

Criminal Law

Elements						
<b>Actus Reas Action</b>	<p><u>Voluntary, Volitional Act</u> (bodily movement)</p> <ul style="list-style-type: none"> <li>× Not a reflex (shock→unconsciousness—<i>Newton</i>; sleepwalking—<i>Cogdon</i>)</li> <li>× Not a status (addict—<i>Robinson</i>)</li> <li>× Not a movement against Δ’s will (drunk in public—<i>Martin</i>)</li> <li>✓ Crime caused by addiction (out of control alcoholic act, but first drink taken voluntarily—<i>Powell</i>)</li> <li>✓ Epileptic seizure (choice to drive = actus reas seizure—<i>Decina</i>)</li> </ul>		<p><u>Omissions</u>: failure to act—includes duties to care req’d by statute, relationship, contract, voluntary assumption of care</p> <ul style="list-style-type: none"> <li>× No duty to save house guest (baby dead from beating—<i>Pope</i>)</li> <li>× No duty to save lover (overdose—<i>Beardsley</i>)</li> <li>✓ Parent’s duty to save child (abusive situation—<i>Cardwell</i>)</li> <li>✓ Brother’s duty to sister (<i>Stone</i>)</li> <li>✓ Duty to save after creating risk (seclusion &amp; spoon→overdose—<i>Oliver</i>; rape &amp; remorse→drowning—<i>Jones</i>)</li> </ul>			
<b>Issue</b>	<b>Common Law</b>	<b>MPC</b>				
<b>Mens Rea Choice</b>	<b>Specific intent</b> : Δ has some future purpose or actual knowledge of fact/circumstance . (murder, attempt, burglary, larceny, robbery)—sort of like purpose/knowledge in MPC		<b>MPC§2.02 Levels of Culpability</b>			
	<b>General intent</b> Δ aware of conduct & has knowledge, but no particular desire/purpose to bring about new circumstances		π can prove level req’d or level higher. If there is a level mentioned in part of the statute that level applies for the other elements.			
	<ul style="list-style-type: none"> <li>× Must have mens rea for each charge:                             <ul style="list-style-type: none"> <li>× Not using stop tap when stealing money from the gas meter→leak→life in danger—<i>Cunningham</i></li> <li>× Sailor intends to get rum but burns the whole ship down in the process—<i>Faulkner</i></li> </ul> </li> <li>✓ Δ is assumed to intend reasonably foreseeable consequences of action (inability to find corrupted juror doesn’t bar specific intent—<i>Neiswender</i>)</li> <li>✓ Deliberate ignorance = mens rea. Awareness of probability of crime sufficient for mens rea (presence of marijuana in the trunk—<i>Jewell</i>)</li> </ul>		<b>Purpose</b> (Required for attempts)	Conscious objective/desire	<b>Circumstance</b> (conditions) Awareness, belief or hope	<b>Result</b> (not always element) Conscious objective/desire
			<b>Knowledge</b>	Aware		Practically certain
			<b>Recklessness</b> (default culpability level) Indifference	Subjective awareness (Δ did actually know) of substantial & unjustified risk that is <u>gross deviation</u> from what law abiding person would do		
			<b>Negligence</b> Inattentiveness	Objective/reasonable person would have been aware, <u>gross deviation</u> from standard of reasonable care based on: 1) gravity of harm that foreseeably would result from Δ’s conduct, 2) probability of harm; 3) burden to Δ of not engaging in risk		
			<b>Conditional Intent</b> : §2.02(6) Does condition take Δ out of realm of people meant to be convicted by statute (negatives the mens rea)? (conviction upheld in conditional [“if you don’t cooperate, I’ll kill you”] carjacking— <i>Holloway</i> ) Common law or MPC?			
MPC 2.02(7) Where knowledge is req’d, a high probability of fact will suffice						
<b>Mistake of Fact Mistake of Law</b>	<b>General Intent</b> Honest & reasonable mistake of fact is a defense <i>Sherry</i> : Must be both honest & reasonable	<b>Specific intent</b> Honest mistake of fact is a defense b/c it overcomes mens rea <i>Reynolds</i> : Just honest & not reckless <i>Kelly</i> : Honest	§2.04 (1) Ignorance/Mistake of fact or law is a defense if (a) it negatives the req’d culpability level; (b) the law allows it.			
