Introduction to Criminal Justice Practice and Process 2nd edition Peak Solutions Manual

SKU: 9781506305929-SOLUTIONS

Chapter 2
Foundations of Law and Crime: Nature, Elements, and Defenses

The laws in place today in the United States originated from a long line of historical events, including the *lex talionis* laws of Hammurabi, the Mosaic Code of the Israelites, and common law developed by the English. The hierarchy of law has been established today to include federal, state, and city or county law. Criminal law differs significantly from civil law in prosecution, burden of proof, and penalty. Substantive law refers to the body of law that spells out the elements of a criminal act, while procedural law are the rules that set forth how the substantive laws are to be enforced. The two essential elements of crime are *mens rea* (guilty mind) and *actus reus* (criminal act). Felonies and misdemeanors are discussed. This includes crimes against persons such as murder in the 1st degree, murder in the 2nd degree, voluntary manslaughter, involuntary manslaughter, sexual assault, robbery, and aggravated assault. Also included are crimes against property, including burglary, larceny-theft, motor vehicle theft, and arson. Defenses for crimes in the court of law include all of the following: self-defense, age, entrapment, intoxication, duress, double jeopardy, and mental illness or insanity are discussed.

1. Introduction

- Assess Your Awareness Exercise

2. Common Law and Its Progeny

- Hammurabi
  - *Lex talionis*: an eye for an eye, a tooth for a tooth
  - Earliest known example of ruler setting forth a body of laws arrange in orderly groupings
- Israelites
  - Mosaic Code: Moses passed on the law to the tribes of Israel
- Common Law
  - Collections of rules, customs, and traditions of medieval England, created during the reign of Henry II
  - Established traveling judges
  - Doctrine of *Stare decisis*
    - Stand by things settled
    - When a court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle—and apply it in the same manner to all future cases where facts are substantially the same

3. Modern-Day Sources of Hierarchy of Law

- Statute
  - Law enacted by Congress or state legislature, also known as statutory law
- Code or ordinance
  - Law enacted by local lawmaking body

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- Federal Law
  - U.S. Constitution, Federal Statutes, Administrative laws, Federal common law
- State Law
  - State constitutional law, state statutes, state common law
- City/County Law
  - Building and construction standards, rent control, noise and nuisance regulations, public health and safety, business licenses, civil rights and antidiscrimination

4. Criminal and Civil Law

- Criminal law
  - The body of law that defines criminal offenses and prescribes punishments for their infractions
  - State prosecutes
  - Prosecutor has burden of proof
    - The requirement that the state must meet to introduce evidence or establish facts
    - Beyond a reasonable doubt
      - The standard used by jurors to arrive at a verdict—whether or not the government (prosecutor) has established guilt beyond a reasonable doubt
    - Penalty
      - Prison or jail time, monetary fine, community-based punishment
- Civil law
  - A generic term for all noncriminal law, usually relating to settling disputes between private citizens
  - Plaintiff
    - The party who is bringing a lawsuit or initiating a legal action against someone else.
  - Defendant
    - A person against whom a criminal charge is pending; one charged with a crime
  - Burden of proof rests on the party seeking damages or remedy by preponderance of evidence: often referred to as the "50 percent plus a feather" test
  - Penalty
    - Money or some legal remedy
  - Heard in different courts

5. Substantive and Procedural Law

- Substantive law
  - The body of law that spells out the elements of criminal acts
- Procedural law
  - Rules that set forth how substantive laws are to be enforced, such as those covering arrest, search, and seizure
    - Miranda warning

6. Essential Elements: *Mens Rea* and *Actus Reus*

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- *Mens Rea* – guilty mind
  - Intent Versus Motive to Commit Crime
    - Intent
      - A purposeful act or state of mind to commit a crime
    - Motive
      - The reason for committing a crime
    - Real questions at trial
    - Did defendant commit the illegal act
    - Did they have necessary mental state
- *Actus Reus* – criminal act
  - Voluntary, overt act or an intentional failure to act where there is a legal duty to do so (known as an "omission," such as a parent failing to feed a child or give him or her medical attention)
  - Rule for establishing criminal liability: did the defendant commit the actus reus element with the mens rea set forth in the particular criminal law

7. Felonies and Misdemeanors

- Felonies
  - Offenses punishable by death or that have a possible sentence of more than one year of incarceration in prison
- Misdemeanors
  - Less serious offense and is typically punishable by incarceration for less than one year in a local jail

