

ADMINISTRATION OF JUSTICE

Second Semester Final Examination Study Guide Mount San Antonio College Articulation

Most people informally define a crime as an act that is deeply wrong, that is worthy of strong community disapproval, and that calls for a punitive sanction. What is truly a crime is any act or that is forbidden or omission to act when required to act by the law and both are a violation of the public interest.

A person commits an act based on one of four types of mental states: Acting with purpose, acting with knowledge, acting recklessly or acting negligently.

The consequences of tort liability are less than the consequences of criminal liability.

Punitive damages in a civil action is not considered the equivalent to incarceration or the stigma for the conviction of a crime.

An individual's single act may constitute both a crime and a tort and thus may be punishable under criminal and civil law.

A crime involves social harm to the public or a person and requires vindication through a public process. Crimes can be broken down into three major categories, felonies, misdemeanors and miscellaneous offenses called infractions.

There are three types of intent (state of mind) that can be involved in proving a persons culpability in committing a crime. general intent, specific intent and transferred intent.

Factors that a prosecutor may consider in deciding whether to charge an offense as a felony or a misdemeanor can include: seriousness of the offense, the number of victims involved and prior offenses of the person committing the crime.

Motive is the reason why the a person performs the act and usually means the emotion that prompts a person to commit the act. Motive is often important because it may help to identify the perpetrator of a crime or explain why a suspect may have acted in a certain way but is not required.

A crime is an act that the government forbids and that the government can punish and almost all crimes require an act, accompanied by a guilty state of mind. The guilty state of mind means that the prohibited act must be done intentionally, knowingly, or willfully.

Mens rea simply stated means a person's conscious desire to commit an act.

Mens rea is that state of mind that a person has at the time that he or she does the act or acts that constitute the commission of a crime.

Mens rea is also referred to as the guilty mind or a persons culpability (ability) in committing an act.

A felony is any serious crime that is punishable by more than a year of imprisonment in a state penitentiary.

Felonies include, but are not limited to, various degrees of homicide, rape, robbery, possession or distribution of illegal narcotics, and arson (setting fires). A crime does not have to be violent or even be perpetrated against a specific individual victim to constitute a felony.

Modern law defines a misdemeanor as a crime that is less serious than a felony and is usually punishable by fines, penalties, or incarceration of less than one year. Misdemeanors include offenses like shoplifting and disorderly conduct.

A person who is convicted of a misdemeanor usually serves his or her sentence in a local or county jail up to one year.

In addition to proving any guilty state of mind required, the prosecutor must prove beyond a reasonable doubt that ALL of the elements of the crime was committed.

The Fifth Amendment protects the accused against self-incrimination and double jeopardy (being tried for same crime twice).

The Sixth Amendment guarantees the right to a speedy and public trial, trial by jury, the confrontation and cross-examination of witnesses, and the right to counsel.

The Fourteenth Amendment guarantees that the right to due process of law applies to both the federal government and state governments.

Criminal liability requires a concurrence, or unity, of two general criteria: First, there needs to be an act or physical element, known as the *actus reus* or the criminal act. Second, there needs to be a certain mental state or intent, known as the *mens rea*. This mental state is often referred to as criminal intent

Even though most people (other than police, firemen, doctors, etc.) would feel obligated to act if someone's life were in danger, there are numerous judicial decisions holding that there was NO criminal liability when an untrained average person stood by and did nothing to help someone else in jeopardy.

Omissions are legally viewed as actions that may lead to criminal liability and a criminal omission occurs when the definition of a crime specifically designates the omission (failure to act) as punishable.

A legal duty to act can arise from a relationship such as that between a parent and a child or between a doctor and a patient.

Actus reus usually consists of a voluntary action and to fully understand *actus reus*, it is important to understand the difference between voluntary actions and mere thoughts. Conditions such as mental illness or extreme youth can diminish a persons criminal responsibility.

Under certain circumstances, mere words can constitute the *actus reus* of a criminal act, when such words are so offensive that they can constitute a threat or cause further physical actions that society views as a social harm.

Most jurisdictions have statutes for possessory offenses, which criminalize the possession of certain items or substances.

A person can be guilty of a crime requiring possession without any further act than possession of the prohibited article.

