

CRIMINAL LAW

Exam generals:

- MBE may tell you the law to apply if there is no prevailing view.
- If exam does not say whether the common law or statutory version of the crime applies, it likely means that specific elements of the crime are not relevant to the questions.

1) General matters

- a) **Jx**: a state has jx over a crime if:
 - i) Any act constituting an element of the offense was committed in the state,
 - ii) An act outside the state caused a result in the state,
 - iii) The crime involved the neglect of a duty imposed by the law of the state,
 - iv) There was an attempt or conspiracy outside state + act inside the state, or
 - v) There was an attempt or conspiracy inside the state to commit offense outside the state.
- b) Source of criminal law
 - i) No federal common law – all fed crimes are statutory.
 - ii) Majority of states have common law crimes.
 - (1) Modern trend is to abolish this by statute or comprehensive criminal codes.
- c) Theories of punishment
 - i) Incapacitation
 - ii) Deterrence of the criminal
 - iii) Deterrence of others
 - iv) Retribution
 - v) Rehabilitation
 - vi) Education of the public
- d) Classes of crimes
 - i) Felonies
 - (1) Punishable by death or imprisonment for more than 1 year.
 - ii) Misdemeanors (misdo)
 - (1) The rest
- e) Constitutional limitations
 - i) Due process requires statute not be **vague**.
 - ii) There must be:
 - (1) **Fair warning**, and
 - (2) **No arbitrary and discriminatory enforcement**
 - iii) No **ex post facto laws**
 - (1) Retroactive law
 - iv) No **bills of attainder**
 - (1) Punishment without trial

- f) Interpretation of criminal statutes
 - i) Construed strictly in favor of def.
 - ii) If 2 statutes address same subject matter but result 2 different ways, the more specific statute will be applied rather than the more general.
 - iii) Recent statute controls an older one.
 - iv) Punishment is under the law that existed at the time the offense was committed.
- g) **Merger**
 - i) Common law
 - (1) If conduct constituted both a felony and a misdo, def could be convicted of only the felony. Misdo merged into the felony.
 - ii) Modern law
 - (1) No merger.
 - (a) Exception:
 - (i) Def cannot be convicted of both the solicitation and the completed crime.
 - (ii) Def cannot be convicted of both the attempt and the completed crime.
 - (iii) Conspiracy does not merge with the completed offense.
 - iii) Double jeopardy
 - (1) Prohibits trial or conviction of a person for a lesser included offense if has been put in jeopardy for the greater offense.
 - (2) However, court can impose multiple punishments for 2 or more statutorily defined offenses specifically intended by the legislature to carry separate punishments.

2) **Elements of a crime**

- a) Crime requires proof of:
 - i) Physical act – actus reus
 - ii) Mental state – mens rea
 - iii) Concurrence of the 2.
 - iv) May require proof of result and causation.
- b) **Physical act**
 - i) Voluntary physical act, or
 - (1) Cannot be voluntary if person is unconscious. Must be voluntary.
 - (2) An act is a bodily movement.
 - ii) Failure to act when required to do so by a legal duty
 - (1) Gives rise to liability only if:
 - (a) There is a specific duty to act imposed by law;
 - (b) Def has knowledge of the facts giving rise to the duty to act; and
 - (c) It is reasonably possible to perform the duty.

- (2) Legal duty can arise from statute, contract, relationship (parent has duty to protect child), voluntary assumption of care of victim, or creation of peril for victim by def.
- (3) There is no general Good Samaritan law requiring people help others in trouble. There must be a duty to act for failure to act to be criminal.
 - (a) Moral outrage is not enough.

iii) Possession as an act

- (1) Def has control of the item for a long enough period to have an opportunity to terminate the possession.
- (2) Possession need not be exclusively 1 person.
- (3) May be constructive – actual physical control need not be proved when contraband is located in def's dominion and control.
- (4) State of mind for possession:
 - (a) If statute does not specify, def must be aware of his possession of contraband but he need not be aware of its illegality.
 - (b) Many statutes specify state of mind. So "knowingly" means def must know the identity or nature of the item possessed.
 - (i) Knowledge or intent may be inferred from combination of suspicion and indifference to the truth.

c) **Mental state**

i) **Specific intent**

- (1) Cannot be conclusively imputed from the mere doing of the act, but the manner in which the crime was committed may provide circumstantial evid of intent.
- (2) Crimes requiring specific intent:
 - (a) **Solicitation** – intent to have the person solicited to commit the crime.
 - (b) **Attempt** – intent to complete the crime.
 - (i) Attempt requires specific intent, even if the crime attempted is not.
 - (ii) I.e., murder does not require specific intent to kill – recklessly disregarding a high risk to human life is enough – but attempted murder requires a specific intent to kill. Without it, def is not guilty of attempted murder.
 - 1. Example: D intends to scare V by shooting the hat off V's head. If D kills V, D is guilty of murder. If V is just wounded, D is not guilty of attempted murder.
 - (c) **Conspiracy** – intent to have the crime completed.
 - (d) **1st degree premeditated murder** – premeditation.
 - (e) **Larceny and robbery** – intent to permanently deprive someone of property.
 - (f) **Burglary** – intent to commit a felony in the dwelling.

- (g) **Forgery** – intent to defraud.
- (h) **False pretenses** – intent to defraud.
- (i) **Embezzlement** – intent to defraud.

ii) **Malice**

- (1) Crimes:
 - (a) Common law murder
 - (b) Arson
- (2) A reckless disregard of an obvious or high risk that the harmful result will occur.
- (3) Defenses to specific intent crimes do not apply to malice.

iii) **General intent**

- (1) An awareness of factors constituting crime.
 - (a) Def must be aware that she is acting in a proscribed way and that any required attendant circumstances exist.
 - (i) Need not be certain that all exist – it is enough that she is aware of a high likelihood that they will occur.
- (2) Almost all crimes require at least general intent.
- (3) Jury may infer general intent merely from doing the act.
- (4) **Transferred intent**
 - (a) Def liable where she intends the harm that is actually caused but to a different victim or objects.
 - (i) Def here is guilty of 2 crimes – completed crime against victim and attempt against intended victim.
 - (b) Defenses and mitigating circumstances may also be transferred.
 - (c) Crimes:
 - (i) Homicide
 - (ii) Battery
 - (iii) Arson
 - (iv) Not to attempt

iv) **Strict liability offenses**

- (1) Does not require awareness of all the factors constituting a crime.
 - (a) So def can be found guilty from the mere fact that she committed the act.
- (2) Crimes:
 - (a) Selling liquor to minors
 - (b) Statutory rape
- (3) Defense of mistake of fact not available.