8. Offense Definitions and Categories

- Crimes against persons
  - A violent crime, to include murder, rape, robbery, and assault
- Homicide
  - Justifiable homicide
    - Acts of war, self-defense, legal state or federal executions, and where a police officer uses lawful lethal force
  - Excusable homicide
    - Killings that are accidental, such as a person who runs over an unseen toddler in the driveway behind his car
- Murder
  - Murder only includes intentional killings
  - Murder in 1st degree:
    - Is the unlawful, intentional killing of a human being with *premeditation/deliberation* (often termed "P&D") and *malice aforethought*
    - Felony-murder rule
      - The legal doctrine that says if a death occurs during the commission of a felony, the perpetrator of the crime may be charged with murder in the first degree
  - Murder in 2nd degree:
    - Intentional—with malice—yet *impulsive*, without P&D
- Voluntary manslaughter

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    - Intentional killing but involves (at least in the eyes of the law) no malice; instead, there is "heat of passion" to a degree that a "reasonable person" might have been provoked into killing someone
- Involuntary manslaughter
    - Typically established in two ways: (1) acts of negligence, such as when one is driving too fast on a slick road and kills a pedestrian, and (2) the misdemeanor-manslaughter rule—similar to the felony-murder rule, but the crime involved is a misdemeanor
- Sexual Assault
    - ("Rape" or "forcible rape" under old state laws)
    - Carnal knowledge of a female forcibly and against her will
- Robbery
    - Taking of or attempt to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear
- Aggravated assault
    - An unlawful attack upon another for the purpose of inflicting severe or aggravated bodily injury
- Crimes against property: a crime where no violence is perpetrated, such as burglary, theft, auto theft, and arson
    - Burglary
        - The unlawful entry of a structure to commit a felony or theft
    - Larceny-theft
        - The unlawful taking, carrying, leading, or riding away of property from the possession of another
    - Arson
        - Any willful or malicious burning or attempting to burn, with or without intent to defraud, a dwelling house, a public building, a motor vehicle or aircraft, personal property of another, and so fort

9. Defenses

- The response by a defendant to a criminal charge, to include denial of the criminal allegations in an attempt to negate or overcome the charges
- Affirmative defense
    - The defendant admits he or she committed the act charged, but for some mitigating reason (self-defense, mental illness, duress, mistake, intoxication) should be treated more lightly (or excused) under the law
- Fall under 2 categories: excuses and justifications
    - Excuses
        - The defendant admits to the criminal act but claims they are excused because of their age or mental state
    - Justifications
        - The defendant admits to the criminal act, but claims they were justified in so acting because of some circumstance, such as the need to act in self-defense or to stop a fleeing felon
- Examples of Justification defenses

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  - Self-Defense
    - Necessity defense, where the defendant argues that he or she had to commit the act because it was necessary to avoid some greater harm
- Examples of Excuse defenses
  - Age
    - Excuses the acts of children age 7 and under because they are too young to be criminally responsible for their actions—they are too young to form the requisite *mens rea*
  - Entrapment
    - Police tactics that overly encourage or entice individuals to commit crimes they normally would not commit
  - Intoxication
    - Intoxication defense is rooted in the concept of *mens rea,* and defendants must show that they were operating under such "diminished capacity" that they could not know what they were doing and cannot be held responsible
  - Duress
    - Excuse with defendants claiming that they committed the act only because they were not acting of their own free will
  - Double Jeopardy
    - Subjecting an accused person to be tried twice for the same offense; prohibited by the Fifth Amendment
  - Mental Illness/Insanity
    - Right-wrong test
      - The test of legal insanity, asking whether the defendant understood the nature and quality of his or her act and, if so, if he or she understood it was wrong
    - Irresistible impulse test
      - Requires a showing that the defendant, because of a mental illness, could not control his or her impulses

10. In a Nutshell – Chapter Summary

- Substantive law is the written law that defines or regulates our rights and duties
- Procedural law sets forth the procedures and mechanisms for processing criminal cases
- Legal system is based on the English common law
- There are both civil and criminal laws at the federal, state, and local level
- Two elements: mens rea and actus reus
- Justice system allows for persons charged with crimes to offer defenses

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- For more information, see: "Nancy Black, Indicted Marine Biologist, Denies Feeding Orcas," *Huffington Post*, February 1, 2012, http://www.huffingtonpost.com/2012/02/01/indicted-marine-biologist-nancy-black_n_1247284.html (accessed March 4, 2013).

