

CRIMINAL LAW**GENERAL MATTERS**

JURISDICTION: legal situs is where conduct or result of crime happened, or should have happened.

MERGER: only solicitation and attempt merge into substantive offense. No merger for conspiracy – separate crime.

ESSENTIAL ELEMENTS: physical act (*actus reus*): own volition, but not reflective, compulsive or unconscious; and mental state (*mens rea*).

SPECIFIC INTENT CRIMES: BAM ACTS. Burglary, Assault, Murder (1st degree), Attempt, Conspiracy, Theft, Solicitation.

MALICE CRIMES: reckless disregard of obviously high risk of harm. Murder/Arson.

GENERAL INTENT CRIMES: awareness of all factors constituting crime, e.g. awareness of act or high likelihood it will occur

STRICT LIABILITY: no required awareness

TRANSFERRED INTENT: two charges – attempt and offense.

ACCOMPLICE LIABILITY

LIABILITY: crime itself and all foreseeable crimes. Req's active involvement, e.g. aid, counsel or encourage, with *intent to aid*

INCHOATE OFFENSES

SOLICITATION: asking someone to commit crime. Req's intent for person to commit the crime. Crime ends at the asking – if person subsequently commits the crime it becomes conspiracy.

CONSPIRACY: (i) Agreement; (ii) intent to agree; (iii) unlawful objective. Maj jps require overt act. Liability: all foreseeable crimes committed to further conspir. Withdrawal: (i) affirmative act notifying all members of withdrawal & (ii) assistance in neutralizing. Cuts off liab for future crimes, not conspiracy.

ATTEMPT: SI to commit + substantial step beyond mere prep

DEFENSES NEGATING CRIM CAPACITY

INSANITY: Def to all, incl Strict L. D - burden of production.

M'Naghten – at time of conduct, D lacked ability to know wrongfulness of actions or nature/quality of actions;

Irresistible Imp – D lacks capacity for self-control & free choice

Durham Rule – D's conduct product of mental illness;

MPC/ALI – D lacked capacity to (i) appreciate criminality of conduct or (ii) conform conduct to req's of law.

INTOXICATION: *Folwer* – only def for Specific Intent. *Invol* – like insanity and is def to all, incl SL. Req's: taking drugs/alcohol w/o knowledge; under duress; pursuant to med advice w/o awareness of intoxicating effect.

INFANCY: < 7, no liab. < 14 – rebuttable presumption of no liab.

EXCUSES/JUSTIFICATION

SELF DEFENSE: *Non-deadly* – reasonably necessary. D – (i) D w/o fault; (ii) confronted w/ unlawful force; (iii) threatened w/ imminent death/great bodily harm. Min - retreat unless in person's home; making lawful arrest; or vic of rape/robbery. Orig aggressor must withdraw and communicate withdrawal.

DEFENSE OF OTHERS: person assisted reasonably appeared to have legal rt to use force in his own defense.

DEFENSE OF PROPERTY: non-deadly force ok. No force to regain possession unless in hot pursuit.

CRIME PREVENTION: *Non-deadly* force to prevent felony or breach of peace. *Deadly* only to prevent dangerous felony.

EFFECTUATE ARREST: *Private person:* deadly force only if person harmed was actually guilty of offense. *Officer:* deadly force to apprehend fleeing felon who threatens death/serious bodily harm and necessary to prevent escape.

DURESS: Threat of imminent infliction of death/great bodily harm on self or member of immediate family. No homicide.

NECESSITY: reasonably necessary to avoid imminent and greater injury to society. No homicide.

OTHER DEFENSES

IMPOSSIBILITY: Factual – no defense. Legal Impossibility – not illegal to do what D intended to do.

MISTAKE OF FACT: Spec Int – any mistake. Malice/Gen Int:: reasonable mistake only. SL – never.

CONSENT: only if crime req's lack of consent, e.g. rape. Req's consent voluntarily/freely given; legally capable; no fraud.

ENTRAPMENT: only if police originated criminal design and D was not predisposed to commit act.

OFFENSES AGAINST PERSON

BATTERY: unlawful application of force resulting in bodily injury or offensive touching. Aggravated: deadly weapon; serious bodily harm; to a child, woman or police.

ASSAULT: attempted battery (SI); threat to bodily injury (GI).

HOMICIDE: unlawful killing of human w/ malice aforethought: intent to kill; intent to inflict great bodily injury; reckless indifference to an unjustifiably high risk to life; felony murder. *First:* deliberate, willful, and premeditated and enumerated felony, e.g. arson, robbery, burglary, rape, mayhem and kidnapping. *Second:* everything else under CL murder.

Unjustified. No felony murder once D reaches temp safety or if death of co-felon is result of resistance by victim or police

MANSLAUGHTER: Bump down murder if "imperfect self-D" – D was at fault in starting fight or unreasonably but honestly believed in necessity. Vol – murder w/ adequate provocation/heat of passion w/o time to cool; Invol – criminal negligence, battery, or misdemeanor.

PROPERTY CRIMES

LARCENY: taking and carry away of personal prop of another by trespass w/ intent to permanently deprive.

EMBEZZLEMENT: fraudulent conversion of personal prop of another by a person in lawful possession of that property.

FALSE PRETENSE: Obtaining title to personal prop of another by an inten'l false stmt of past or existing fact w/ intent to defraud

LARCENY BY TRICK: Obtaining possession to personal prop of another by inten'l false stmt of fact with intent to defraud.

ROBBERY: Taking of personal prop of another from other's person or presence by force or threat of imminent death/injury with intent to permanently deprive.

EXTORTION: obtain prop by threat of harm/exposing info.

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Nils Rosenquest

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