Requisite Intent for Major Crimes			
Specific Intent	General Intent	Malice	Strict Liability
Solicitation	Battery	Common law murder	Statutory rape
Attempt	Rape	Arson	Selling liquor to minors
Conspiracy	Kidnapping		Bigamy (in some jx)
1 st degree premed murder	False imprisonment		
Assault (attempted battery)			
Larceny, robbery			
Burglary			
Forgery			
False pretenses			
Embezzlement			

v) **Model Penal Code (MPC) analysis of fault**

(1) MPC eliminates common law distinctions between general and specific intent and uses these categories of intent:

(a) A subjective standard used for:

(i) **Purposely**

1. When a person's conscious object is to engage in certain conduct or cause a certain result.

(ii) **Knowingly**

1. When a person is aware that his conduct is of a particular nature or knows that his conduct will necessarily and very likely cause a particular result.
2. Satisfies a statute requiring willful conduct.
 - a. So knowingly = willfully

(iii) **Recklessly**

1. When a person knows of a substantial and unjustifiable risk and consciously disregards it.
2. Mere realization of the risk is not enough.
3. Involves both objective (unjustifiable risk) and subjective (awareness) elements.
4. Unless statute specifies a different degree of fault or is strict liability, def must have acted at least recklessly to be criminally liable.

(iv) Exam hint – if asked to interpret a statute, check language carefully for the mental state required for each element, because whether def is guilty turns on mental state.

1. Example: if statute requires that def act knowingly (knowingly sells gun to a felon), def will not be guilty if she did not have that knowledge (didn't know purchaser was a felon).

(b) Negligence

- (i) When a person fails to be aware of a substantial and unjustifiable risk where such failure is a substantial deviation from the standard of care.
- (ii) An objective standard.
 1. But not reasonable person. Def must have taken a very unreasonable risk.

vi) Vicarious liability offenses

- (1) Where a person without personal fault may be held liable for criminal conduct of another (usually an employee).
 - (a) Trend is to limit vicarious liability to regulatory crimes and to limit punishment to fines.

vii) Enterprise liability

- (1) Common law
 - (a) Corp does not have capacity to commit crimes.
- (2) Modern statutes
 - (a) Corps may be held liable for an act performed by:
 - (i) An agent of corp acting within the scope of his employment, or
 - (ii) A corp agent high enough in the hierarchy to presume his acts reflect corp policy.

d) Concurrence of mental fault with physical act

- i) Def must have had the intent necessary for the crime at the time he committed the act.
- ii) And intent must have actuated the act.
- iii) Example: if D is driving to V's house to kill him, he will like the necessary concurrence for murder if D accidentally runs V over before reaching the house.

e) Causation

- i) Some crimes require result and causation.
 - (1) Homicide

STATE OF MIND		
<u>Mens Rea</u>	<u>State of mind required</u>	<u>Objective or subjective test</u>
Common Law		
Specific Intent	Intent to engage in proscribed conduct	Subjective
General intent	Awareness of acting in proscribed manner	Subjective
Malice	Reckless disregard of a known risk	Subjective
Strict liability	Conscious commission of proscribed act	Objective
MPC Fault Standards		
Purposely	Conscious object to engage in proscribed conduct	Subjective
Knowingly	Awareness that conduct is of a particular nature or will cause a particular result	Subjective
Recklessly	Consciously disregarding a substantial known risk	Subjective
Negligently	Failure to be aware of a substantial risk	Objective

3) **Accomplice liability**

a) Parties to a crime

i) **Common law**

(1) Principal in the 1st degree

(a) Person who actually engaged in the act that constitutes the offense or who caused an innocent agent to do so.

(2) Principal in the 2nd degree

(a) Person who aided, commanded, or encouraged the principal and was present at the crime.

(3) Accessory before the fact

(a) Person who assisted or encouraged but was not present.

(4) Accessory after the fact

(a) Person with knowledge that the other committed a felony, assisted him to escape arrest or punishment.

(5) Conviction of principal is required for conviction of an accessory and the charge must have indicated the correct theory of liability (principal or accessory).

- ii) **Modern statutes**
 - (1) Most jx abolished distinctions. All parties to the crime can be found guilty.
 - (a) Still easier to think of as principal and accomplices.
 - (2) Exception:
 - (a) Accessory after the fact.
 - (b) Punishment for this usually bears no relationship to the principal offense.
- b) **Mental state – intent required**
 - i) Most jx require that person giving aid, counsel, or encouragement to principal with the intent to encourage the crime.
 - (1) Mere knowledge is not enough – at least where the aid given is in the sale of ordinary goods at ordinary prices.
 - (a) I.e., gas station attendant is not liable for arson for knowingly selling gas to an arsonist.
 - (2) But selling at a higher price because of buyer's purpose may be enough to have a stake in the venture to constitute liability.
 - (a) I.e., charging arsonist \$100 for the gallon of gas.
- c) **Scope of liability**
 - i) Accomplice is responsible for crimes he counseled and for any other crimes committed in the course of committing the crime, as long as the other crimes were probable or foreseeable.
 - ii) Person who cannot be convicted as a principal can still be convicted of being an accomplice.
 - (1) I.e., at common law, woman cannot be convicted of being principal in a rape, but can be an accomplice if she aids principal.
 - iii) Exclusions from liability:
 - (1) Members of the protected class
 - (a) I.e., a woman transported across state lines cannot be an accomplice to the crime of transporting women across state lines for immoral purposes, since she is in the class being protected.
 - (2) Necessary parties not provided for
 - (a) I.e., if statute makes sale of heroin illegal but does not provide for punishment of purchaser, he cannot be found guilty under the statute as an accomplice to the seller.

iv) **Withdrawal**

- (1) A person who withdraws from a crime before it is committed cannot be held guilty as an accomplice.
 - (a) Must occur before the crime becomes unstoppable.
- (2) Repudiation is enough for withdrawal for mere encouragement.
- (3) Attempt to neutralize is required if participation went beyond mere encouragement.
- (4) Notifying the police or taking other action to prevent the crime is also sufficient.

Classification of crimes

Was crime committed prior to or in preparation for a more serious offense?

No	Yes
	- solicitation
	- attempt
	- conspiracy
	(see inchoate crimes chart)

Was the crime against person or property?

Property	Person
	Did death result?
	Yes
	No
	- battery
	- assault
	- false imprisonment
	- kidnapping
	- rape
	murder
	manslaughter
	felony murder

Was crime against habitation or personal property?

Personal Prop	Habitation
	- burglary
	- arson
larceny	
embezzlement	
false pretenses	
robbery	

4) **Inchoate offenses**

a) **Solicitation**

i) Elements

- (1) Inciting, counseling, advising, urging, or commanding another to commit a crime
- (2) With the intent that the person solicited commit the crime.
- (3) It is not necessary that the person says yes.

ii) Defenses

- (1) That the solicitor could not be found guilty of the completed crime because of a legislative intent to exempt her.
 - (a) I.e., woman cannot be found guilty of soliciting man to transport her across state lines for purpose of immoral purposes.
- (2) MPC recognizes renunciation if def prevents commission of the crime.

iii) Not defenses:

- (1) That the person solicited is not convicted.
- (2) That the offense solicited could not in fact have been successful.
- (3) Most jx, not a defense that the solicitor renounces or withdraws the solicitation.

iv) Merger

- (1) If person accepts the solicitation, both can be held liable for that crime.
- (2) May also both be liable for attempt (if person solicited commits sufficient acts).
- (3) If not enough for attempt, both can be held liable for conspiracy.
- (4) Solicitor cannot be punished for both solicitation and other offenses.

b) **Conspiracy** – agreement between 2 or more to commit a crime.

i) Elements

- (1) **Agreement between 2 or more people;**
- (2) **Intent to enter into that agreement;** and
- (3) **Intent by at least 2 people to achieve the objective of the agreement.**
 - (a) So you need at least 2 guilty minds, 2 who intend to agree and intend that the crime be committed.
 - (i) I.e., no conspiracy between def and undercover cop because only def intended the crime to be committed.
 - (ii) I.e., if facts show that 2nd person only agreed, pretending to go along with it but really meant to warn police, no conspiracy.