	<b>General Intent</b> Mistake of law ≠ defense <i>Hopkins</i> –even where relying on an official b/c official doesn’t determine law <i>Wood</i> —quickie divorce	<b>Specific intent</b> Honest mistake of law is a missing element <i>Smith</i> —where Δ is missing specific intent (thinks he is ripping up own floorboards)	(2) Defense is not allowed when the Δ would have been guilty of another offense if the circumstances were as she thought they were; this will reduce the grade of the offense. (3) Mistake of law is a defense when (a)Δ doesn’t know of law & it’s unpublished; (b)Δ acts in reasonable reliance on official statement of law later determined to be invalid • Only a defense when afterwards the law is deemed invalid— <i>Albertini</i> • Ignorance of law is no defense unless code allows it— <i>Marrero</i> (misinterpretation of law ≠ defense)—common law case			

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<b>Strict Liability</b> Usu. involves newer statutory regulatory crimes where mens rea hard to prove	“Wrong in itself” → no need for mens rea ✓ If it’s a strict liability statute, mistake of fact doesn’t matter (underage girl— <i>Prince</i> ; leaving pregnant wife— <i>White</i> ) x Old crime that doesn’t mention a req’d intent ≠ strict liability (accidental theft of casings— <i>Morrisette</i> )	Only where explicitly stated in statute x Can’t hold owner crim liable under a regulatory crime making it illegal to serve underage alcohol b/c of stigma, costs of crim conviction— <i>Guminga</i> ✓ Can hold Δ liable for strict liability speeding law w/ stuck cruise control despite lack of control— <i>Baker</i>
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Issue	Common Law		MPC
<b>Homicide</b> Unlawful causing death of another			
	<p><b>W/ Malice Aforethought</b></p> <p>Premeditated (First Deg.) Intent/awareness to cause death or SBI to another</p> <p>Not premeditated (Second): <u>Felony Murder</u>: killing that occurs along w/ commission of a felony <u>Abandoned/malignant heart killing</u>: extreme reckless indifference to the value of human life</p>	<p><b>No Malice Aforethought</b></p> <p>Manslaughter</p> <ul style="list-style-type: none"> <li>Voluntary: in the heat of passion; provocation exists. Mitigates murder → manslaughter</li> <li>Involuntary (Recklessness, Criminal negligence)</li> <li>Misdemeanor-manslaughter</li> </ul>	<p><b>Murder</b></p> <ul style="list-style-type: none"> <li>Purpose/knowingly</li> <li>Recklessly under circumstances manifesting extreme indifference to value of human life (including f-m after robbery, rape, sex by threat of force, arson, burglary, kidnapping, or felonious escape)</li> </ul> <p><b>Manslaughter</b></p> <ul style="list-style-type: none"> <li>Recklessness (risk w/ awareness): Substantial unjustified risk &amp; gross deviation from normal person.</li> </ul> <p><b>Negligent Homicide</b></p> <ul style="list-style-type: none"> <li>Risk w/ inattention</li> </ul>
<b>Premeditation</b>	<i>Carroll</i> : can be formed immediately (thought of gun in bedroom)	<i>Guthrie</i> : has to be time for premeditation (relationship, etc) (towel snap)	Not needed b/c of cases like <i>Anderson</i> , where there's no pre-meditation but a gruesome murder
<b>Provocation</b> (Reduces murder to manslaughter)	Can't have both malice aforethought & heat of passion killing. <i>Giouard</i> : categories of provocation (doesn't include words)		Functions as an excuse; no need for provocation <i>Cassassa</i> : (1) If there's subj/actual EED, then (2) send it to jury to determine if it was reasonable for person who shares Δ's characteristics (only phys/permanent characteristics & extreme grief, not moral values) to form EED & kill
<b>Creation of Homicidal Risk</b>	Involuntary Manslaughter: Extreme recklessness showing disregard for human life. Recklessness req: likelihood/degree of risk, gravity of harm, awareness of danger/risk (can be inferred if there is a great likelihood/degree of risk). Unsafe nightclub=involuntary manslaughter— <i>Welansky</i> Objective standard req'd even when Δ can't meet it— <i>Williams</i> (sick baby)		
<b>Felony-Murder</b> A type of strict liability that borrows mens rea from felony. Murder must be causally related to the commission of the felony.	<b>Limitation: Inherently Dangerous Felonies</b>		Only when felony is one that shows extreme indifference to the value of human life: robbery, forcible rape, arson → creates rebuttable presumption; still have to prove foreseeability (apply the "in furtherance," cause/agency theories)
	Consider the felony in the abstract. No f-m for: <i>Phillips</i> : med fraud <i>Satchell</i> : concealed weapon; <i>Randolph</i> : drug distribution	Consider felony in circumstance F-M for: <i>Stewart</i> : felony child abuse, <i>Heacock</i> : drug distribution	
	<b>Killing by Non-Felon</b>		
	Proximate Cause Theory: Any death prox. caused, even if done by 3 <sup>rd</sup> party (ask who was killed—was it foreseeable?)	Agency theory: must be Δ or agent of Δ who killed in furtherance of felony (ask who committed the killing)	
<b>Killing "in furtherance" of Felony</b>			
<i>Stamp</i> : Take V as find them; "but for" cause	<i>King</i> : Must be a direct causal link (drug plane)		

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<b>Excuses = Subjective Standard (in theory)—particular to Δ</b>		
