

Criminal Law Outline: Barbri

I Jurisdiction & General Matters

- A) Jurisdiction: A state has jx over a crime if: 1) The state is the **situs** of the criminal **act or injury** or 2) the crime involved **neglect of a duty imposed by state's law**. If crime **of omission**, state where act should have been performed
- B) Theories of punishment: incapacitation, rehabilitation, special deterrence, general deterrence, education of the public
- C) **Felonies v Misdemeanors**: Felonies punishable by death or imprisonment for **MORE Than 1 yr**. All other crimes are misdemeanors
- D) Constitutionality of Criminal Statute: must **give fair warning** (person of **average intelligence** able to discern what activity is prohibited) & 2) **no arbitrary/discriminatory enforcement**. **No ex post facto**. **Constructions in favor of D**
- E) **No Merger (unlike CL)**. Exceptions: **Solicitation & attempt merge w/completed crime**. **Conspiracy NEVER merges**. **Tip: Heavily Tested**
- F) **Multiple Convictions of same transaction/act** if falls under 2+ statutory offenses for which legislature intends separate punishments

II Essential Elements of a Crime: Generally, need 1) actus reus 2) mens rea & 3) concurrence bw actus reus & mens rea

A) Actus Reus: physical act

- 1) Must be a **voluntary** physical act – **bodily movement** (Also a voluntary **failure to act** where there is a legal duty to act if omission). **Reflexive** acts not volitional.
 - (a) E.g., acts committed **while unconscious/asleep** aren't voluntary **unless** D knew she was **likely to** become unconscious or likely to fall asleep at wheel; E.g., A pushes D who falls onto V. V falls onto train. D not liable.
 - 2) **Omission** may satisfy actus reus requirement if :
 - (a) there is a legal duty to act. Duty to act may arise: 1) under **statute** – e.g., D has a duty to file tax returns 2) **by K** – e.g., lifeguard 3) relationship bw parties 4) **Good Samaritan** who voluntarily assumes a duty of car – e.g. liable for abandoning effort 5) Where D's conduct **creates peril** (E.g., D pushes V into pool as a joke & doesn't save V)
 - (b) D has **knowledge of facts** giving rise to duty to act
 - (c) **Reasonably possible** to perform the duty
- B) **Mens Rea** – Mental State Required for Criminal Liability. **Tip: MOST Heavily tested**
- 1) Specific Intent Crimes: requires the **doing of an act w/a specific intent**, an element D.A. must prove **CASE OF F3LAB**: Conspiracy, Attempt, Solicitation, Embezzlement, False Pretenses, Forgery, First degree premeditation murder, arson, burglary.
 - (a) Additional **defenses** for Specific Intent crimes if **negate** the specific intent (not available for General Intent crimes – e.g. murder/arson. **Tip: heavily tested**)
 - (i) **mistake of fact - no matter how unreasonable & silly Tip: Heavily tested**
 - (ii) **& voluntary intoxication**
 - 2) Mens Rea for CL Murder & Arson: requires only a reckless disregard for obvious high risk that particular harmful result will occur.

- (a) **Tip:** If murder mentioned on MBE & no designation of degree: assume CL murder in the 2nd degree. Specific intent defenses (voluntary intoxication & Mistake of fact) don't apply.
- 3) General Intent crimes: Battery, Arson & Rape, kidnapping, false imprisonment Merely require an awareness she is acting in proscribed way. General intent may be inferred from D's commission of the act.
- 4) Strict Liability/Public Welfare Crimes: if crime is administrative/regulates morality. Liability based on mere commission. No intent required. Mistake of fact, voluntary intoxication, consent, incapacity, etc never a defense. **Tip:** No consent to criminal acts + if given statute, SL crime if no adverbs. E.g., statutory rape, selling alcohol to minors, some jxs – bigamy.
- 5) Note on MPC: subjective standard. Purposely, knowingly & recklessly.
- 6) Vicarious liability limited to SL crimes.
- 7) Enterprise/corporate liability: liable if performed by agent w/in scope of employment or alter ego
- C) Concurrence of Mental State w/Physical Act required (E.g., D driving to gun shop to get gun to kill X. On the way, accidentally runs over X. Not murder bc actus reus not concurrent w/required mens rea)