- ii) **Agreement** between 2 or more people – must involve a meeting of the minds
 - (1) Spouses
 - (a) Common law – spouses cannot conspire together
 - (b) Modern – most states abandoned this
 - (2) Corp and agent
 - (a) No conspiracy between corp and a single agent acting on its behalf.
 - (b) Split on whether agents of corp can be co-conspirators with corp.
 - (3) Wharton rule
 - (a) When 2 or more people are needed for the commission of the substantive offense (adultery, dueling) there is no crime of conspiracy unless more parties participate in the agreement then are necessary for the crime.
 - (i) I.e., because it takes 2 people to commit adultery, it takes 3 people to conspire to commit adultery.
 - (b) Exception:
 - (i) Does not apply to agreements with necessary parties not provided for by the substantive offense. Both parties may be guilty of conspiracy even though both are necessary for commission of the substantive offense.
 - (4) Agreement with person in protected class
 - (a) Persons within the protected class cannot be guilty of the crime itself or of conspiracy to commit that crime.
 - (b) Nonprotected person cannot be guilty of conspiracy if the agreement was with the protected person only.
 - (5) Acquittal of some conspirators
 - (a) Traditional view - acquittal of all persons with whom def is alleged to have conspired precludes conviction for conspiracy of the last def.
 - (i) In some jx under this view, a conviction for conspiracy is allowed to stand when the co-conspirator is acquitted in a separate trial.
 - (ii) Acquittal is key – If def and other conspired and only def is charged and tried, def can be convicted. But if def is charged and tried and all others have been acquitted, def cannot be convicted – acquittals show there was no one with def to conspire with.
 - (b) MPC approach
 - (i) Def can be convicted of conspiracy regardless of whether the other parties have all been acquitted or were only feigning agreement.

iii) **Specific intent**

- (1) Parties must have:
 - (a) **Intent to agree**, and
 - (b) **Intent to achieve the objective** of the conspiracy.

iv) **Overt act**

- (1) Most states require performance of an act in furtherance of the conspiracy.
Act of mere preparation is usually enough.

v) **Liability for co-conspirator crimes**

- (1) Conspirator may be liable for crimes committed by co-conspirators if:
 - (a) Crimes were committed in furtherance of the objectives of the conspiracy, and
 - (b) Were foreseeable.

vi) Termination of conspiracy

- (1) Usually upon completion of the wrongful objective.
- (2) Unless agreed to in advance, acts of concealment are not part of the conspiracy.

vii) **Defenses**

- (1) Not a defense:
 - (a) Factual impossibility
 - (b) **Withdrawal**
 - (i) Generally not a defense to conspiracy because the conspiracy is complete as soon as the agreement is made and an act in furtherance is performed.
- (2) Defense:
 - (a) **Withdrawal**
 - (i) May be a defense to crimes committed in furtherance of conspiracy, including the substantive target crime of the conspiracy.
 - (ii) To be effective, conspirator must perform an affirmative act that notifies all members of her withdrawal. Notice must be given in time for all members to abandon their plans. If she has assisted as an accomplice, she must try to neutralize the assistance.

(iii) Withdrawal is important on exam. Don't let feelings get in the way. Remember:

1. Conspiracy is complete upon the agreement with the requisite intent and an overt act.
2. Overt act can be preparatory, so conspiracy is usually complete very soon after the agreement.
3. If crime is complete, def is guilty of conspiracy – even if facts show she had 2nd thoughts, told her co-conspirators she was backing out, warned the police, hid the weapons, etc. These actions are too late.
 - a. These actions may relieve def of liability for acts of co-conspirators after this withdrawal but they have no effect on the crime of conspiracy.

viii) **No merger**

- (1) Conspiracy and the completed crime are distinct offenses and def can be convicted and punished for both.

ix) Large conspiracy with a number of subconspiracies

- (1) Important to determine whether members of one subconspiracy are liable for acts of other subconspiracies.
- (2) Chain relationship
 - (a) A single, large conspiracy in which all parties to subagreements are interested in the single large scheme.
 - (b) All members are liable for the acts of others in furtherance of the conspiracy.
- (3) Hub and spoke relationship
 - (a) Number of independent conspiracies are linked by a common member.
 - (b) The common member will be liable for all conspiracies, members of the individual conspiracies are not liable for the acts of others.

c) **Attempt**

i) Elements – attempt is:

(1) An **act**;

- (a) Act must be beyond mere preparation for the offense.

(i) Traditionally

1. Proximity test – requires act be dangerously close to successful completion of the crime.

(ii) MPC and most states

1. Substantial step – requires act constitute a substantial step in a course of conduct planned to culminate in the commission of the crime that strongly corroborates the actor's criminal purpose.

- (2) Done with **intent to commit a crime**;
 - (a) Attempt always requires a specific intent (to commit the crime) regardless of the intent necessary for the completed offense.
 - (i) Attempt to commit a crime defined as negligent (negligent homicide) is logically impossible because a person does not intend to be negligent.
- (3) That **falls short of completing the crime**.

ii) **Defenses**

- (1) Defense
 - (a) Legal impossibility – only when def did or intended acts that would not constitute a crime.
 - (b) Abandonment – MPC provides that a fully voluntary and complete abandonment is a defense.
- (2) Not defense
 - (a) Factual impossibility
 - (i) I.e., fact that robbery victim has no property is not a defense.
 - (b) Abandonment
 - (i) If def had intent and committed an overt act, she is guilty of attempt despite the fact that she changed her mind and abandoned the plan before the intended crime was completed.

iii) **Merger**

- (1) Attempt merges with the completed crime.
 - (a) So def cannot be found guilty of both attempt and the completed crime.
 - (b) Def charged with only the completed crime may be found guilty of attempt. But def charged only with attempt may not be convicted of the completed crime.

