizen may also use reasonable non-deadly force to make a citizen's arrest.
  - A citizen may ordinarily not use deadly force except in self defense or the defense of others. A citizen using deadly force takes full responsibility for a mistake.