III Accomplice Liability

- A) Principal: person who commits the illegal act OR causes an innocent agent to do so. Liability: principal crime
- B) Accomplice: Person who aids or encourages principal to commit the illegal conduct is liable for principal crime + all other foreseeable crimes if intended to aid/encourage (includes CL accessory before the fact, assisted but not present).
 - 1) Mere knowledge that crime will result not enough. Exceptions: Procuring illegal item or selling at higher price bc of buyer's purpose constitutes a "stake in the venture" = intent to commit.
- C) Accessory after the fact: Person who aids another to escape knowing that he has committed a felony is liable for separate, less serious crime of being an accessory after the fact – not for principal crime.
- D) Note: Mere presence not sufficient for accomplice liability, even if don't call police/consent.
- E) Inability to be a principal does not preclude accomplice liability (E.g., CL woman can't be principal for rape but may be accomplice)
- F) Limitations to Accomplice Liability:
 - 1) Members of a class protected by a statute (E.g., Woman transported across state lines for immoral purposes even if intended to aid crime not liable)
 - 2) Necessary Parties Not provided for: a party who is necessary to crime's commission but not provided for in the statute has no accomplice liability E.g., Statute makes sale of heroin illegal but doesn't mention purchaser. Purchaser can't be liable as accomplice
 - 3) Withdrawal: Must withdraw BEFORE crime committed
 - (a) Repudiation sufficient if had merely encouraged
 - (b) If assistance was more than mere encouragement, must attempt to neutralize assistance (e.g., notifying police to prevent crime)

IV Inchoate Offenses

- A) Solicitation
 - 1) Elements:
 - (a) Actus reus – inciting, counseling, advising, urging or commanding another to commit a crime

- (b) Mens rea: with the intent that the person solicited commit the crime
- 2) Defenses:
 - (a) Lack of success is not a defense bc crime completed as soon as solicitation done. No withdrawal
 - (b) Defense if legislator exempted her from guilt (E.g., Woman can't be guilty for soliciting man to violate Mann Act).
 - (c) Merger:
 - (i) If person solicited commits crime → both person + solicitor liable for crime. Solicitor not liable for solicitation + underlying target offense bc merges
 - (ii) If person solicited commits acts sufficient to constitute attempt → both person + solicitor liable for attempt + conspiracy
- B) Conspiracy
 - 1) Requirements: 1) an agreement bw 2+ persons 2) an intent to enter into the agreement 3) intent by at least 2 persons to achieve the objective of the agreement 3) overt act
 - (a) Agreement: No requirement agreement be express – may be implied from joint activity. **Tip** – heavily tested. Requires meeting of 2 guilty minds. E.g., CL - undercover cop won't work but MPC – under 'unilateral approach' it works.
 - (i) Wharton Rule: Where 2+ ppl necessary for commission of an offense (e.g., adultery), no conspiracy unless more parties participate.
 - (ii) Persons w/in protected statutory class can't be guilty of conspiracy (E.g., Man & Woman agree to transport woman in violation of Mann Act. No conspiracy).
 - (iii) Effect of Acquittal of some conspirators: if *all* co-conspirators acquitted, D can't be convicted
 - (b) Overt Act: Mere preparation sufficient (unlike attempt)
 - 2) Liability for Co-conspirators crimes: **Tip**: Heavily tested. Conspirator liable for crimes committed by other conspirators if crimes committed in 1) furtherance of conspirator & 2) foreseeable.
 - (a) Termination of conspiracy: cuts off liabilities of co-conspirators bc crimes no longer in "furtherance" of conspiracy. Terminates on completion of wrongful act. Acts of concealment not part of conspiracy.
 - 3) Defenses:
 - (a) Impossibility is not a defense
 - (b) Withdrawal: NEVER effective defense to conspiracy bc conspiracy complete as soon as agree.
 - (i) May be a defense to subsequent crimes committed in furtherance of conspiracy if withdraw.
 - (ii) Reqs to withdraw: 1) affirmative act that notifies members of withdrawal 2) must be given in time for members to abandon plans 3) if D has provided assistance, must try & neutralize
 - 4) Multiple Conspirator Situations: Whether Members of One Subconspiracy are liable for Criminal acts of another subconspiracy. 2 theories
 - (a) Chain Relationship: all subconspiracies center around 1 single large scheme. All liable for acts in furtherance of conspiracy
 - (b) Hub & Spoke Relationship: Conspiracies independent but linked by a common member. Members not liable for acts of other conspirators but common member is.
- C) Attempt
 - 1) Definition: An act done w/ intent to commit a crime that falls short of completing the crime. (SI)