Actual possession of the stolen article and knowledge the article is stolen is usually required.

To be guilty of the crime of attempt, the accused must have both intended to commit a crime and taken some substantial step toward committing the crime. A conspiracy is an agreement between two or more persons to commit a crime.

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The person who actually commits a crime is called the principal and principals (multiple parties) to crimes are all guilty of the same offense. To abet in a crime means to advise and encourage the commission of a crime. Expressed malice means – with purpose or design, deliberate.

Anyone who helps the principal complete the crime may be charged as an accomplice and a person could be an accomplice to a crime simply by offering words of encouragement to commit the crime.

An accessory after the fact is every person who, after a crime has been committed, harbors, conceals, or aids a principal in such crime with intent that said principal may avoid or escape arrest, conviction or punishment.

While committing a misdemeanor criminal offense of battery a man accidentally kills another person. This act would be classified as involuntary manslaughter.

In the crime of battery with special circumstances, "serious injury", means a serious impairment, or physical condition such as a bone fracture.

A hunter goes rabbit hunting. While hunting rabbits, he comes across what appears to be an abandoned shed. Just for the fun of it, he fires several shots into the shed. Unknown to him are two boys playing inside the shed, and a bullet kills one of them. This would be classified as involuntary manslaughter.

A man spansks his son for damaging his neighbors fence. His son, feeling he has had enough pulls away from his fathers grip and loses his balance. The boy falls and strikes his head on the fireplace killing him. The father has committed no crime this is classified as an excusable homicide.

A "deadly" weapon is any object, instrument, or weapon which, from the manner in which it is used, is capable and likely to produce great bodily injury.

Death is defined as the "total and irreversible cessation of the brain function." In order for a death to be classified as a homicide the victim must die within three years and a day of the death causing act. (this applies to California)

There are two types of lawful homicide, excusable and justifiable. A court ordered execution of a prisoner is an example of a justifiable homicide. An officer that must shoot and kill someone they are attempting to arrest who in fact resists such an arrest while putting the officer in fear of his/her life would be classified as justifiable homicide. The key words to identify an excusable homicide are accident and misfortune.

In order to legally kill an intruder in your home under the "Defense of Habitation" protection, the homeowner is NOT required to give an oral warning to the intruder prior to shooting the unwelcome intruder.

Parents may bring charges against a person suspected of unlawful intercourse with their daughter without the consent or involvement of their minor child. Unlawful intercourse refers to sex relations with a victim who is *under the age of 18* in most states California is one of them.

A criminal assault includes a person who in anger intentionally "swings" at another but does not actually hit the person. Battery is simply a completed assault. Pointing a loaded gun at a person and threatening to kill them would be classified as assault with a deadly weapon (ADW). The crime of assault on a peace officer includes off-duty peace officers who intervene in crimes in progress when they identify themselves as police officers.

Under tort law, we have a duty to act reasonably at all times in order to ensure the safety of other people and their property. Everyone has a responsibility to others that involves not intentionally causing injury to a person; not causing damage to a person's property; not acting in a careless or negligent way that causes injury or damage.

A man who wants to obtain money from an insurance policy by poisoning his wife would be charged with first degree murder. All deaths resulting from the commission of a felony are classified as at least second degree murder.

Under tort law, a "reasonable person" is one who takes care not to injure others and acts sensibly. A reasonable person is therefore the same as an ordinary person or an average person.

The element of fear in the crime of robbery can be the fear of a possible injury to a relative who is not present at the time of the confrontation.

Someone places a bomb in the entrance of a closed office building so it will blow up at night and not injure anyone. At the time the bomb explodes, a night watchman is killed. This would be first degree murder because the death involved the use of an explosive device.

If two people are engaged in an argument and one gets mad at the other unlawfully pushing the other person causing them to fall. The fall results in the person hitting their head on a chair causing death, the death would constitute involuntary manslaughter.

Some state laws make an employer strictly liable for injuries to a minor (under the age of 18) on the job only if the employer caused the injury.

Modern theft law recognizes many different kinds of crimes against property as well as hybrid crimes(both against person AND property, like robbery).

Consummating the element of "entry" in burglary does not require the person to have gone completely inside the building. Merely fastening a rope on a stick and hooking an object you wish to steal would constitute a burglary.