<p><b>Duress</b> Threat overcomes Δ's free will</p>	<p>Person of ordinary/reasonable firmness would yield to immediate threat Not an excuse to homicide.</p>	<ul style="list-style-type: none"> <li>• Coercion by use/threat of unlawful force against Δ</li> <li>• &amp; in Δ's situation (subj)</li> <li>• a reasonable person (obj) would be caused to act</li> </ul> <p><i>Toscano</i>: even where the threat's not immediate. Not a defense if the Δ created the threat or peril</p>
<p><b>Mental Disorder &amp; Legal Insanity</b> Must exist at the time of the crime</p> <p><b>Effects:</b></p> <ul style="list-style-type: none"> <li>• Automatic commitment</li> <li>• Discretionary commitment</li> <li>• Could be committed longer</li> <li>• GBMI: guilty but mentally ill</li> </ul>	<p><i>M'Naughten</i> Rule: Δ suffered from gross &amp; verifiable mental disease That caused Δ to commit the crime either b/c: (a) of disease, Δ didn't know what Δ was doing wrong (but not just a mistake of law) OR (b) Δ didn't know nature/quality of act (thinks she's squeezing lemons but strangling spouse)</p>	<p>Δ has mental disease/defect &amp; Δ subjectively lacks <b>substantial</b> capacity to: (a) <b>appreciate</b> wrongfulness of conduct, (b) <b>conform</b> conduct to law. (<i>Blake</i>: Δ w/ hist of mental problems wouldn't be excused under common law b/c not lacking knowledge of actions or sudden incapacity) <i>Lyons</i>: modified MPC; addiction ≠ legal insanity, withdraws support for (b) Goes back to <i>M'Naughten</i> w/o Irresistible Impulse</p>
	<p>Irresistible Impulse Test: Not just an impairment of thinking but Δ can't control conduct; must be a sudden lack of volition (<i>Blake</i>)</p>	
	<p>Requires cognitive knowledge Impairment is an on-off switch Distinction b/w (a) &amp; (b) Requires sudden lack of volition</p>	<p>Appreciate: More than knowing—requires understanding of consequence (emotion + thought) Lacks "substantial" capacity Collapses distinction b/w: lack of knowledge from right and wrong &amp; lack of knowledge of action Volitional impairment doesn't have to occur suddenly</p>

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<b>Justification</b> (Δ's conduct was necessary; wasn't wrong) Obj. standard (in theory)		
<b>Self Defense</b>	Elements: 1. Actual/apparent threat of force 2. Unlawful & immediate threat 3. Threat's characteristics are subj & obj believed (Δ actually & reasonably believed it was necessary to defend herself) 4. Δ's response must be reasonably proportional to situation When necessity ends, justification no longer applies	MPC requires a subj belief of imminent threat that is reasonable (obj) under the circumstances. §3.04
	Reasonable person in Δ's situation → <i>Goetz</i> (subjectivizes standard to Δ w/ past muggings); <i>Kelly</i> (BWS, subjectivizes standard to Δ in circumstance of spousal abuse to explain why she stayed, but not whether her actions were reasonable—that's up to the jury)	
	Self-defense w/ <b>deadly force</b> is justified only to prevent a deadly attack as long as it doesn't pass into category of conscious disregard of lives of other; its use must be <b>reasonable</b> <i>Adams</i> : self defense → death of innocent bystander still justified in certain circumstances (dark, no time, etc.).	Self-defense w/ <b>deadly force</b> if Δ honestly believes it's justified but is mistaken about that belief then it's negligence homicide or manslaughter (recklessness). Justifiable to use deadly force to protect against death, SBI, rape, kidnapping
	<b>Retreat rule</b> : Non-aggressor Δ has duty to retreat when: 1. Δ intends to use deadly force & 2. Δ has actual awareness of opportunity to retreat (subj) & 3. was possible for Δ to retreat w/ complete safety (obj) Exception to retreat: at home <i>Abbott</i> : where there's a Q as to whether Δ was aggressor & whether Δ used deadly force, instruct jury on retreat rule	
<b>Choice of Evils: Necessity</b> Δ acted w/ reasonable belief that Δ's action req'd to prevent greater harm	Difference is the source of peril: Duress (excuse): threat from another person Necessity: non-human threat (1) Clear and imminent danger. (2) Direct causal relationship b/w action & harm averted. (3) There must be no effective <i>legal</i> way to avert the harm. (4) The harm that the Δ will cause by violating the law must be less serious than the harm he seeks to avoid (in terms of the harm that was reasonably foreseeable at the time, rather than the harm that actually occurred). (5) No statute forbidding act under circumstances (6) Δ must have clean hands	Can raise both choice of evils & duress Choice of Evils = Δ violated a criminal prohibition, but in circumstances it was the right thing to do. Conduct the actor believes to be necessary to avoid a harm/evil to himself or another is justified provided that: <ul style="list-style-type: none"> <li>• The harm/evil sought to be avoided by such conduct is greater than that sought to be prevented by the law</li> <li>• The law defining the offense doesn't have such an exception</li> </ul>
<b>Necessity &amp; Excuse in Prison Escape</b>	Both justification & excuse defenses available for prison escape under threats from inmates <i>Harmon</i> : it's an excuse. <i>Unger</i> : it's both excused & justified <i>Lovercamp</i> : 5 element test: specific death/SBI threat in immediate future; no time to contact authorities, no force used in escape, Δ immediately reports to authorities.	

