This outline was created for the February 2008 California bar exam. The law changes over time, so use with caution. If you would like an **updated** and editable version of this topic outline, go to http://www.barexammind.com/california-bar-exam-outlines/.

Criminal Law Outline

I. Jursidiction and General Matters
   a. Jurisdiction
      i. **Situs** of the crime is where the act or omission takes place and creates jurisdiction (NB: gunshot across state lines killing gives jurisdiction to both states)
   b. Vagueness and other Const Limitations
      i. The statue must not be vague, and must provide:
         1. *fair warning:* ie, a person of ordinary intelligence must be able to discern what is prohibited; and
         2. *no arbitrary or discriminatory enforcement*
   c. Merger
      i. CL
      ii. Modern Law – No Merger
         1. **exceptions:** solicitation and attempt merge into completed crime
            a. **NB:** conspiracy NEVER merges
         2. Never merge crimes with different victims (eg, transferred intent crimes of attempted murder and murder)

II. Essential Elements of a Crime
   a. Physical act (Actus Reus)
      i. The act must be **voluntary**
         1. the following are NOT voluntary:
            a. conduct that is <u>not the product of the actor's determination</u>
            b. <u>reflexive or convulsive</u> acts (eg, seizure)
            c. acts performed while D is <u>unconscious or asleep</u> (but if fall asleep while driving, liable)
      ii. Omission as an "Act"
         1. generally, no legal duty to act, but can arise in 5 situation:
            a. by statute
            b. by contract
            c. by relationship (eg, spouse, children)
            d. by voluntary assumption of care ("I'll save him")
            e. if D created peril for victim
         2. failure to act = liability only if:
            a. there was a duty to act;
            b. D has knowledge of facts giving rise to duty to act; and
            c. It is reasonably possible to perform the duty
   b. Mental State (Mens Rea): 4 CL levels of mental state
      i. Specific intent
         1. Crimes:

            a. Solicitation, attempt, conspiracy
            b. First degree premeditated murder[1]
            c. Assault (only the intent to commit battery type)
            d. Larceny, robbery, burglary, forgery, false pretenses, embezzlement
        2. Permits applicability of certain defenses:
            a. Voluntary intoxication
            b. Unreasonable mistake of fact
    ii. Malice:
        1. only two crimes here: CL Murder and CL Arson
    iii. General Intent
        1. catch all
        2. examples include: rape and battery
        3. **transferred intent**: normally applied to homicide, battery, and arson; does NOT apply to attempt
    iv. Strict liability offenses (aka **public welfare offense**)
        1. elements:
            a. an administrative, regulatory, or morality offense; and
            b. no adverbs in statutory description
        2. significance:
            a. any defense negating intent is inapplicable
c. Concurrence of mental fault with physical act
d. Causation
e. MPC analysis of fault (see CMR p. 6)

III. Accomplice liability
a. General **Rule:** accomplices are liable for crime itself and all other foreseeable crimes
b. Accomplice
    i. Must be actually involved and have *intent* to encourage the crime (committed, aids, counsels, or encourages)
    ii. Mere *presence* not enough (even if appears to consent to crime)
c. Defenses
    i. Withdrawal
        1. repudiation sufficient for mere encouragement
        2. attempt to neutralize required if participation went beyond encouragement

IV. Inchoate Offenses
a. Solicitation
    i. Elements:
        1. Is asking/advising/counseling someone to commit a crime (crime is complete after asking[2]); and
        2. intent the person solicited commit the crime

[1] NB: if MBE says "murder" it means CL malice murder (aka murder in 2nd degree) and is therefore NOT a specific intent crime
[2] converts to conspiracy if solicited person agrees to commit the crime

ii. No Defenses (unless excluded by legislative intent: minor excluded from soliciting statutory rape)
iii. Merges with completed crime