Forgery is a crime in which a person who, with the purpose of deceiving or injuring, makes or alters a writing in such a way as to convey a false impression concerning its authenticity.

Elements of theft include the unlawful taking of the personal property of another with the specific intent to permanently deprive the owner.

A woman enters a store with a "booster box" (a booster box is made for the purpose of helping someone to steal items) intending to use it for shoplifting. She is caught *before* it is put to use. Under these conditions she may still be prosecuted for burglary.

Burglary is the unauthorized entry into a structure with the intent to steal or commit a felony, regardless of the time of day.

The crime of unauthorized use of a vehicle (sometimes referred to as "joyriding") is committed if the person only intends to take the vehicle temporarily.

A man sends his trained bird to fly into a department store to steal a watch. This type of entry is called "constructive entry".

Carjacking is the felonious taking of a motor vehicle from the possession of another person with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession, accomplished by means of force or fear.

Robbery and extortion are hybrid crimes, both are crimes against person and property. It's also sometimes said that these are "aggravated" forms of larceny.

We have the right to go about our daily lives without fear of being injured by someone else. If we are injured because of someone's unreasonable, wrongful actions, tort law gives us the right to be compensated.

In reviewing a negligence case a court would have to ask three questions: Did the defendant have a duty in this case? Did the defendant breach, or fail to do, his duty? Did the defendant cause the harm? Did the Plaintiff suffer damages?

Because it is difficult to show that a fire was caused as a result of a willful and malicious act, most states have enacted laws to cover fires resulting from reckless acts in order to successfully prosecute.

Extortion is the only general intent crime against property and is sometimes referred to as "blackmail".

Extortion can be committed over the phone, by mail, or by e-mail (this makes it a federal crime).

The motives for extortion don't really matter and it doesn't matter if the victim cooperates or not.

Extortion is the most common criminal charge brought against corrupt police officers.

To determine the value of property taken in a theft, the FAIR MARKET value is the ultimate test of value of the item that determines the value not the value placed on it by the owner. Original purchase price and current market value are not factors.

Most larcenies and thefts are general intent crimes (extortion is the exception being a specific intent crime) which means that the mental state is precisely spelled out in criminal statutes.

Many states have constructed three levels of taking larceny (theft) by trick -- con games, schemes, and swindles, larceny (theft) by deception -- stings, scams, price altering, larceny (theft) by fraud -- inside trading, telemarketing, credit card fraud

Crimes against property includes crimes in which property is stolen or otherwise taken against the will of the owner such as theft and embezzlement.

For the crime of burglary to be committed any door entered by the thief, intending to steal items inside, is not required to be closed or locked prior to the entry. If the entry occurs by going through a door left open, it would be enough to constitute burglary.

Public order and safety laws: are intended to protect the general public by dealing with behavior not necessarily considered morally wrong. These laws help protect the peace and safety of the community. These offenses are considered to be acts that are not inherently bad, but are considered crimes only because the law designates them to be.

Public order and safety offenses are usually strict liability offenses, which means that if the defendant committed the elements of the crime, his or her intent to cause harm is irrelevant.

Breach of the peace offenses include unlawful assembly, disorderly conduct, and rioting.

When two or more people gather together with a lawful purpose but in a violent, boisterous, or tumultuous manner, it may become a/an unlawful assembly

It is unlawful for a person to use offensive words in a public place which are inherently likely to provoke an immediate violent reaction. Every person who willfully resists, delays, or obstructs, any public officer, peace officer, or fireman, in the discharge or attempt to discharge an official duty, may be found guilty of a criminal offense.

Indecent exposure is the unlawful exposure of body parts for the purpose of arousing or gratifying sexual desire of himself or herself or of any person other than his or her spouse.

For the purpose of indecent exposure "public exposure" may occur on a street, building, beach, or even within a private location, provided that the exposure may be viewed from another public or private place.

Exhibitionism is the repeated intentional act of exposing one's genitals to an unsuspecting stranger or strangers for the purpose of achieving sexual excitement.

Some public morality offenses, such as prostitution and gambling, are geographically restricted to certain areas of the United States. There is considerable public debate about whether some public morality offenses, such as gambling, and prostitution, are victimless crimes and thus should be decriminalized.