- 2) Act required is beyond mere preparation. Traditional rule: proximity – act must come “dangerously close to completion.” Modern rule & MPC: act must be a substantial step towards completion.
- 3) Note: Overt act requirement for attempt much more substantial than for conspiracy.
- 4) Defenses:
 - (a) Factual impossibility of D to commit intended crime not a defense (E.g., D intends to commit robbery but V has nothing on her not a defense; or D receives “stolen” goods from cop)
 - (b) Legal impossibility is a defense (it is not a crime to do what D intended to do. E.g., D intends to fish where he believes it’s trespassing but the pond is open to the public).
 - (i) **Tip:** On MBE impossibility usually refers to factual. Usually not a defense
 - (c) Abandonment is not a defense if D had intent + committed an overt act **Tip** – Heavily tested
 - (d) Merges w/completed crime

V Responsibility & Criminal Capacity

- A) Insanity: at the time of the crime, was D so mentally ill as to be entitled to acquittal
 - 1) *M’Naghten Rule*: D’s mental disease caused him to not know his act would be wrong or not understand nature/quality of actions. Loss of control no defense
 - 2) *Irresistible Impulse*: D is unable to control his actions/conform conduct to law
 - 3) *Durham/New Hampshire*: “but for” D’s mental illness, D would not have committed the crime.
 - 4) A.L.I./MPC (combination of *M’Naghten & Irresistible*): D lacked the substantial capacity to either 1) appreciate the criminality of his act or 2) conform his conduct to the law
 - 5) *Diminished Capacity*(some jx): Falls short of insanity. Bc of D’s mental disease, he did not have mental state required for commission of crime charged.
 - 6) Procedural Issues: All Ds presumed sane. May refuse ct ordered psych exam unless pleads sanity. unQ due process violation to try, convict or sentence if D unable to undersnad proceedings or assist L in preparing defense
- B) Intoxication
 - 1) Voluntary Intoxication: Defense to SI crimes if negates the SI crime + only if crime requires purpose (intent) or knowledge & intoxication prevents.
 - (a) Defense not available if D voluntarily becomes intoxicated to use the defense + can’t reduce 2nd degree murder to manslaughter + for crimes involving malice, recklessness, negligence or SL
 - 2) Involuntary Intoxication: involuntary if results from taking substance w/o knowledge of its nature, under direct duress or under medical advice. Tx as mental illness if D meets insanity tests
- C) Infancy: No liability for act committed by child under 7. Rebuttable presumption that children bw ages 7-14 could not understand wrongfulness of acts.

VI Exculpation

- A) Justification: D committed crime but shouldn’t be punished bc circumstances justified.
 - 1) Self Defense: Never justified for threat of future harm. Must be immediate threat of harm
 - (a) Non- Deadly force: Person w/o fault + may use such force as reasonably appears necessary + to protect self or others from + imminent use of unlawful force. NO duty to retreat.
 - (b) Deadly Force: Person may use if 1) w/o fault 2) confronted w/unlawful force & 3) imminent death or great bodily harm

- (i) . Majority rule: No duty to retreat. Minority rule: duty to retreat UNLESS 1) attack occurs in V's home 2) while V is making a lawful arrest 3) D is robbing/raping 4) Person is cop
 - (ii) E.g., if D kills in self-defense but not all 3 reqs met may be manslaughter. Imperfect self defense doctrine
- (c) Right of Aggressor to Use Self Defense: may use force only if 1) effectively withdraws + 2) communicates to other her desire to withdraw OR 1) victim suddenly escalates the minor fight & 2) initial aggressor has no chance to withdraw
- 2) Defense of Others: same standards
- 3) Defense of a Dwelling:
 - (a) Non-deadly force permissible to prevent/terminate unlawful entry/attack
 - (b) Deadly force only to prevent violent entry made w/intent to commit a felony therein/personal attack on inhabitants
- 4) Defense of Other Property
 - (a) Defending Possession:
 - (i) Deadly force may never be used
 - (ii) Nondeadly force may be used if request to desist would be futile/dangerous
 - (b) Regaining possession: Force cannot be used UNLESS immediate pursuit of taker
- 5) Crime Prevention
 - (a) Non-deadly force only if reasonably appears necessary to prevent a felony/serious breach
 - (b) Deadly force: only to prevent/end felony risking human life
- 6) Use of force to effectuate an arrest:
 - (a) Police:
 - (i) Non-deadly force: if reasonably necessary to arrest
 - (ii) Deadly force: Only to prevent escape of felon who threatens human life
 - (b) Private persons
 - (i) Non-deadly force: if crime in fact committed + reasonable belief this person committed it
 - (ii) Deadly force: Only to prevent escape of person who actually committed felony + threatens human life
- 7) Use of force to resist an arrest
 - (a) Non-deadly force permissible if improper arrest
 - (b) Deadly force: Only if improper arrest + D does not know arrester is cop
- 8) Necessity: if person reasonably believed commission of crime was necessary to avoid imminent & greater injury to society.
 - (a) Limitations: good faith not enough, causing death of another never justified, not available when D at fault in creating situation
 - (b) Contrast w/duress: necessity involves pressure from natural/physical forces v duress: human
- 9) Public Policy: police officer
- B) Duress: If D reasonably believes another would imminent inflict death/great bodily harm on her or member of her family if didn't commit the crime. NOT A DEFENSE TO HOMICIDE.
- C) Other Defenses
 - 1) Mistake of Fact:
 - (a) If SI crimes: no need it be reasonable as long as negates the intent required

