

Introduction to Criminal Law



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Almost all crimes require an illegal act accompanied by a guilty **state of mind**. A guilty state of mind usually means that the prohibited act was done intentionally, knowingly, or willfully. The Latin term used by lawyers when they discuss this requirement for a guilty mind is **mens rea**. In most cases, mere carelessness is not considered a guilty state of mind. For example, if Meredith accidentally forgot to turn off the stove before leaving for work and the whole apartment building caught fire as a result, she would not be guilty of arson, which is the intentional burning of a person's property. She committed the act but did not have the guilty state of mind.

State of mind is different from motive. State of mind refers to the level of awareness a person has when committing an act, for example intentionally or recklessly. Motive is the person's reason for performing the act. For example, Robin Hood stole from the rich to give to the poor, but his state of mind was intentional, so he would be guilty of a crime.

Police officers secure a crime scene to ensure that evidence is not lost.



A few crimes are **strict liability** offenses. These crimes do not require a guilty state of mind. The act itself is criminal, regardless of the knowledge or intent of the person committing it. For example, it is a strict liability crime to sell alcoholic beverages to minors. Selling alcohol to a minor is a crime regardless of whether the seller knew the buyer was underage. Similarly, having sex with an underage partner, or **statutory rape**, is a crime even if the perpetrator believes the person is not a minor. Strict liability often applies to less serious offenses such as parking violations. The state does not have to prove a guilty state of mind, only that a car was parked illegally. Unless a legislature declares in a law that it is a strict liability offense, courts assume that a guilty intent is required.

General Considerations

Every crime is defined by certain **elements**, each of which must be proven at trial in order to convict the offender. Thus, in addition to proving any required guilty mental state, the prosecutor must prove beyond a reasonable doubt that all of the elements of the crime were committed. For example, robbery is defined as the unlawful taking and carrying away of goods or money from someone's person by force or intimidation. Thus, the elements of robbery are (1) the taking and carrying away of goods or money, (2) the taking from someone's person, and (3) the use of force or intimidation.

If someone breaks into your house when you are not home and takes your property, the person cannot be convicted of robbery. The person did not take the property from a person (no one was home) and therefore could not force or intimidate anyone. However, the person could be guilty of burglary—breaking and entering into a home with intent to commit a felony—because the elements of that crime do not require the taking from a person or the use of force.

A single act can be both a crime and a civil wrong. For example, if Clay purposely sets fire to Tamika's store, the state may file criminal charges against Clay for arson. Tamika may also bring a separate civil action (lawsuit) against Clay to recover for the damage to her store. You will learn more about civil cases (torts) in Unit 3.

The crime of arson is accompanied by a guilty state of mind. *How is state of mind different from motive when a crime is committed?*



Problem 8.1

Anton is a bully. One night while eating at local diner, he notices Derek eating at a nearby table. Anton does not like the band displayed on Derek's T-shirt, so to show his pals who is in charge, Anton orders Derek to sit at another table. When Derek refuses, Anton punches him in the jaw. As a result of the injury, Derek misses several weeks of work and has to pay both medical and dental bills.

- a. Has Anton violated civil laws, criminal laws, or both?
 - b. Who decides whether Anton should be charged criminally? Who decides whether or not to sue Anton in a civil action?
 - c. If Anton is charged with a crime and is sued in a civil action, would the civil and criminal cases be tried together? Why or why not?
 - d. Is going to court the only way to handle this problem? What alternatives are there and which do you think would work best?
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State and Federal Crimes

Criminal laws exist at both the state and federal levels. Some acts, such as simple assault, disorderly conduct, drunk driving, and shoplifting, can be prosecuted only in a state court unless they occur on federal property, such as a national park. Other acts, such as failure to pay federal taxes, mail fraud, espionage, and international smuggling, can be prosecuted only in a federal court. Certain crimes, such as illegal possession of drugs and bank robbery, can violate both state and federal law and can be prosecuted in both state and federal courts.