Chapter 2

You Be The Police Officer: *Mens rea* and *Actus Reus*

1. What is the *mens rea* element under Section 1 of the motor vehicle homicide statute (and what words define the *mens rea* element)? What is the *actus reus* element?

2. Provide an example of what would qualify as motor vehicle homicide under Section 1.

3. A woman who is texting while driving strikes and kills a pedestrian who is crossing the street. The woman was not speeding. Can she be charged for a violation of Section 1? Why or why not?

4. Which words supply the *mens rea* element under Section 60-6,213 (reckless driving)? Define and provide examples. Which words identify the *actus reus* element under this section?

5. Answer the questions in item 4 for Section 60-6,214.

Guidance for Instructors: Section 1 is a classic involuntary manslaughter statute (the *mens rea* element/word being "unintentionally"), and instructors can prompt students to analyze the *mens rea* issue more thoroughly by asking why lawmakers include the unlawful act element (this is what elevates a true accident—subject to civil penalties only—to a criminal homicide). Should the unlawful act be an inherently dangerous violation (drunk driving, running a red light), or something rather benign (like not using a turn signal)? Question #2 should trigger a discussion of DUI offenses; but the reckless driving statute is there to provide students another possibility for the unlawful act required in Section 1. Question #3 requires students to ask whether texting and driving is an unlawful act under state law (instructors can refer to the 2012 Massachusetts case in which 17-year old Aaron Deveau was convicted of vehicular homicide). Question #4 urges students to probe further the difference between "indifferent disregard" (much like negligence: driving too fast in icy conditions) and "willful disregard" (true recklessness: driving 80 mph in a dense residential area or approaching a crosswalk, which are reckless regardless of conditions).

You Be The Prosecutor: Murder or Manslaughter?

1. What are the *actus reus* and *mens rea* elements for second-degree murder? For vehicular manslaughter?
2. How would you argue as the prosecutor that the driver should be convicted of second-degree murder? Remember, you will have to prove *mens rea*, so what facts would you use to tie into the second-degree murder statute's definition of *mens rea?*
3. How could the defense attorney argue that the driver should be convicted only of manslaughter, that second-degree murder is not appropriate? (See "Excuse Defenses: Intoxication" later in this chapter.)

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Guidance for Instructors: This exercise is based on a New York drunk-driving case where DA Kathleen Rice charged the defendant with second-degree murder rather than a traditional manslaughter charge (which she justified by arguing that when a defendant voluntarily drinks to excess with even the possibility that they may drive, they have acted with depraved indifference to human life). The exercise should push students to think beyond the traditional vehicular manslaughter scenario, analyze the case under simple *mens rea* concepts using the statute's specific language, and apply *mens rea* to case facts. It also allows for class discussion about the crime of drunk driving and what current laws reveal about societal attitudes toward these cases. On the defense side, students will need to articulate the justification for traditional manslaughter charges rather than just argue that such a charge is typical in these cases. Instructors can then conclude the discussion by showing the 60 Minutes piece entitled "Is It Murder," profiling the NY case, including the defendant's conviction on second-degree murder charges, and the trend in these cases. See *People v. Heidgen*, 22 NY 3d 259 (2013);http://law.justia.com/cases/new-york/court-of-appeals/2013/174-1.html; http://www.cbsnews.com/news/dwi-deaths-is-it-murder/.

Chapter 3

You Be The U.S. Sentencing Commissioner: Guidelines or Discretion?

1. What do you think? Should judges rely on the more rigid, strict guidelines? Or, alternatively should judges be permitted to exercise discretion in such cases?
2. What are advantages and disadvantages of each approach with regard to punishing white-collar criminals (e.g., deterring others from committing such crimes, allowing judges to try to tailor the punishment to fit the crime, and so on)?

Guidance for Instructors: The first question provides an excellent opportunity to test students' understanding of how legislative mandates in the criminal law affect and/or negate the discretion of criminal justice players – in this case, sentencing judges. Many students will pick up on the idea that allowing judges to go outside legislative guidelines shifts power and decision-making about sentences back to the courtroom, but this exercise should also tee up a discussion about how legislative mandates or guidelines are a more democratic approach and should be –ideally – a reflection of voters' views. A post-exercise classroom discussion should also include questions about the potential dangers of judges "identifying" more with white-collar criminals and how that might affect discretionary sentencing. The second question obviously guides students back to the chapter's criminology discussion and helps them see those principles at work in the sentencing phase, but the white-collar example is also useful for a post-exercise classroom discussion of what types of offenders are even aware of sentencing laws (e.g., are lawyers more aware and does that affect their criminality?), and how different offenders are treated in the media and to what deterrent effect, if any.