b. Conspiracy
i. Elements
1. an agreement between two or more person[3] (need not be express; can be shown by concert of action)
2. intent to enter into an agreement
3. intent to achieve the **unlawful** objective of the agreement
4. overt act in furtherance (may be merely preparatory)
a. overt act required by majority rule
b. minority rule only required agreement
ii. Liability for co-conspirator's crimes if:
1. crimes were committed in furtherance of the objectives of the conspiracy; and
2. crimes were a foreseeable consequence of conspiracy
iii. Defenses to future crimes[4]: withdrawal:
1. affirmative act notifying **all members** of the conspiracy of withdrawal; and
2. notice must be given so conspirators have opportunity to abandon plans
iv. Punishment – No merger
v. Number of conspiracies in Multiple party situations; conspirators need not know each other
1. chain conspiracy
2. hub and spoke conspiracy
vi. Acquittal vs. lack of prosecution
1. if all co-conspirators are acquitted, then a D can't be convicted of conspiracy; however, if alleged co-conspirators cannot be found to be prosecuted, D can still be convicted
2. MPC: unilateral conspiracy

c. Attempt
i. Is a **specific intent** to commit a crime plus a **substantial step**, beyond mere prep, in the direction of commission of the crime
ii. Defenses
1. legal impossibility
2. factual impossibility NOT applicable
iii. Prosecution for attempt – merger

V. Responsibility and Criminal Capacity
a. Insanity: **know the trigger words**
i. *M'Naghten* Rule

[3] Wharton Rule: if 2 people needed for the underlying offense (eg, adultery, ie where both parties must act voluntarily), then 3 people needed before a conspiracy is possible. NB: MPC permits conviction for unilateral conspiracy, even where undercover cop or person pretending to want to commit crime is the other party to conspiracy.
[4] not defense to conspiracy itself since crime complete upon agreement

            1. at the time of his conduct, D lacked the ability to know the wrongfulness of his actions or understand the nature and quality of his actions
        ii. Irresistible Impulse Test
            1. D was unable to control his actions or conform his conduct to the law [very broad test]
        iii. *Durham* (Or New Hampshire) Test
            1. D's conduct was the product of a mental disease or defect
        iv. ALI or MPC test
            1. D lacked ability to appreciate criminality of conduct or to conform his conduct to requirements of the law
        v. Procedural issues
            1. is a defense to ALL crimes, including strict liability
            2. D must raise; can wait until trial
        vi. Post-acquittal commitment to mental institution
        vii. Mental condition during criminal proceedings
        viii. Diminished capacity
    b. Intoxication
        i. Voluntary intoxication
            1. a defense only to <u>specific intent</u> crimes
        ii. Involuntary intoxication
            1. considered a form of insanity and thus usable for all crimes
            2. D must satisfy jurisdiction's insanity test
    c. Infancy
        i. Under 7, no criminal liability
        ii. Under 14, rebuttable presumption that no criminal liability

VI. Principles of Exculpation
    a. Justification
        i. Self-defense
            1. Non-deadly force: person can use force that reasonably appears necessary to protect himself from imminent use of unlawful force upon herself
            2. Deadly force:
                a. <u>Majority rule:</u> may use any time person reasonably believes that deadly force will be used on him; no retreat
                b. <u>Minority rule:</u> must first retreat to wall if safe, EXCEPT:
                    i. Where attack is in victim's home
                    ii. Victim is a cop who is making an arrest
                    iii. Victim is being robbed or raped
                c. Original Aggressor may use deadly force if:
                    i. Effectively removes himself from fight; and
                    ii. Communicates desire to remove to other party
        ii. Defense of others
        iii. Defense of a dwelling
            1. general **rule:** deadly force cannot be used merely to defend property

b. Necessity
    i. Person reasonably believed that commission of crime necessary to avoid an *imminent* and greater injury to society than involved in the crime.
    ii. An objective standard; involves pressure from natural or physical forces, unlike human forces in duress
c. Excuse of Duress
    i. Available in all crimes except homicide
    ii. Duress is threat of imminent bodily harm or death to person or member of immediate family
d. Other defenses
    i. Mistake or ignorance of Fact

| **Mental State** | **Application of Defense** |
|---|---|
| Specific intent | Any mistake (no matter how unreasonable) will work |
| Malice/General Intent | Reasonable mistake only |
| Strict Liability | Never applicable |

    ii. Mistake of ignorance of Law – No Defense
    iii. Consent
        1. consent of victim almost NEVER a defense; don't fall for it on Exam
    iv. Entrapment: very narrow defense
        1. if D has **predisposition** to commit the crime, it negates defense.