<u>Inchoate crimes</u>			
	Solicitation	Conspiracy	Attempt
Culpable conduct	Solicitation of another to commit a felony	Agreement between 2 or more to commit a crime	Performance of an act that would be a crime if successful
Mental state	Specific intent that person solicited commit the crime	Specific intent to 1) enter into agreement, and 2) achieve the objective	Specific intent to commit the particular crime attempted
Overt act	No act (other than solicitation)	Act in furtherance of the conspiracy	Act dangerously close to success (MPC – substantial step)
Merger into completed crime?	Yes	No	Yes
Withdrawal a defense?	Generally no	No, except for further crimes of co-conspirators	Generally no

5) Responsibility and criminal capacity

a) Insanity

- i) Tests to determine whether, at time of the crime, def was so mentally ill as to be entitled to acquittal.

(1) M'Naughten rule

- (a) Def is entitled to acquittal only if he had a mental disease/defect that caused him to either:
 - (i) Not know his act would be wrong, or
 - (ii) Not understand the nature and quality of his actions.
- (b) Loss of control because of mental illness is no defense.

- (c) Short way to remember = def does not know right from wrong.

(2) Irresistible impulse test

- (a) Def is entitled to acquittal only if, because of a mental illness, he was unable to control his actions or conform his conduct to the law.
- (b) Short way to remember = an impulse def cannot resist.

(3) **Durham (or New Hampshire) Test**

(a) Def is entitled to acquittal if the crime was the product of his mental illness.

(i) Crime would not have been committed but for the disease.

(ii) Broader than either M'Naughten or irresistible impulse.

(b) Short way to remember = but for the mental illness, def would not have done the act.

(4) **MPC test**

(a) Def is entitled to acquittal if he had a mental disease/defect and as a result, he lacked the substantial capacity to either:

(i) Appreciate the criminality of his conduct, or

(ii) Conform his conduct to the requirements of the law.

(b) This is the modern trend.

(c) Short way to remember = combination of M'Naughten and irresistible impulse.

ii) Procedural issues

(1) Burden of proof

(a) All def are presumed sane. Def must raise insanity issue.

(b) Split of jx as to whether def raising the issue bears the burden of proof.

(2) When raised

(a) Not guilty plea at arraignment does not waive right to raise defense in the future.

(3) Pretrial psych exam

(a) If def does not raise the issue, he may refuse a court-ordered psych exam to determine his competency.

(b) If def raises issue, he may not refuse psych exam.

iii) Post-acquittal commitment to mental institution

(1) In most jx, def acquitted by reason of insanity may be committed to a mental institution until cured.

(2) Can be for longer than the max period of incarceration for the offense charged.

iv) Mental condition during proceedings

(1) Due process clause says def cannot be tried, convicted, or sentenced if, as a result of mental disease/defect, he is unable to:

(a) Understand the nature of the proceedings being brought against him;
or

(b) To assist his lawyer in preparation of his defense.

(2) Def cannot be executed if he is incapable of understanding the nature and purpose of the punishment.

- v) Diminished capacity
 - (1) Some states recognize this. Def asserts that he did not have the mental state required because of a mental defect short of insanity.
 - (2) Limited to specific intent crimes, but few allow it for general intent.
- b) **Intoxication**
 - i) May be caused by any substance. Can be raised whenever intoxication negates one of the elements of the crime.
 - ii) **Voluntary** intoxication
 - (1) The result of intentional taking of an intoxicating substance without duress.
 - (2) May be offered as a defense to specific intent crimes. Only if the crime requires purpose (intent) or knowledge and the intoxication prevented def from formulating that purpose or knowledge.
 - (a) Defense not available if def purposely became intoxicated in order to use the defense.
 - (3) Not a defense to crimes involving malice, recklessness, negligence, or strict liability.
 - (a) So intoxication will not reduce 2nd degree murder (involving criminal recklessness) to manslaughter.
 - iii) **Involuntary** intoxication
 - (1) Only if the taking of the intoxicating substance was:
 - (a) Without knowledge of its nature,
 - (b) Under direct duress imposed by another, or
 - (c) Pursuant to medical advice while unaware of the intoxicating effect.
 - (2) May be treated as mental illness and def is entitled to acquittal if she meets jx insanity test.
- c) **Infancy**
 - i) Common law
 - (1) No liability for an act committed by child under 7.
 - (2) Between 7 and 14, rebuttable presumption that child was unable to understand the wrongfulness of his acts.
 - (3) Over 14 treated as adults.
 - ii) Modern statutes
 - (1) No child can be convicted of a crime until child reaches stated age – usually 13 or 14.
 - (2) Child can be found delinquent in juvenile court.

<u>Defenses negating criminal capacity</u>		
Defenses	Elements	Applicable crimes
Insanity	Meet applicable <u>insanity test</u> (M’Naughten, irresistible impulse, Durham, MPC)	Defense to all crimes
Intoxication		
- Voluntary	<u>Voluntary, intentional taking</u> of a substance <u>known to be</u> intoxicating	Defense to specific intent crime if intoxication prevents formation of required intent.
- Involuntary	Taking intoxicating substance <u>without knowledge</u> of its nature, <u>under duress</u> , or pursuant to <u>medical advice</u> .	Treated as mental illness (apply appropriate insanity test) Defense to all crimes
Infancy	Common law: def under 14 Modern statutes: def under 13 or 14	Common law: under age 7, defense to all crimes. Under 14, rebuttable presumption of defense. Modern statutes: defense to adult crimes but may still be delinquent
Diminished capacity (in some states)	As a result of mental defect short of insanity, def did not have the required mental state to commit the crime.	Most states limit defense to specific intent crimes.

6) Principles of exculpation

a) Justification

- i) Although def did the act, he should not be punished because the circumstances justify the action.
- ii) Exam tip
 - (1) Threat must be immediate – threat of future harm is not sufficient.
 - (2) Nondeadly force is justified where it appears necessary to avoid imminent injury or retain property. Deadly force is justified only to prevent death or serious bodily injury.

iii) Self-defense

(1) Nondeadly force

- (a) Use force as reasonably appears necessary to protect herself from the imminent use of unlawful force upon herself.
- (b) No duty to retreat.

(2) Deadly force

- (a) Allowed if:
 - (i) She is without fault;
 - (ii) She is confronted with unlawful force; and
 - (iii) She is threatened with imminent death or great bodily harm.
- (b) Imperfect self-defense – some states would find def guilty of manslaughter rather than murder if def kills in self-defense but not all 3 requirements are met.

(c) Retreat

- (i) Generally, there is no duty to retreat.
- (ii) Minority view – requires retreat if victim can safely do so, unless attack occurs:
 - 1. In the victim's home
 - 2. While victim is making a lawful arrest, or
 - 3. While assailant is robbing victim.

