

I. Criminal Law

a. General

i. Types of Crimes

1. Category

- a. Malum in se (bad in itself) – generally, CL crime
- b. Malum prohibitum (bad b/c we prohibit it) – generally, statutory

2. Severity

- a. Felony (> 1 year)
- b. Misd. (<1 year)
- c. Regulatory Infractions (traffic tickets, etc)

3. Jurisdiction (federal, state, local, etc)

ii. Theories on Punishment

1. Deterrence

- a. General (societal): risk v. reward
- b. Specific (Individual): Inhibit behavior in a person

2. Incapacitation (immobilize/neutralize)

3. Rehabilitation (make better, improve, heal)

4. Retributive Justice (suffer in return)

iii. Burdens of Proof (BoP)

1. Reasonable Suspicion (to investigate)

2. Probable Cause (to charge)

3. Preponderance of the Evidence (CIVIL BoP)

4. Beyond Reasonable Doubt (BrD)

- a. *Jackson v. Va* test: “rational trier of fact (juror) could have found the essential elements of the crime beyond a reasonable doubt (**sufficiency of the evidence**)”
- b. *In re Winshop*: upheld Due Process – no person...shall be deprived of life, liberty, or property w/out due process of the law
- c. Blackstone’s Formulation: It is better that 10 guilty person roam free than 1 innocent person imprisoned

b. Elements of a Crime

i. Identification – government must prove BrD that Δ & Perp. Are the same person

1. Direct Evidence – fingerprints, photographs/camera footage, DNA

2. Circumstantial – Various circumstances/evidence that doesn’t directly implicate but, when taken together, could prove BrD that this was the person

ii. Actus Reus – the act that we are punishing => necessary, “cannot convict on guilty mind alone”

1. Voluntary (must be)

a. Act

i. Possession

1. Actual – Δ physically possesses the/an item

2. Constructive

- a. Exclusive - Δ knowingly holds the power and ability to exercise dominion and control over something
- b. Shared – Government must establish ‘nexus’ between Δ and item and show knowledge and access required to exercise dominion and control
  - i. Proximity alone cannot establish knowledge in joint occupied nor dominion and control
  - ii. May be established through direct or circumstantial evidence (more than proximity though proximity can be used as long as there is more)

b. Omission – failing to meet a legal duty to act

- i. Statute imposes duty to care for another
    - ii. One stands in certain status relationship (parent & child)
    - iii. One has assumed contractual duty to care for another
    - iv. One has voluntarily assumed the care of another and secluded the helpless person from others/other forms of aid
  2. Involuntary (doesn't count for actus reus)
    - a. Reflex or convulsion
    - b. Bodily movement while unconscious or asleep
    - c. Conduct during hypnosis or resulting from hypnotic suggestion
    - d. Bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual
  3. Status is not an action (having STD, addiction to alcohol, etc) and cannot be criminalized
- iii. Mens rea – guilty mind
  1. Culpability (broad meaning): morally blameworthy mindset
  2. Elemental (narrow meaning): particular mental state by the statute
    - a. Knowingly
      - i. Actual Knowledge: has the knowledge
      - ii. Deliberate Ignorance: chose to avoid knowledge/verification
        1. Ostrich Instruction
          - a. Δ claims no knowledge
          - b. Evidence in record of deliberate ignorance
    - b. Intentionally – acting w/ conscious object
      - i. Types
        1. General Intent: intending the action
        2. Specific Intent: intending the outcome
      - ii. Transferred intent – intent can transfer person-person or property-property
        1. Ex) shoot at dog but kill neighbor = no transfer
        2. Ex2) shoot at neighbor and kill their wife = transfer
    - c. Willfully
    - d. Recklessly (gross deviation of reasonable behavior of reasonable person)
      - i. Consciously disregard
      - ii. Substantial
      - iii. Unjustifiable risk
      - iv. Leading to cause of death/injury of another
    - e. Negligently – same as reckless but w/o awareness (conscious disregard)
- iv. Jurisdiction – requires a 'federal nexus' of constitutional authority b/c of limited police power
  1. Jurisdiction: power of the court to hear a case (adjudicate)
  2. Venue: place w/in jurisdiction you're located (place where judicial authority should be exercised).  
Every case requires proof (gov must make) that venue is proper.
- v. Causation – important for "results crimes"
  1. Types
    - a. "But For" Causation: start here. This is where you determine what, if any, actions Δ took that either **caused or accelerated** the results crime.
    - b. Proximate Cause: when you find "but for" cause, now determine if this can be held 'legally responsible'. (choosing the "but for" cause is the one) "fairness"
      - i. Direct Causation – act or omission → result/harm
      - ii. Indirect Causation – act or omission → intervening causes → result/harm
        1. Intervening causes are separate 'but for' causes that happen after Δ voluntary act
        2. Intervening superseding causes – break causal chain between Δ act and result – key factor: FORSEEABILITY