Classes of Crimes

Crimes are classified as either felonies or misdemeanors. A **felony** is any crime for which the potential penalty is imprisonment for more than one year. Felonies are usually more serious crimes. A **misdemeanor** is any crime for which the potential penalty is imprisonment for one year or less. Minor traffic violations are not considered crimes, although they are punishable by law. This chapter deals primarily with felonies and more serious misdemeanors.

Parties to Crimes

The person who commits a crime is called the **principal**. For example, the person who fires the gun in a murder is the principal. An **accomplice** is someone who helps the principal commit a crime. For example, the person who drives the getaway car during a bank robbery is an accomplice. An accomplice may be charged with and convicted of the same crime as the principal. A person who orders a

crime or helps the principal commit the crime but who is not present during the crime—for example, the mob leader who hires a professional killer—is known as an **accessory before the fact**. This person can usually be charged with the same crime and can receive the same punishment as the principal. An **accessory after the fact** is a person who, knowing a crime has been committed, helps the principal or an accomplice avoid capture or helps them escape. This person is not charged with the original crime but may be charged with harboring a fugitive, aiding the escape, or obstructing justice. Being an accessory after the fact has been made a separate crime by statute in many jurisdictions. The victim of a crime is not a party to the crime but might be called as a witness at the trial.



An accomplice can be charged with the same crime as the person who commits the crime. Describe the difference between an *accessory before the fact* and an *accessory after the fact*.

Problem 8.2

Harold and Marci decide to burglarize Superior Jewelers. Their friend Carl, an employee at Superior, helps by telling them the location of the store vault. Marci drives a van to the store and acts as the lookout while Harold goes inside and cracks the safe. After Harold and Marci make their getaway, Harold meets a friend, Shawn, who was not involved in the actual burglary. Harold tells Shawn about the burglary, and Shawn helps Harold get a train out of town. David, a former classmate of Harold and Marci, witnesses the crime but does not tell the police, even though he recognizes both Harold and Marci. How will each person be charged? Explain your answer.

Crimes of Omission

Most crimes occur when a person does something or performs some act in violation of a law. In a few cases, however, failing to act—called an omission—may be a crime if the person had a legal duty to act. For example, it is a crime for a taxpayer to fail to file a tax return or for a motorist to fail to stop after being involved in an automobile accident. A person is guilty of a **crime of omission** when he or she fails to perform an act required by a criminal law, if he or she is physically able to perform the required act.

The Drowning Girl

Abe takes his daughter Jill and her friends Kristi and Chin to the lake. While horsing around on the dock, Kristi deliberately shoves Chin into Jill, causing Jill to fall into the water. Jill lands awkwardly and sinks to the

bottom. Chin pushes Kristi back, ignoring Jill's plight. Hannah, a bystander and an expert swimmer, glares at Kristi but takes no other action. Abe confronts the group, demanding that they do something. If Jill drowns, would any of the witnesses be criminally liable? Should any of them be liable? Explain your answer.

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Preliminary Crimes

Certain types of behavior take place before or in preparation for committing a crime. These preliminary actions—such as attempt, solicitation, and conspiracy—are crimes in themselves. Sometimes called **inchoate crimes**, they require proof of criminal intent but can be punished even if the harm intended never occurred. If two people agree to rob a bank, for example, they have committed the offense of conspiracy whether or not they actually rob the bank.

Solicitation

A number of states make it a crime for a person to solicit—or ask, command, urge, or advise—another person to commit a crime. The offense is committed at the time the **solicitation** is made. It does not require that the person solicited, or asked, actually commits the crime. For example, Dennis wishes to kill his wife, Carmella. Lacking the nerve to do the job himself, he asks William to kill her. Even if William refuses, Dennis has committed the crime of solicitation.

Attempt

In most states, an attempt to commit a crime is itself a crime. To be guilty of an attempted crime, the accused must have both intended to commit a crime and taken some “substantial step” toward committing the crime. When someone performs all of the elements of a crime but fails to achieve the criminal result, an **attempt** has occurred. For example, when a person intends to shoot and kill someone but misses or merely wounds the intended victim, the person is guilty of attempted murder. Sometimes the crime is foiled before all the necessary steps are completed, such as when a person purchases a gun and intends to shoot another person but is arrested on the way to the intended victim's house. Courts must then determine whether the actions of the accused constituted a “substantial step” toward the actual commission of the crime or were mere acts of preparation.