(d) Aggressor's use of self-defense

- (i) Self-defense can only be used by the aggressor if:
 - 1. She effectively withdraws from the altercation; and
 - 2. She communicates to the other her desire to do so; or
 - 3. Victim of the initial aggression suddenly escalates the minor fight into a deadly altercation; and
 - 4. Initial aggressor has no chance to withdraw.

iv) Defense of others

- (1) Def can defend others if she reasonably believes that the person assisted has the legal right to use force in his own defense.
- (2) No special relationship between the people is needed.

v) **Defense of a dwelling**

- (1) Nondeadly force
 - (a) Can be used to prevent or terminate what is reasonably regarded as an unlawful entry into or attack on def's dwelling.
- (2) Deadly force
 - (a) Can only be used to prevent a violent entry made with the intent to commit a personal attack on an inhabitant; or
 - (b) To prevent an entry to commit a felony in the dwelling.
- (c) Basis for right to use deadly force is not to protect the dwelling but to protect the safety of the people inside.

vi) **Defense of other property**

- (1) Defending possession
 - (a) Deadly force can never be used.
 - (b) Nondeadly force may be used, but not if a request to refrain from the activity would be enough.
- (2) Regaining possession
 - (a) Force cannot be used to regain property wrongfully taken unless the person using force is in immediate pursuit of the taker.

vii) **Crime prevention**

- (1) Nondeadly force can be used to extent reasonably necessary to prevent felony or serious breach of the peace.
- (2) Deadly force only used to prevent dangerous felony to human life.

viii) **Use of force to effectuate arrest**

- (1) Nondeadly force can be used if reasonably necessary to get an arrest.
- (2) Deadly force only if necessary to prevent felon's escape and felon threatens death or serious bodily harm.
- (3) Private persons
 - (a) Can use nondeadly force to make arrest if:
 - (i) A crime was in fact committed, and
 - (ii) Private person has reasonable grounds to believe the person arrested in fact committed the crime.
 - (b) Can use deadly force only if person harmed was actually guilty of offense.

ix) **Resisting arrest**

- (1) Nondeadly force can be used to resist an improper arrest even if a known officer is making arrest.
- (2) Deadly force may be used only if person does not know that it is an officer arresting him.

x) **Necessity**

- (1) It is a defense that the person reasonably believed that commission of the crime was necessary to avoid imminent and greater injury to society than that involved in the crime.
- (2) It is an objective test – good faith belief is not enough.
- (3) Limits:
 - (a) Causing death to protect property is never justified.
 - (b) Necessity defense not available if def is at fault in creating the situation that required him to choose between 2 evils.
- (4) Involves pressure from natural or physical forces.
 - (a) Duress involves a human threat.

xi) **Public policy**

- (1) Police officer is justified to use reasonable force against another, or in taking property, provided officer acts pursuant to a law or court order.

xii) **Domestic authority**

- (1) Parents of a minor child may lawfully use reasonable force upon the child for purpose of promoting child's welfare.

<u>Justification Defenses</u>		
Defense	Nondeadly force	Deadly force
Self-defense	If reasonably necessary to protect self	Only if threatened with death or great bodily harm
Defense of others	If reasonably necessary to protect person	Only if threatened with death or great bodily harm
Defense of dwelling	If reasonably necessary to prevent or end unlawful entry	Only if person inside is threatened or to prevent felony inside
Defense of other property	If reasonably necessary to defend property in one's possession (but if request to desist would suffice, for <u>not</u> allowed)	Never
Crime prevention	If reasonably necessary to prevent felony or serious breach of peace	Only to prevent or end felony risking human life
Effectuate arrest		
- Police	If reasonably necessary to arrest	Only to prevent escape of felon who threatens human life
- Private person	If crime in fact committed and reasonable belief that this person committed it	Only to prevent escape of person who actually committed felony and who threatens human life
Resisting arrest	If improper arrest	Only if improper arrest and def does not know it is officer
Necessity	If reasonably necessary to avoid greater harm	Never

b) **Duress**

- i) Def reasonably believed that another person would imminently inflict death or great bodily harm upon him or a member of his family if he did not commit the crime.
- ii) This is a defense to a crime other than homicide.

c) **Other defenses**

i) **Mistake or ignorance of fact**

- (1) This is relevant to criminal liability only if it shows that def lacked the state of mind required for the crime.
 - (a) So it is irrelevant for a strict liability crime.
- (2) Reasonableness
 - (a) Mistake need not be reasonable if offered to disprove a specific intent.
 - (b) Must be reasonable to disprove any other state of mind.
- (3) Exam tip – don't confuse this with factual impossibility.
 - (a) In both, def is mistake about certain facts, but results for each are different.
 - (b) Mistake – defense to a crime that has been completed.
 - (c) Impossibility – arises only when def fails to complete the crime and is being charged with attempt. Impossibility is not a defense to attempt.

ii) **Mistake or ignorance of law**

(1) **No defense**

- (a) Even if belief was reasonable and based on advice of atty.
 - (i) However, reliance on atty may negate a mental state element. To have mistake negate mental state, mistake must be on the elements of the crime, not on the existence of the statute making the act criminal.
 - 1. I.e., def cannot be found guilty of selling a gun to a known felon if she thought that the crime buyer was guilty of was only a misdo.

(2) Exceptions: def has a defense if:

- (a) Statute proscribing conduct was not published or made reasonably available prior to conduct.
- (b) There was reasonable reliance on statute or judicial decision.
- (c) In some jx, there was reasonable reliance on official interpretation or advice.

iii) **Consent**

- (1) Only a defense if the crime requires lack of consent of the victim (rape).
- (2) Is a defense to minor assault and batteries if there is no danger of serious bodily injury.
- (3) Elements:
 - (a) Consent was voluntarily and freely given;
 - (b) Party was legally capable of consenting; and
 - (c) No fraud involved in obtaining consent.

iv) **Entrapment**

- (1) Exists only if:
 - (a) The criminal design originated with law enforcement officers, and
 - (b) Def was not predisposed to commit the crime prior to contact by govt.
- (2) Cannot be entrapped by a private person.
- (3) Fed law – entrapment cannot be based on fact that govt provided an ingredient for the commission of the crime.
- (4) Exam tip – this is difficult to establish so on MBE, entrapment is usually the wrong choice.

v) No defense

- (1) Forgiveness by the victim.
- (2) Illegal conduct by victim of a crime.

<u>Exculpatory Defenses</u>		
Defense	Applicable to	When available
Justification (self-defense, defense of others, etc.)	Usually crimes of force (battery, homicide)	Nondeadly – if reasonably necessary to avoid imminent injury or to retain property Deadly – only to prevent serious bodily harm
Duress	All crimes <u>except</u> homicide	Def reasonably believed that another would imminently harm him or a family member if he did not commit the crime
Mistake of fact	Crimes with a mental state element (all crimes except strict liability)	Specific intent crimes – any mistake that negates intent Other crimes – only reasonable mistakes
Mistake of law	Crimes with a mental state element and statutory crimes	Mistake must negate awareness of some aspect of law regarding the elements of the crime Exceptions: (see above)
Consent	Crimes requiring lack of consent and minor assaults and batteries	Applicable <u>only</u> if consent is freely given, party is capable of consenting, and no fraud was used to obtain consent
Entrapment	Most crimes, but not available if police merely provide the opportunity to commit the crime	Criminal design originated with the police and def was not predisposed to commit the crime before contact with the police

7) **Offenses against the person**

a) **Assault and battery**

i) **Battery**

(1) Elements:

- (a) Unlawful application of force
- (b) To the person of another
- (c) Resulting in either bodily injury or an offensive touching.