Chapter 4

You Be The Officer: Dilemmas of Gifts and Gratuities

3. Are Mr. Chang's motives honorable?
4. Should the deputy accept the offered discount? The bicycle?
5. Do you believe the department's policy should be modified to accommodate such situations?

Guidance for Instructors: This scenario involves an Asian businessman for a specific reason: their culture—as well as etiquette and protocol—revolves around respect, and gift-giving is a very important

Chapter 2: Foundations of Law and Crime: Nature, Elements, and Defenses
Discussion Questions

1. Which crimes should be punishable by long prison sentences and which by community based sentences?

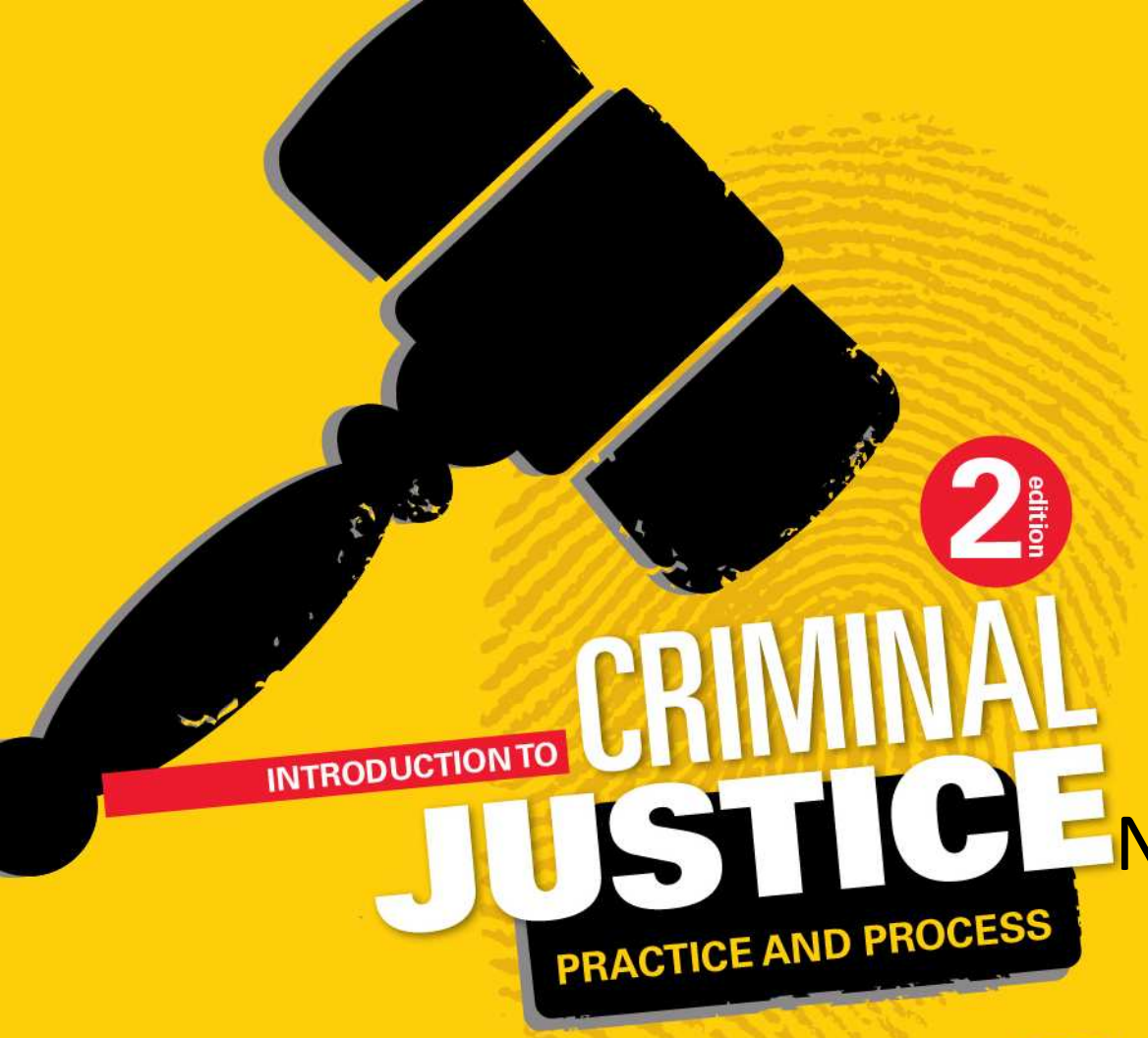
2. Do some property crimes have potential to become violent?

