

This outline was created for the July 2006 Oregon bar exam. The law changes over time, so use with caution. If you would like an editable version of this outline, go to www.barexammind.com/outlines.

Criminal Law Outline

I. Jurisdiction 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. 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. Elements of a crime

b. Physical act (Actus Reus)

i. The act must be **voluntary**

1. the following are NOT voluntary:
 - a. conduct that is not the product of the actor's determination
 - b. reflexive or convulsive acts (eg, seizure)
 - c. acts performed while D is unconscious or asleep (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

c. Mental State (Mens Rea): 4 CL levels of mental state

i. Specific intent

1. Crimes:

- a. Solicitation, attempt, conspiracy
- b. First degree premeditated murder¹
- c. Assault (only the intent to commit battery type)

¹ NB: if MBE says "murder" it means CL malice murder (aka murder in 2nd degree) and is therefore NOT a specific intent crime

- 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
 - 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
 - d. Concurrence of mental fault with physical act
 - e. Causation
- III. Accomplice liability
 - a. General **Rule**: accomplices are liable for crime itself and all other foreseeable crimes
 - b. Accomplice
 - i. Must be actually involved (committed, aids, counsels, or encourages)
 - ii. Mere *presence* not enough (even if appears to consent to crime)
- IV. Inchoate Offenses
 - a. Solicitation
 - i. Is asking someone to commit a crime; crime is complete after asking
 - ii. No Defenses (unless excluded by legislative intent: minor exclude from soliciting statutory rape)
 - iii. Merges with completed crime
 - b. Conspiracy
 - i. Elements
 - 1. an agreement between two or more person (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: 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
- 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
 - iii. Prosecution for attempt – merger
- V. Responsibility and Criminal Capacity
 - a. Insanity: **know the trigger words**
 - i. *M’Naghten* Rule
 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 lacked the capacity for self control and free choice (unable to conform to the law)
 - 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
 - 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 specific intent crimes
 - ii. Involuntary intoxication
 1. considered a form of insanity and thus usable for all crimes
 - 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. Majority rule: may use any time person reasonably believes that deadly force will be used on him
 - b. Minority rule: 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. Excuse of Duress
 - i. Available in all crimes except homicide
 - ii. Duress is threat of imminent bodily to person or member of immediate family
- c. 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)
- b. Mayhem
- c. Homicide:
 - i. CL criminal homicides
 1. murder (four kinds)

- a. intent to kill
 - b. intent to inflict great bodily injury
 - c. highly reckless and indifferent to unjustifiably high risk to human life (ie, depraved heart murder)
 - d. intent to commit felony (ie, felony murder)
 - 2. voluntary manslaughter
 - a. killing with **adequate provocation** (ie, in heat of passion)
 - i. NB: “mere words” not adequate
 - 3. involuntary manslaughter (two kinds)
 - a. criminal negligence
 - b. misdemeanor manslaughter
 - i. killing in course of misdemeanor 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
 - e. Kidnapping
 - i. Aggravated Kidnapping
- VIII. Sex Offenses
- a. Rape
 - 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
 - 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
 - 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
 - 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
 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
- 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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