VII. Offenses against the person
a. Assault and battery
    i. Battery: a completed assault (NB: general intent crime)
    ii. Assault: two kinds at CL:
        1. attempt to commit a battery (specific intent)
        2. threat creating reasonable apprehension of imminent bodily harm (general intent)[5]
b. Mayhem: dismemberment or disablement
c. Homicide:
    i. CL criminal homicides
        1. murder (four kinds)
            a. intent to kill
            b. intent to inflict great bodily injury
            c. Reckless indifference to an unjustifiably high risk to human life (ie, depraved heart murder)
            d. intent to commit felony (ie, felony murder; *inherently dangerous* felony)
        2. voluntary manslaughter
            a. killing with **adequate provocation** (ie, in heat of passion)
                i. NB: "mere words" not adequate
            b. Elements:

[5] thus a jokster who wants to scare a friend, but has no intention of harming him, is still guilty of reasonable apprehension assault

i. Provocation arousing a sudden and intense passion in mind of ordinary person;
ii. D was in fact provoked;
iii. Not sufficient time for a reasonable person to cool;
iv. D did not cool off before killing

3. involuntary manslaughter (two kinds)
    a. criminal negligence
    b. misdemeanor manslaughter
        i. killing in course of misdeamenor or killing during unenumerated felony

ii. statutory first-degree murder
1. MBE either calls it such OR gives a statute defining it

iii. Defenses to **Felony Murder**
1. not guilty of underlying felony
2. felony is not independent of killing
3. death not a foreseeable result of the felony
4. death occurs after reaching place of "temporary safety"
5. co-felon is the one who died
    a. if innocent person dies b/c victim shoots at felon, then felon is liable for the murder

d. False Imprisonment
i. Unlawful confinement of a person without his consent

e. Kidnapping
i. Aggravated Kidnapping

VIII. Sex Offenses
a. Rape: CL – carnal knowledge of woman not his wife by a man without consent
i. Slightest penetration is sufficient
ii. Absence of marital relationship
iii. Lack of effective consent

b. Statutory rape
i. Strict liability offense

c. Adultery and fornication
d. Incest
e. Seduction
f. Bigamy

IX. Property Offenses
a. Larceny
i. Elements:
1. a taking
2. and carrying away
3. of tangible personal property
4. of another
5. by trespass
6. with intent (*at time of taking*) to permanently deprive the person of an interest in the property

ii. Defense

            1. if you take property in belief that it is yours or that you have some right (eg, pay a debt) to it
        iii. title does not pass
    b. Embezzlement
        i. Elements:
            1. the fraudulent
            2. conversion
            3. of property
            4. of another
            5. by a person **in lawful possession of that property**
        ii. title does not pass
    c. False Pretenses
        i. Elements:
            1. **obtaining title**
            2. to the property of another
            3. by intentional (or knowing) false statement of *past or present fact*
            4. with the intent to defraud the other
        ii. "larceny by trick" distinguished
            1. obtain only possession, not title
        iii. The Misrepresentation Required
    d. Robbery = larceny + assault[6]
        i. Elements
            1. a taking
            2. of personal property of another
            3. from the other's person or presence
            4. **by force or intimidation**
            5. with intent to permanently deprive him of it
        ii. Distinguish Larceny: no force or threat
    e. Extortion = robbery by threat of *future* harm
        i. Distinguish robbery
            1. threat need not involve immediate or physical harm
            2. property need not be in victim's presence
            3. eg, "Give me $5,000 or *I will* …"
    f. Receipt of Stolen Property
        i. Possession
        ii. "Stolen" property (if no longer stolen, then *attempt* to receive)
    g. Theft
    h. Forgery
        i. Fraudulently obtaining signature of another
        ii. Uttering a forged instrument
    i. Malicious Mischief
X. Offenses against the Habitation
    a. Burglary
        i. Elements

[6] since Robbery is a greater included offense and Larceny is a lesser included offense, one cannot be convicted of both.

            1. a breaking (actual/constructive)
            2. and entry
            3. of the dwelling
            4. of another
            5. at nighttime
            6. with the **intent** (at time of breaking) of committing a felony therein
    b. Arson
        i. Elements:
            1. the malicious
            2. burning (must cause material wasting to structure)
            3. of the dwelling
            4. of another
        ii. Damage required
        iii. Related offense: Houseburning (one's own house)

XI. Offense Involving Judicial Procedure
    a. Perjury
    b. Subornation of perjury
    c. Bribery
    d. Compounding a crime
    e. Misprision of a felony

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