3. Provide some examples of when consent could be used as a defense against a crime.

4. With some acts, there has to be necessary circumstances for it to be considered a crime. Provide some examples of acts that may not always be considered a crime.
   - Under what circumstances would they be considered a crime?

5. What is the irresistible impulse test?
   - How does it differ from the right-wrong test?

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Foundations of Law and Crime: Nature, Elements, and Defenses

Chapter 2

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Learning Objectives

- Briefly explain how modern-day law evolved from English common law, and the differences between criminal and civil law

- Explain the difference between substantive and procedural law

- Review two critical elements of the criminal law—criminal intent (*mens rea*) and the physical commission of the criminal act (*actus reus*)

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Learning Objectives

- Delineate the definitions of, and distinctions between, felonies and misdemeanors, crimes against persons and property, and the different degrees of homicide and sexual assault

- Discuss the various defenses that criminal defendants may offer to reduce or eliminate their criminal liability

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Common Law and Its Progeny

- The Code of Hammurabi
  - *Lex talionis*
    - An eye for an eye, a tooth for a tooth
- Israelites
  - Mosaic Code
    - Moses passed on the law to the tribes of Israel

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Common Law and Its Progeny

- Common Law
  - Collections of rules, customs, and traditions of medieval England, created during the reign of Henry II
    - *Stare decisis*
      - When a court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle – and apply it in the same manner to all future cases where facts are the same

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Modern-Day Sources of Hierarchy of Law

- The U.S. features different sources of law and jurisdictions where those laws are enforced and administered
- Terminology is critical to understanding law
  - Statute
    - law enacted by Congress or state legislature, also known as statutory law
  - Code or ordinance
    - law enacted by local lawmaking body

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Modern-Day Sources of Hierarchy of Law

- Other Types of Laws
  - Federal Law
    - U.S. Constitution
    - Federal Statutes
    - Administrative laws
    - Federal common law
  - State law
    - State constitutional law
    - State statutes
    - State common law

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Modern-Day Sources of Hierarchy of Law

- City/Council Law
  - Building and construction standards
  - Rent control
  - Noise and nuisance regulations
  - Public health and safety
  - Business licenses
  - Civil rights and antidiscrimination

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Criminal and Civil Law

- Criminal law
  - The body of law that defines criminal offenses and prescribes punishments for their infractions
    - Prosecutor has burden of proof
      - The requirement that the state must meet to introduce evidence or establish facts

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Criminal and Civil Law

- Beyond a reasonable doubt
  - » The standard used by jurors to arrive at a verdict—whether or not the government (prosecutor) has established guilt beyond a reasonable doubt

- Penalty
  - Prison or jail time, monetary fine, community-based punishment

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Criminal and Civil Law

- Civil law
  - Plaintiff
    - The party who is bringing a lawsuit or initiating a legal action against someone else.
  - Defendant
    - A person against whom a criminal charge is pending; one charged with a crime

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Criminal and Civil Law

- Burden of proof rests on the party seeking damages or remedy by preponderance of evidence: often referred to as the "50 percent plus a feather" test

- Penalty
  - Money or some legal remedy

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Substantive and Procedural Law

- Substantive law
  - The body of law that spells out the elements of criminal acts

- Procedural law
  - Rules that set forth how substantive laws are to be enforced, such as those covering arrest, search, and seizure
    - Miranda warnings

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Essential Element

- *Mens Rea* – guilty mind
  - Intent: a purposeful act or state of mind to commit a crime
  - Motive: the reason for committing a crime
  - Real questions at trial
    - Did defendant commit the illegal act
    - Did they have necessary mental state

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Essential Elements:

- *Actus Reus* – criminal act
  - Voluntary, overt act or an intentional failure to act where there is a legal duty to do so (known as an "omission," such as a parent failing to feed a child or give him or her medical attention)

- The rule is to prove that the defendant committed the actus reus element with the means rea set forth in the criminal law.