(2) Need not be intentional and force need not be directly applied.

- (a) I.e., causing a dog to attack the victim is battery.

(3) Types:

- (a) Simple battery is a misdemeanor.
- (b) Aggravated battery in most jurisdictions are felonies:
 - (i) Battery with a deadly weapon
 - (ii) Battery resulting in serious bodily harm
 - (iii) Battery of a child, woman, or police officer

ii) **Assault**

(1) Elements:

- (a) Intentional creation
 - (i) Other than by mere words
- (b) Of a reasonable apprehension in the mind of victim
 - (i) If actual touching is involved, the crime is battery, not assault.
- (c) Of imminent bodily harm.

(2) Assault is also an attempt to commit a battery.

(3) Exam tip – think of assault both ways:

- (a) Attempt to commit battery – a specific intent crime (def must intend to commit the battery), and
- (b) Creation of reasonable apprehension assault
- (c) Example: if D stops V at knifepoint and demands V's money, D has committed the creation of reasonable apprehension assault but not attempted battery assault.

iii) **Mayhem**

- (1) Common law – requires dismemberment or disablement of a bodily part.
- (2) Modern trend – to abolish this crime and treat it as aggravated battery.

iv) **Homicide**

(1) **Common law** categories:

(a) **Murder**

(i) Unlawful killing of a person with **malice aforethought**.

(ii) **Malice aforethought:**

1. No facts reduce the killing to voluntary manslaughter or excuse it, and
2. Killing was committed with state of mind of:
 - a. Intent to kill;
 - i. Inference of intent to kill created by an intentional use of a deadly weapon.
 - b. Intent to inflict great bodily injury;
 - c. Reckless indifference to an unjustifiably high risk to human life (abandoned and malignant heart); or
 - d. Intent to commit a felony (felony murder).

(iii) Exam tip – don't follow emotions. If facts paint out def to be a terrible person, he is not guilty of murder if he does not have one of these states of mind. Similarly, def intends to kill in a mercy killing incident, so even though it is an act of love, he is guilty of murder.

(b) **Voluntary manslaughter**

(i) Killing that would be murder but for the existence of adequate provocation.

1. Provocation is adequate only if: (heat of passion)
 - a. It would arouse sudden and intense passion in the mind of an ordinary person, causing him to lose self-control;
 - i. I.e., exposure to a threat of deadly force or finding spouse in bed with another are adequate provocations.
 - b. Def was in fact provoked;
 - c. There was not sufficient time for a reasonable person to cool; and
 - d. Def in fact did not cool off between provocation and killing.

(ii) Imperfect self-defense

1. Some states use this even though def's actions do not qualify for self-defense. Reduction to manslaughter even though def was at fault in starting the altercation, or def unreasonably but honestly believed in the necessity for responding with deadly force.

(iii) Exam tip – make sure to consider all 4 elements of provocation carefully and not jump to assumption. Also note reasonable person standard. Consider:

1. Passion must be reasonable under the circumstances. Def cannot be set off by something that would not bother others.
2. Def must lose control – so even if reasonable person would have been provoked, if def was not, there is no reduction to manslaughter.
3. Time to cool – the more time that passes, the more likely a reasonable person would have cooled off.
4. Def must not have cooled down. If de did calm down, there is no reduction to manslaughter.

(iv) Exam tip – remember that heat of passion is not a defense to the killing but it just reduces from murder to manslaughter.

(c) Involuntary manslaughter

- (i) If killing was committed with criminal negligence.
- (ii) Some states use this for killings in the commission of an unlawful act (misdo or felony not included in felony murder rule).
 1. Foreseeability of death is required.

(2) Statutory modifications to common law categories

(a) Murder is 2nd degree unless it falls into categories below which make it 1st degree murder.

(b) 1st degree murder

(i) Deliberate and premeditated

1. Def decides to kill in a cool and dispassionate manner and actually reflects on the idea of killing, even if only for a brief period.
2. 1st degree murder based on premeditation requires specific intent which may be negated by voluntary intoxication.
 - a. If def was so drunk that he could not premeditate, he can only be convicted of 2nd degree murder or common law murder because that only requires a reckless indifference to life (for which voluntary intoxication is not a defense).

(ii) 1st degree felony murder

1. Killing during commission of 1 of the following felonies:
 - a. Burglary, arson, rape, robbery, kidnapping
 - b. Other states may have additional crimes that are inherently dangerous to human life.
2. Some statutes may say killing during any felony is felony murder but then it would be classified as 2nd degree murder.
3. Some states require the felony be inherently dangerous to life to provide for felony murder.

- (iii) Some statutes make killings performed in certain ways (by torture)
1st degree murder.

(3) Felony murder

- (a) Any death caused in the commission of, or in attempt to commit, a felony is murder.
 - (i) Malice is implied from intent to commit the underlying felony.
- (b) Felonies included
 - (i) Common law – burglary, arson, rape, sodomy
 - (ii) Statutes have added more felonies.
- (c) Limitations on liability
 - (i) Def must have committed the underlying felony.
 - 1. Defense that negates an element of the underlying offense is also a defense to felony murder.
 - (ii) Felony must be distinct from the killing itself.
 - 1. Aggravated battery that causes death does not qualify as basis to impose felony murder.
 - (iii) Death must have been a foreseeable result of the felony.
 - (iv) Death must have been caused before def's immediate flight from the felony ended.
 - 1. Once felon reached a place of temporary safety, subsequent deaths are not felony murder.
 - (v) Def is not liable for felony murder when a co-felon is killed as a result of resistance from felony victim or police.
 - (vi) Agency theory – def is not liable for felony murder when innocent party is killed unless death is caused by def or his agent (accomplice)
 - 1. But proximate cause theory – def may be liable when innocent party is killed by victim or police.

(4) Causation

- (a) Def's conduct must be both:
 - (i) Cause in fact, and
 - 1. Death would not have occurred but for def's conduct.
 - (ii) Proximate cause of death
 - 1. Death is a natural and probable consequence of the conduct.
- (b) Act that hastens an inevitable result is still the legal cause.
- (c) Simultaneous acts of 2 or more people may be independently sufficient cause.

(d) Limitations

(i) Year and a day rule

1. Traditionally – for def to be liable for homicide, death must occur within 1 year and a day from the injury.
2. Modern – most states abolish this rule

(ii) Intervening acts

1. Shields def from liability if act is a coincidence or not foreseeable from risk created by def.
2. 3rd party's negligent medical care or victim's refusal of medical care are foreseeable, so def would still be liable.

v) **False imprisonment**

(1) Elements:

(a) Unlawful confinement of a person;

(b) Without his valid consent.

- (i) Consent is invalidated by coercion, threats, deception, incapacity due to mental illness, retardation, or youth.

(2) Confinement must interfere substantially with victim's liberty.