2. Commission of lawful act w/out due caution
    3. Commission of lawful act in unlawful manner
  - iii. Criminal Negligence: gross deviation from standard of care
    1. Extent of risk v. extent of awareness = test between Crim. Neg. and Depraved Heart.
- ii. Kidnapping: Δ...
  1. Knowingly & Willingly
  2. Transports in interstate commerce
  3. A non-consenting person: if it starts w/ non-consensual event it is highly unlikely to be made consensual and stop the kidnapping later (i.e. abducted at gunpoint but later remains)
  4. Who is held for ransom, reward, or otherwise (some other criminal purpose)
- iii. Sexual Assault Crimes
  1. CL: carnal knowledge of a woman forcibly against her will
    - a. Male Δ; female victim
    - b. Force = resistance required;
    - c. Spousal immunity
  2. Modern: Gender neutral; no spousal immunity; no resistance requirement;
    - a. series of offenses:
      - i. forcible sexual assault,
      - ii. coercive,
      - iii. nonconsensual,
      - iv. SA of minor,
      - v. Statutory rape
        1. Age-Based (below age of consent; 16/18)
        2. Position-Based (teacher-student; coach-athlete, etc)
        3. Consent invalid, minor cannot consent
        4. Knowledge of minor status unnecessary (majority rule)
    - b. Sexual Acts: vaginal intercourse, oral sex, anal sex, digital penetration
    - c. Sexual Contact: intentional touching of genitalia, buttocks, breasts w/ intent to abuse, humiliate, harass, degrade, arouse (under or over clothing)
    - d. Consent
      - i. Consent obtained by fraud is invalid
        1. Fraud in Factum: deceived as to the act (putting something somewhere else than where you received permission = no consent)
        2. Fraud in Inducement: deceived as to some other issue (consented to act itself but defrauded as to why = consent)
          - a. Exception = medical community
      - ii. Express consent is fine, but unnecessary (can infer from situation/facts)
      - iii. Must be voluntarily given
      - iv. 'No' can change to 'yes'; 'yes' can change to 'no' (post-penetration withdrawal allowed)
      - v. Δ doesn't need to know there wasn't consent, knowledge unimportant
- iv. Inchoate Crimes – 'unfinished business'
  1. General Rules
    - a. Merger Rule: when an unfinished crime is completed, the two crimes are 'merged' into the completed, larger offense
      - i. Ex) solicitation to murder → attempted murder or → murder
      - ii. Never includes conspiracy, it is always a separate offense
    - b. Abandonment/Withdrawal: cannot ever 'abandon' or 'withdraw' from a crime