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Felonies and Misdemeanors

- Crimes are classified into two broad categories
  - Felonies
    - Offenses punishable by death or that have a possible sentence of more than one year of incarceration in prison
  - Misdemeanors
    - Less serious offense and is typically punishable by incarceration for less than one year in a local jail

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Offense Definitions and Categories

- Crime Against Persons
  - Most people consider these as violent crime or street crime
  - Homicide
    - Taking of a human life, most serious act that one can perpetrate against another person
  - Justifiable homicide
    - Acts of war, self-defense, legal state or federal executions
  - Excusable homicide
    - Killings that are accidental

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Offense Definitions and Categories

- Criminal homicides fall into two categories
  - Murder (intentional)
    - Categorized by degrees
      - Murder 1st Degree: is the unlawful, intentional killing of a human being with *premeditation/deliberation* (often termed "P&D") and *malice aforethought*
      - Murder 2nd Degree: intentional—with malice—yet *impulsive*, without P&D

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Offense Definitions and Categories

- Manslaughter (accidental)
  - Voluntary manslaughter
    - Intentional killing but involves (at least in the eyes of the law) no malice; instead, there is “heat of passion” to a degree that a “reasonable person” might have been provoked into killing someone

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Offense Definitions and Categories

- Involuntary manslaughter
  - Typically established in two ways: (1) acts of negligence, such as when one is driving too fast on a slick road and kills a pedestrian, and(2) the misdemeanor-manslaughter rule—similar to the felony-murder rule, but the crime involved is a misdemeanor

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Offense Definitions and Categories

- Sexual Assault, "rape" or "forcible rape"
  - Historically defined as the carnal knowledge of a female forcibly and against her will
  - Categorized by degrees depending on the type of contact
  - Includes a strict liability with no mens rea election, also known as statutory rape

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Offense Definitions and Categories

- Robbery
  - Taking of or attempt to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear

- Aggravated assault
  - an unlawful attack upon another for the purpose of inflicting severe or aggravated bodily injury

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Offense Definitions and Categories

- Crimes against property
  - A crime where no violence is perpetrated
    - Burglary
      - The unlawful entry of a structure to commit a felony or theft
    - Larceny-theft
      - The unlawful taking, carrying, leading, or riding away of property from the possession of another

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Offense Definitions and Categories

- Motor vehicle theft
  - The theft or attempted theft of a motor vehicle

- Arson
  - Any willful or malicious burning or attempting to burn, with or without intent to defraud, a dwelling house, a public building, a motor vehicle or aircraft, personal property of another, and so fort

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Defenses

- Affirmative defenses
  - The defendant admits to the criminal conduct but offers his or her reasons for acting
  - Two categories
    - Excuses
      - The defendant admits to the criminal act, but claims they are excused because of their age or mental state
    - Justifications
      - The defendant admits to the criminal act, but claims they were justified in so acting because of some circumstances, such as the need to act in self-defense or to stop a fleeing felon

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Defenses

- Justification defenses
  - Self-Defense
    - Necessity defense, where the defendant argues that he or she had to commit the act because it was necessary to avoid some greater harm

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Defenses

- What are some other examples of justification defenses?

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Defenses

- Excuse defenses
  - Age
    - Excuses the acts of children age 7 and under because they are too young to be criminally responsible for their actions—they are too young to form the requisite *mens rea*
  - Entrapment
    - Police tactics that overly encourage or entice individuals to commit crimes they normally would not commit

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Defenses

- Intoxication
  - Intoxication defense is rooted in the concept of *mens rea,* and defendants must show that they were operating under such "diminished capacity" that they could not know what they were doing and cannot be held responsible
- Duress
  - Excuse with defendants claiming that they committed the act only because they were not acting of their own free will

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Defenses

- Double Jeopardy
  - Subjecting an accused person to be tried twice for the same offense; prohibited by the Fifth Amendment
- Mental Illness/Insanity
  - Right-wrong test
    - The test of legal insanity, asking whether the defendant understood the nature and quality of his or her act and, if so, if he or she understood it was wrong
  - Irresistible impulse test
    - Requires a showing that the defendant because of a mental illness could not control his or her impulses

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Conclusion

- What is the rule of law important?

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