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<p><b>Attempts</b> Involves a failure of perception, Interruption of causation, or Failure on part of Δ to complete conduct</p>	<p>Reduced punishment than for completed crime</p>	<p>Punishment is the same as it is for completed crime (except for Murder I)</p>
	<p><b>Mens Rea:</b> Attempt requires specific intent (purpose/knowledge) <i>Smallwood:</i> must be high probability; HIV+ rape ≠ attempted murder <i>Jones:</i> mens rea for attempt is higher; murder in crowded room of V1 ≠ extreme recklessness attempted murder of other V's</p>	<p><b>Mens Rea:</b></p> <ul style="list-style-type: none"> <li>• <u>Purposefully</u> engages in the <u>conduct</u></li> <li>• That would be criminal in <u>circumstances</u> as Δ believes them to be (req mens rea of target offense)</li> <li>• Acts w/ the <u>belief/knowledge</u> that it will cause the <u>result</u> w/o further conduct on Δ's part</li> </ul>
	<p><b>Actus Reas</b> <i>Proximity Tests:</i></p> <ul style="list-style-type: none"> <li>• Dangerous Proximity Test: Attempt must be so near accomplishment that in all reasonable probability the crime would have been committed</li> <li>× <i>Rizzo:</i> driving around looking for V ≠ attempt</li> <li>× <i>Duke:</i> Δ agrees to meet underage V (undercover cop) online; showing up ≠ attempt</li> <li>• Indispensible Element Test: Δ had control over every element needed to commit crime</li> </ul> <p><i>Res Ipsa Tests:</i> Δ's actions show intent</p> <ul style="list-style-type: none"> <li>• Equivocality test: criminal attempt must be only plausible inference. Intent to perform actions &amp; obtain results &amp; Δ does act that equivocally shows intent</li> <li>× <i>McQuirter:</i> very little evidence for conviction of black Δ who followed white "V" in south</li> </ul>	<p><b>Actus Reas:</b> substantial step that's corroborative of criminal purpose. Acts under the belief that act is a substantial step in plan that will culminate in criminal conduct (factors of corroborative evidence inc lying in wait, obtaining weapon, readying the scene, enlisting support, etc...)</p>
<p>No abandonment</p>	<p><b>Abandonment</b> Renunciation of criminal purpose is affirmative defense; must be a voluntary &amp; complete renunciation—can't be done due to frustration of circumstances. Subj test (mostly) <i>Johnston:</i> no renunciation when Δ is disappointed by \$ in the drawer <i>McNeal:</i> no renunciation when Δ encounters unexpected resistance from V</p>	
<p><b>Larceny</b> Taking w/o violence (protects property)</p>	<p>Requires trespassory taking (w/o consent), carrying away (asportation) w/ specific intent to steal</p> <ul style="list-style-type: none"> <li>× <i>Thluchak:</i> Δ who has lawful possession can't be guilty of larceny</li> <li>× <i>Topolewski:</i> Where owner/agent of owner aids in offence, no larceny b/c there's consent</li> </ul>	<p>Requires exercise of unlawful control, no need to take it away</p>
<p><b>Corporate Crime</b></p>	<p>Corp crim liability under common law req (trad'tl 3 element test):</p> <ol style="list-style-type: none"> <li>1. Crime committed by employee/agent (doesn't have to be the title)</li> <li>2. Crime committed w/in scope of employment (interpreted broadly)</li> <li>3. Intent to benefit the corp</li> </ol>	<p>MPC §2.07 (1) A corporation can commit aff act; omission; or high managerial agent/board authorized, requested, commanded, performed or recklessly tolerated commission of offense; ...(5) due diligence defense if corp tries to work against violations against strict liability offenses (6) a responsible person can be convicted of act on corp behalf (duty or reckless omission)</p>