- (a) So not enough to block someone if there are alternate routes available.

vi) **Kidnapping**

(1) Elements:

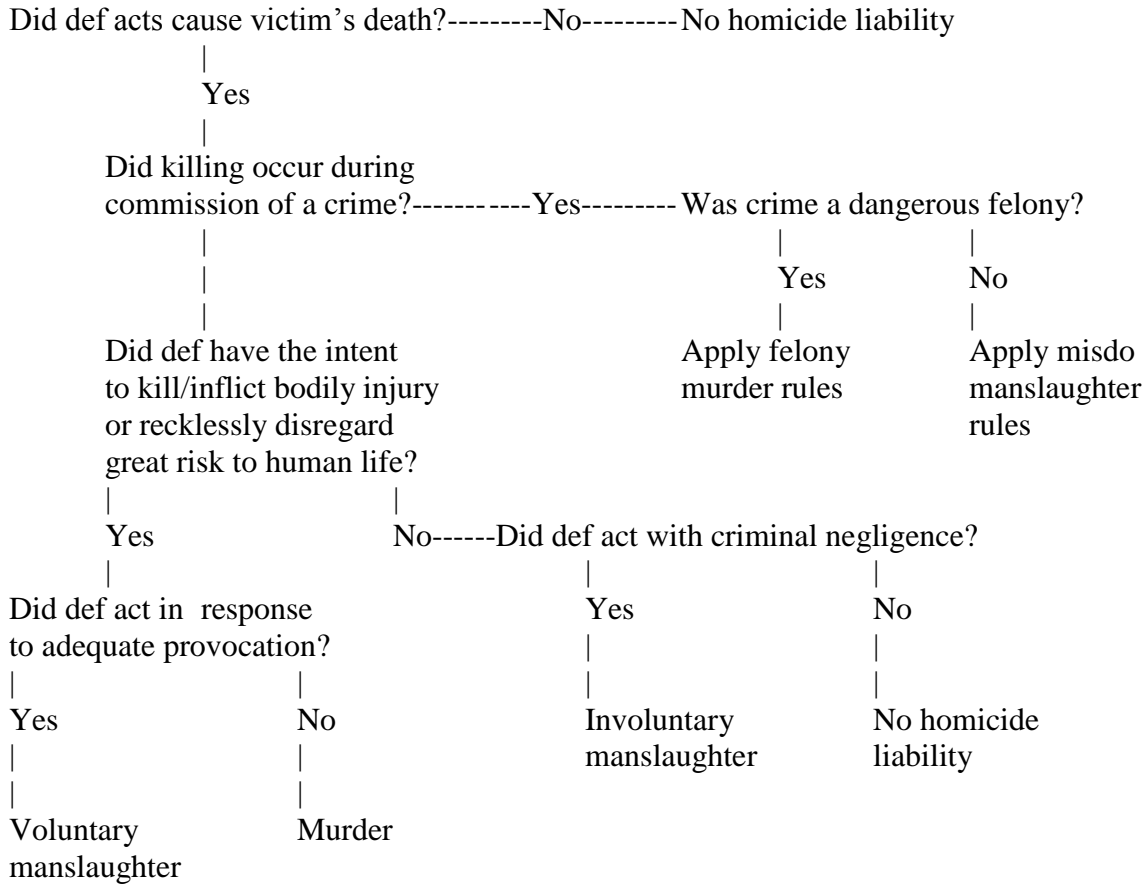
(a) Unlawful confinement of a person that involves either;

- (i) Movement of the victim, or
- (ii) Concealment of the victim in a secret place.

(2) Aggravated kidnapping

- (a) Kidnapping for ransom, for purpose of committing other crimes, for offensive purposes, and child stealing.

Homicide Crimes



This chart will lead you to the prima facie homicide that def committed. Then decide whether any defenses apply.

8) **Sex offenses**

a) **Rape**

i) Elements:

- (1) Unlawful carnal knowledge of a woman by a man, not her husband,
 - (a) Slightest penetration is enough.
 - (b) MPC says husband cannot rape his wife. Most states now either reject this or reject it where parties are separated.
- (2) Without her effective consent.
 - (a) Lack of effective consent exists where:
 - (i) Intercourse is accomplished by actual force.
 - (ii) Intercourse is accomplished by threats of great and immediate bodily harm.
 - (iii) Victim is incapable of consenting due to unconsciousness, intoxication, or mental condition.
 - (iv) Victim is fraudulently cause to believe that the act is not intercourse.
 - (b) So not that consent due to other types of fraud is effective.
 - (i) I.e., telling victim he is her husband or he will marry her.

b) **Statutory rape**

i) Elements:

- (1) Carnal knowledge of a female under the age of consent.
- ii) Strict liability crime. Not necessary to show lack of consent.
 - (1) So reasonable mistake as to age is also irrelevant.

c) **Adultery and fornication**

- i) Adultery – committed by both parties to intercourse if either is validly married to someone else.
 - (1) Often required that behavior be open and notorious.
- ii) Fornication – intercourse or open and notorious cohabitation by unmarried persons.

d) **Incest**

- i) Marriage or sexual act between closely related persons.

e) **Seduction**

- i) Inducing, by promise of marriage, an unmarried woman to engage in intercourse.
- ii) MPC does not require chastity or that female be unmarried.

f) **Bigamy**

- i) Common law – strict liability – marrying someone else while having another living spouse.

9) **Property offenses**

a) **Larceny**

i) Elements:

- (1) A taking (obtaining control);
- (2) And carrying away;
- (3) Of tangible personal property;
 - (a) Excludes realty, services, and intangibles.
 - (b) Includes written instruments embodying intangible rights such as stock certificates.
- (4) Of another with possession;
 - (a) So if def had possession of property at time of taking, crime is not larceny (but may be embezzlement).
 - (b) Possession is more than just custody, involves greater authority to deal with the property.
 - (i) I.e., low level employees have custody of employer's property so are guilty of larceny.
- (5) By trespass (without consent or by consent induced by fraud);
- (6) With intent to permanently deprive that person of her interest in the property.
 - (a) Intent must be at the time of the taking.
 - (i) If def believes property she is taking is hers, or if she intends only to borrow the property or to keep it as repayment of a debt, there is no larceny.

ii) Larceny can be committed with lost or mislaid property or property delivered by mistake but not with abandoned property.

iii) If def wrongfully takes property without intent to permanently deprive (borrow umbrella without permission) and later decides to keep it, she is guilty of larceny when she decides to keep it.

- (1) If the original taking was not wrongful (took umbrella thinking it was hers) and later decides to keep it, it is not larceny.

b) **Embezzlement**

i) Elements:

- (1) The fraudulent;
 - (a) Def must intend to defraud.
- (2) Conversion;
 - (a) I.e., dealing with the property in a manner inconsistent with the arrangement by which def has possession
- (3) Of personal property;
- (4) Of another;
 - (a) Not embezzlement if conversion is pursuant to a claim of right to the property. Whether def took it openly is an important factor.
- (5) By a person in lawful possession of that property.