Problem 8.3

Examine the following situations and decide whether any of the individuals involved would be guilty of the crime of attempt.

- a. Martin, a bank teller, figures out a foolproof method of stealing money from the bank. It takes him some time to get up the nerve to steal any money. Finally, he makes up his mind and tells his girlfriend, Yuka, that tomorrow he will steal the money. Yuka goes to the police, and Martin is arrested an hour later.
- b. Gilbert, an accomplished thief, is caught while trying to pick Lewis's pocket. He pleads not guilty and says he cannot possibly be convicted, because Lewis did not have a penny on him.
- c. Rita and Anwar decide to rob a liquor store. They meet at a pub and talk over their plans. Rita leaves to buy a revolver, and Anwar leaves to steal a car for use in their getaway. Rita is arrested as she walks out of the gun shop with her new revolver. Anwar is arrested while trying to hot-wire a car.
- d. Amy decides to burn down her store to collect the insurance money. She spreads gasoline around the building. She is arrested while leaving the store to get a book of matches.

Conspiracy

A **conspiracy** is an agreement between two or more persons to commit a crime, coupled with an intent to commit the crime and (in most states) some action or conduct that furthers the agreement. The designation of conspiracy as a crime allows police to arrest conspirators before they complete the crime. It also is meant to prevent other crimes and to strike against criminal activity by groups.

The U.S. government took into custody people, such as Zacarias Moussaoui, believed to have conspired against the United States in the September 11, 2001, terrorist attacks. *Why is the designation of conspiracy as a crime sometimes criticized as a threat to First Amendment freedoms?*



For example, the federal government aggressively pursued anyone believed to have conspired with the al-Qaeda network in the terrorist attacks of September 11, 2001. The goal was to punish those involved in the attacks and to prevent any future terrorist activities from being carried out against U.S. interests. However, the designation of conspiracy as a crime is sometimes criticized as a threat to freedom of speech and association. During the Vietnam War, the government charged several people with conspiracy for speaking publicly to young men about how to avoid the draft. Many critics of criminal conspiracy said the accused were being denied the freedom of speech.

A criminal conspiracy also occurs when Nick, a drug dealer, persuades Lyle, his associate, to help him kill another rival dealer. If Lyle agrees to Nick's request and then takes steps toward committing the crime, such as buying a gun, both Nick and Lyle are guilty of conspiracy to commit murder, even if the murder is never attempted or accomplished.

In many states and under some federal laws, an **overt** act—an act that is open to view—is required for conviction on a conspiracy charge. The overt act must occur after the agreement but does not have to be illegal. For example, assume several people agree to rob a bank. Then one of them buys a ski mask that is to be worn during the robbery. The requirement for an overt act has been met for all the co-conspirators.

What happens if one member involved in the conspiracy decides not to go through with the planned crime? In most states, the person who withdraws from the planned crime must also notify law enforcement before the crime takes place in order to avoid criminal liability.

Problem 8.4

Three students—Johnson, Hector, and Rajana—hate school. On Monday, they discuss a plan to commit arson and burn down their school. On Tuesday, the three of them purchase kerosene and matches at the local hardware store. On Wednesday, Johnson, Hector, and Rajana load the kerosene and matches into Hector's truck and drive together to the school. They carry the kerosene and matches towards the school, pour kerosene near the school and light a match. A police officer notices them and runs over to arrest them.

- a.** At what point, if any, are Johnson, Hector, and Rajana guilty of the crime of conspiracy in most states?
 - b.** At what point, if any, are Johnson, Hector, and Rajana guilty of the crime of attempted arson?
 - c.** Assume that Johnson changes his mind and decides not to participate in the arson after he goes to the hardware store with Hector and Rajana to purchase the kerosene and matches. Could he be charged with any crime? If so, what crime?
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