- (b) For any other crime: it must be reasonable
- 2) Mistake of Law: No defense even if reasonable & based on L's advice. UNLESS mistake negates awareness of some aspect of law regarding the elements of the crime.
- 3) Consent: generally not a defense for crime. May be a defense to minor assaults/batteries.
- 4) Entrapment: Criminal design originated w/law enforcement officers + D not predisposed to commit crime. Merely providing opportunity/contraband not entrapment + private citizen can't entrap. **Tip:** usually wrong

VII Offenses Against the Person

A) Assault & Battery

- 1) Battery: unlawful application of force + to the person of another + resulting in bodily injury or offensive touching. Need not be intentional + force need not be applied directly (e.g, causing a dog to attack)
 - (a) Aggravated: Felonies – w/deadly weapon/results in serious bodily harm, of child, woman or cop
- 2) Assault: **Tip** – think of it as 2 separate crimes. Either 1) attempt to commit battery or 3) intentional creation of reasonable apprehension of imminent bodily harm. (mere words not enough). E.g., D intends practical joke & pretends to be a robber. Assault.
 - (a) Aggravated: deadly weapon/intent to rape/mayhem

B) Homicide

- 1) Murder: the unlawful killing of a human being with malice aforethought. Malice exists where no facts reducing killing to voluntary manslaughter + one of these states of mind:
 - (a) Intent to kill
 - (b) Intent to inflict great bodily injury
 - (c) Reckless indifference to unjustifiably high risk to human life (abandoned & malignant heart, depraved heart)
 - (d) Intent to commit an inherently dangerous felony (felony murder rule)
- 2) Voluntary Manslaughter: would be murder but for existence of adequate provocation. Provocation adequate if 1) would arouse sudden & intense passion in mind of ordinary person causing him to lose self-control 2) D was in fact provoked 3) insufficient time to cool off 4) D didn't cool off.
 - (a) **Tip:** Not a defense but just reduces murder → manslaughter. Incorrect choice to say not guilty bc D acted in heat of passion
- 3) Imperfect self-defense: Murder may be reduced to manslaughter even though D was at fault in starting altercation if D unreasonably but honestly believed necessary to respond w/deadly force
- 4) Involuntary manslaughter: killing committed w/gross criminal negligence or during commission of an unlawful act (MISDEMEANOR OR FELONY not under Felony murder rule).
 - (a) **Tip:** MBE if question refers to manslaughter consider both.
- 5) Felony Murder: **"BARRK"** – if murder is committed during commission or attempted commission of an inherently dangerous felony, it is first degree murder.
 - (a) Limitations:
 - (i) D must be guilty of underlying felony
 - (ii) Felony must be distinct from killing itself (E.g., commission of aggravated battery causing V's death doesn't qualify as distinct underlying felony)

- (iii) Death must have been foreseeable result
- (iv) Death must have been caused before felony ended – when D reached place of temporary safety. **Tip** – heavily tested. E.g., Death of V after D goes to mom’s house. D not guilty.
- (v) D not liable for felony murder where co-felon killed as a result of resistance from felony V or police
- (vi) D’s liability for innocent party killed:
 - (1) Agency theory: D not liable unless death caused by D or D’s agent – accomplice
 - (2) Proximate cause theory: D may be liable when innocent party killed by V or police
- (b) Some jurisdictions divide murder into degrees. **TIP: If see “murder” assume it’s 2nd degree murder** unless first degree murder (which is deliberate & premeditation killing of another human being. Requires SI which may be negated by voluntary intoxication. 2nd degree murder only requires recklessness & voluntary intoxication no defense)
- C) False Imprisonment: unlawful confinement of a person w/o their consent
- D) Kidnapping: unlawful confinement that involves either some movement of V or confinement of V in ‘secret place’