- i. Exception: can withdraw from a conspiracy, explicitly, and not be held liable for future Pinkerton liability stuff (i.e. tell them you're out and not held responsible for bank robbery, just the original conspiracy)
        - c. Aiding & Abetting/Accomplice Liability: a theory of criminal responsibility (not a separate crime) where accomplice is charged as principal
          - i.  $\Delta$  assisted or encouraged another in the commission of a crime before or during commission
            1. Even verbal encouragement in a fight is enough
          - ii.  $\Delta$  had intent to assist or encourage
            1. No accidental/unwitting help to the crime
          - iii. Crime was actually committed by another (and completed)
          - iv. NOTE: This is narrower than conspiracy and totally different because:
            1. Not a crime (like conspiracy)
            2. Doesn't require agreement (like conspiracy)
            3. Crime needs completion (unlike conspiracy)
2. Attempt (charging the unsuccessful criminal)
  - a. Elements
    - i. Intent to do \_\_\_\_\_
    - ii. Took an overt act to complete \_\_\_\_\_
  - b. Two Types
    - i. Complete/Imperfect:  $\Delta$  did everything in their power to finish but outside forces caused failure (i.e. security guard apprehends  $\Delta$  who is shooting at teller)
    - ii. Incomplete:  $\Delta$  was not able to complete all steps b/c of outside forces (security guard stops robber before he could shoot at teller)
  - c. Prep v Perp: preparation is not an attempt, movement towards perpetration is an attempt
    - i. Majority: "Substantial Step" rule: would a reasonable person deduce that, based on  $\Delta$  conduct, he/she intended to commit that crime
3. Conspiracy: a separate crime based on agreement to commit more
  - a. Elements:
    - i. Agreement
    - ii. 2+ people
    - iii. To commit a criminal offense
  - b. Two Types
    - i. General – overt act required in furtherance of conspiracy (extra element)
      1. Overt Act: *any* act that *further*s the conspiracy, even a teensy bit
        - a. Purpose: give a  $\Delta$  a window, albeit small one, to exit conspiracy
    - ii. Specialized – no overt act required, simply is
  - c. Unilateral (w/ a government agent only) are illegal. If there is an informant there needs to be 2+ nongovernmental agents involved.
4. Solicitation: separate crime (like conspiracy) that merges (unlike conspiracy) upon furtherance
  - a. Elements
    - i. Command, encourage, request another person
    - ii. To commit a crime
    - iii. w/ intent that other person commit a crime (no jokes)
    - iv.  $\Delta$ 's intent strongly corroborated by acts, etc
  - b. Only really charged in sting operations or moments where there is absolutely no other charge available
5. Accessory after the Fact
  - a. Separate crime (not treated as principal!)
  - b. "Clean-Up Crew" – no involvement w/ the prep or commission of crime
  - c. Must be aware of the crime they are aiding and abetting to



- i. Exception1: escalation of force by other party
      - ii. Exception2: First Aggressor retreats
    - 4. Δ response was proportional (deadly-deadly force; non-non)
  - b. Imperfect Self-Defense
    - i. How: subjectively reasonable; objectively unreasonable
    - ii. Result: Reduction in offense ; reduction in penalty
  - c. Defense of others
    - i. CL: first only family, then ‘alter ego’ approach (take on that person’s ego)
    - ii. Modern: Reasonableness approach
      - 1. Force was reasonable
      - 2. Acting on behalf of person you reasonably believe in danger (subjective and objective)
      - 3. Used the force that other person would have been entitled to
- 4. Excuses (Affirmative): focuses on the actor – i.e. the actor is morally unblameworthy
  - a. Public Authority Δ (affirmative): knowingly acted in violation of criminal law but did so based on reasonable reliance of authorization by government official
    - i. Usually covers informants
    - ii. Notice required in form of:
      - 1. Law enforcement agency or intelligence agency
      - 2. Member of agency who supervised Δ
      - 3. Time during which Δ claims to have acted w/ public authority
    - iii. Must prove:
      - 1. Official had given instructions
      - 2. Official had authority to do so
      - 3. Δ relied on that authority to carry out
  - b. Duress (affirmative)
    - i. Threat of imminent death or serious bodily harm forced Δ to commit crime
    - ii. No reasonable legal alternative
    - iii. Δ not responsible for creating the threat
  - c. Necessity: (affirmative) rare Δ. Δ must show a choice between two evils and choosing lesser
  - d. Insanity: (affirmative) legal Δ that relies on M’Naghten Rule. Usually only applies to Schizophrenia, Bipolar Disorder, but it’s evolving. Doesn’t mean mental illness
    - i. M’Naghten Rule:
      - 1. At time of crime, Δ suffered from mental disease/defect
      - 2. That rendered Δ unable to know what he was doing or
      - 3. If Δ did know was unable to know wrongfulness of his actions
- 5. Nonexculpatory Public Policy Defenses: Δ is guilty but shouldn’t be convicted (i.e. entrapment)