The term obscenity refers to the legal definition of certain materials that are not protected under the First Amendment.

Prostitution is committed when one person agrees to engage in sexual or deviate sexual intercourse in return for something of value, usually money. Prostitution It is often referred to as the world's oldest profession and is described in history's earliest written records. Members of either sex may be convicted of prostitution.

Any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.

Modern disorderly conduct laws include: conduct that disturbs the safety, health, or morals of others, fighting in a public place or challenging another person in a public place to fight, maliciously and willfully disturbing another person by loud and unreasonable noise.

Frequent kinds of white-collar crimes that are committed include tax evasion, false advertising, and mail fraud

In order to prove the existence of a tax deficiency, the government must show: the defendant received income in addition to what was reported, the unreported income was taxable, and the itemized deductions claimed on the return were knowingly inflated to reduce the amount tax owed.

Knowingly performing an affirmative act toward the evasion of taxes constitutes a felony and includes: Filing false tax returns, Keeping a double set of books and concealing (hiding) assets

Willfulness, for tax evasion purposes, is the intentional violation of a known legal duty regarding a taxpayer's knowledge they should have reported more income than actually reported on their tax return.

Mail fraud is a form of fraud that uses a mail service to disseminate materials that deceive people.

There are four basic elements that must be proven beyond a reasonable doubt in order to obtain a conviction for mail fraud:

1. There was a scheme to defraud someone. 2. There was the required intent to defraud. 3. The scheme to defraud may involve the U.S. Postal Service OR a private interstate commercial carrier. 4. The use of the mail service was for the purpose of furtherance of that scheme.

A defendant has two main defenses to a mail fraud charge. One is the good faith defense, which is merely a contention that there was no fraud intended and the other is the statute of limitations defense (generally five years on a mail fraud charge.)

"Insider trading" is a type of fraud involves the purchase and sale of securities based on material, nonpublic information. The following people would be classified as insiders: corporate directors and officers, family members of corporate officers, and lower level employees who may obtain information because of their jobs.

The impression most people have is that the chief task of the American legal system is to fight crime. In reality, most court time is related to civil matters.

Courts deal with disagreements between people. Courts play an important role in settling disputes about property ownership, contracts, and physical injuries. Courts settle family matters such as divorce, adoption, and child custody.

The main purpose of criminal law is to punish people who do harm to others.

An important goal of civil law is to compensate, or repay, the people who have been harmed. Compensation is payment for the loss or injury they have suffered. The person who causes an accident may tried in both criminal court and civil court.

A person who commits a single act can be held to answer for both a criminal and civil wrong an exmple is an auto accident. Violator may be charged with a crime driving under the influence (criminal) and sued in civil court for medical expenses.

In the United States, the U.S. Constitution and the constitution of California require that special rights and protections be afforded to an accused criminal.

If someone is found to have broken a civil law, he or she may be required to offer a remedy meaning a way to make up for the damage that has been done.

The civil process begins when the plaintiff (or their lawyer) files a complaint - a written notice to the court that explains his side of the story. The complaint describes what was harmed, damaged, or injured. The complaint explains who the plaintiff thinks is responsible. The complaint will state what the plaintiff wants from the defendant. After the court receives the plaintiff's complaint, it notifies the defendant that they are being sued.

Punishment can take many forms, all of which carry one essential characteristic that distinguishes criminal from civil wrongdoing, the condemnation and stigma that accompanies the conviction of a crime.

The justice system used in the United States has been established by our legislative bodies to establish classifications of crimes based on severity, to distinguish between types of crimes, civil offenses, and moral wrongs.

Criminal defendants have more protections than those who commit civil or moral wrongs, because criminal defendants have considerably more to lose through criminal punishment.

Criminal liability requires a concurrence, or unity, of two general criteria. There needs to be an act or physical element, known as the actus reus or the criminal act and there needs to be a certain mental state or intent, known as the mens rea.

The process of resolving a dispute in civil court is called litigation or a lawsuit.

The Sixth Amendment right to a court-appointed lawyer does not apply in civil cases. (The same is true for most of the constitutional safeguards, they apply only to criminal cases.)