- ii) Differs from larceny
 - (1) Embezzlement – def misappropriates property while it is in his rightful possession.
 - (2) Larceny – def misappropriates property not in his possession.
- iii) Intent to restore
 - (1) If def intends to restore the exact property taken, it is not embezzlement.
 - (2) But if def intends to restore similar property, it is embezzlement.
 - (a) Even if what was taken was cash and the intent is to return the same amount – still embezzlement.
- c) **False pretenses**
 - i) Elements:
 - (1) Obtaining title;
 - (2) To personal property of another;
 - (3) By an intentional false statement of past or existing fact;
 - (a) Victim must actually be deceived by or act in reliance on the misrepresentation and this must be a major factor (or sole cause) of victim passing title to def.
 - (b) Not enough:
 - (i) Misrepresentation as to what will occur in future.
 - (ii) False promise, even if made without the intent to perform.
 - (4) With intent to defraud the other.
 - ii) Tricks
 - (1) If victim is tricked by a misrepresentation of fact, into giving up mere possession of property, crime is larceny by trick.
 - (2) If victim is tricked into giving up title to the property, crime is false pretenses.
- d) **Robbery**
 - i) Elements:
 - (1) A taking;
 - (2) Of personal property of another;
 - (3) From the other's person or presence (including anywhere in his vicinity);
 - (4) By force or threats of immediate death or physical injury to the victim, a family member, or some person in the victim's presence;
 - (a) Victim must give up property because she feels threatened. If given up for another reason (feels sorry for def or wants def to go away) then def is not guilty of robbery. (But maybe for attempted robbery.)
 - (5) With the intent to permanently deprive him of it.
 - ii) Differs from larceny because robbery requires def to use force or threats to get property.
 - (1) I.e., pick pocketing would be larceny but if victim notices attempt and resists, then taking would be robbery.

Property Crimes				
Crime	Activity	Method	Intent	Title
Larceny	Taking and carrying away property from possession of another person	Without consent or with consent obtained by fraud	With intent to steal	Title does not pass
Embezzlement	Conversion of property held pursuant to a trust agreement	Use of property in a way inconsistent with terms of trust	With intent to defraud	Title does not pass
False pretenses	Obtaining title to property	By consent induced by fraudulent misrepresentation	With intent to defraud	Title passes
Robbery	Taking of property from another's presence	By force or threat of force	With intent to steal	Title does not pass

e) **Extortion**

i) Common law

(1) Corrupt collection of unlawful fee by an officer under color of office.

ii) Modern statutes

(1) Obtaining property by means of threats to do harm or to expose information.

(2) Some statutes do not require obtaining the property – crime is completed with the threats are made with the intent to obtain the property.

iii) Differs from robbery

(1) Extortion – threats may be of future harm and taking does not need to be in presence of victim.

f) **Receipt of stolen property**

i) Elements:

(1) Receiving possession and control;

(a) Need not be actual possession. Def possesses the property when put in locate she designates or she arranges a sale to a 3rd person.

(2) Of stolen personal property;

(a) Must be stolen at the time def receives it.

(i) I.e., if police have already recovered the property and use it with the owner's permission, it is not stolen and def not guilty of receipt of stolen property.

(b) Def can be convicted of attempted receipt of stolen property if she intended to receive the property believing it to be stolen.

(3) Known to be stolen;

- (4) By another person;
- (5) With the intent to permanently deprive the owner of his interest in it.

g) **Theft**

- i) Under modern statutes and MPC, property offenses are combined and defined as the crime of theft.

h) **Forgery**

- i) Elements:
 - (1) Making or altering;
 - (2) A writing with apparent legal significance;
 - (3) So that it is false;
 - (a) Representing that it is something that it is not.
 - (i) I.e., a fake warehouse receipt, but not an inaccurate real warehouse receipt.
 - (4) With intent to defraud.
 - (a) No one actually need to be have been defrauded.
- ii) If def fraudulently causes a 3rd person to sign a document that the 3rd person does not realize he is signing, forgery has been committed.
 - (1) But if 3rd person realizes he is signing the document, no forgery, even if 3rd person was induced by fraud to sign it.
- iii) Uttering a forged instrument consists of:
 - (1) Offering as genuine;
 - (2) An instrument that may be the subject of forgery and is false;
 - (3) With intent to defraud.

i) **Malicious mischief**

- i) Elements:
 - (1) The malicious;
 - (2) Destruction of or damage to;
 - (a) This must have been intended or contemplated by def.
 - (3) The property of another.
- ii) Does not require ill will or hatred.

10) Offenses against habitation

a) Burglary

i) Elements:

(1) A breaking;

(a) Common law: creating or enlarging an opening by at least minimal force, fraud, or intimidation.

(b) Modern statutes often eliminate this.

(c) If def had resident's consent to enter, entry is not a breaking.

(2) And entering;

(a) Placing any portion of body or any instrument to commit the crime in the structure.

(3) Of a dwelling;

(a) Common law: structure used with regularity for sleeping purposes.

(b) Modern statutes do not require sleeping purposes.

(4) Of another;

(a) Ownership is irrelevant. Occupancy by someone other than def is all that is required.

(5) At nighttime;

(a) This is common law requirement.

(b) Modern statutes often eliminate this.

(6) With the intent to commit a felony in the dwelling.

(a) Common law required felony.

(b) Modern statutes often say intent to commit misdo theft is enough.

(c) Felony need not be carried out to be burglary.

(d) Intent must be present at the time of entry.

(i) Later-acquired intent is not sufficient.

b) Arson

i) Common law elements:

(1) The malicious;

(a) Intentional or with reckless disregard of an obvious risk.

(2) Burning;

(a) Requiring some damage to the structure cause by fire.

(b) Mere blackening by smoke or discoloration by heat (scorching) is not sufficient. Charring is sufficient.

(3) Of a dwelling;

(a) MBE questions assume arson extends to other structure.

(4) Of another.

ii) Modern statutes have modified these elements. Expand to include damage caused by explosion and expands type of property to include commercial property, cars, trains, etc.

iii) Common law misdo of house burning consisted of:

(1) A malicious burning of one's own dwelling if the structure is either in a city or town or near other homes to create a danger to them.

11) **Offenses involving judicial procedure**

a) **Perjury**

- i) Intentional taking of a false oath (lying) in regard to a material matter (one that might affect the outcome of the proceeding) in a judicial proceeding.

b) **Subornation of perjury**

- i) Consists of procuring or inducing another to commit perjury.

c) **Bribery**

- i) Common law – corrupt payment or receipt of anything of value for official action.
- ii) Modern statutes – extended to nonpublic officials.

d) **Compounding a crime**

- i) Agreeing, for valuable consideration, not to prosecute another for a felony or to conceal the commission of a felony or the whereabouts of a felon.

e) **Misprision of a felony**

- i) Common law – failure to disclose knowledge of the commission of a felony or to prevent the commission of a felony.
- ii) Modern statutes – no longer a crime or if it does, requires some affirmative action in aid of the felon.