VIII Offenses Against Property

- A) Larceny: Elements- Trespassory + Taking + carrying away (asportation) + of tangible personal property + of another + w/intent to permanently deprive the owner
 - 1) Tangible personal property: may include intangible rights such as stock certificates
 - 2) By trespass: w/o consent or consent induced by fraud
 - 3) **Tip:** If D had possession of property at time of taking, not larceny but may be embezzlement (bailee w/possession more likely than mere low level EE to be guilty of embezzlement)
 - 4) Intent to permanently deprive must be concurrent at the time of the taking. Intent to create substantial risk of loss, to sell or pledge the good to the owner is sufficient for larceny
 - (a) Where D believes property she is taking is hers/only intends to borrow/keeping it as repayment for debt, no larceny
 - 5) Abandoned, lost or mislaid property: Lost or mislaid property may be subject to larceny but not abandoned property
 - 6) Continuing Trespass:
 - (a) If D wrongfully takes property w/o intent to permanently deprive + later decides to keep the property she is guilty of larceny when she decides to take it.
 - (b) But if original taking not unlawful & later decides to keep it → not larceny
- B) Embezzlement
 - 1) Definition: the fraudulent + conversion + of personal property + of another + by a person in lawful possession of that property
 - 2) Distinguish from larceny: in embezzlement, the D is in lawful possession but misappropriates
 - 3) D must have fraudulent intent: must intend to defraud. If D intends to restore the exact property taken not embezzlement but if to restore similar/substantially identical → embezzlement.
 - 4) Just like larceny, if D believed she had a right of claim to property, not larceny
- C) False Pretenses

- 1) Definition: Obtaining title + to personal property of another + by an intentional false statement + of past or existing fact + with intent to defraud the other
- 2) Must be a past/existing fact – misrepresentations about what will occur in the future not enough
- 3) Distinguish from larceny by trick: larceny by trick is giving up mere possession by trick v false pretenses entails giving up title.

D) Robbery

- 1) Definition: Larceny + by force: A taking + of personal property of another + from the other's person or presence + by force/threats of immediate death/physical injury + w/intent to permanently deprive.
- 2) V must actually give up property bc feels threatened (not bc feels sorry for/wants D to leave).
- 3) **Tip:** pickpocketing would be larceny but if V resists → robbery

E) Extortion: corrupt collection + of an unlawful fee + by an officer under color of office. i.e., blackmail

F) Receipt of Stolen Goods:

- 1) Elements: Receiving possession & control + of "stolen personal property + known to have been obtained in a criminal manner + by another person + w/intent to permanently deprive the owner of it.
- 2) Property must be stolen at time D receives it. So receiving it from cop, can't be convicted of receipt of stolen goods but attempt to receive

G) Forgery

- 1) Elements: Making/altering + a writing + with legal significance + so that it is false + w/intent to defraud
- 2) Fraudulently obtaining signature of another: if 3rd person didn't know what she was signing.
- 3) Uttering a forged instrument: 1) offering it as genuine 2) when instrument may be subject of forgery & is false 3) w/intent to defraud

H) Malicious Mischief: Malicious + destruction of damage + to property of another.

IX Sex Offenses

A) Rape: slightest penetration completes. Carnal knowledge of woman by a man w/o consent. Consent invalid if actual force, threat of harm, incapable of consent, fraudulently caused to believe act not intercourse

B) Statutory Rape: SL

X Offenses Against Habitation

A) Burglary:

- 1) Elements: breaking + and entering + of a dwelling + of another + at nighttime + with the intent to commit a felony therein.
- 2) Breaking - creating or enlarging an opening using minimal force. (e.g., opening closed door, walking into open door & opening closed interior door)
- 3) Entering – placing any part of the body/instrument to be used in commission of felony
- 4) Dwelling: structure used w/regularity for sleeping purposes (even if for other purposes also)
- 5) Must have concurrence of intent at time of breaking & entering

B) Arson

- 1) Elements: the malicious (intentional/reckless disregard) +burning+ of the dwelling + of another.

- (a) **Tip:** blackening/discoloration not enough. But mere charring enough
- 2) Damage must be caused by fire. Explosion not enough unless causes fire.

XI Offenses against judicial process

- A) Perjury: intentional taking of a false oath + in regard to a material matter + in a judicial proceeding
- B) Subornation of Perjury: procuring/inducing another to commit perjury
- C) Compounding a Crime: agreeing + for valuable consideration + not to prosecute/conceal commission of felony