

# GENERAL FEATURES OF CRIME

## I. The Criminal Act

- An act in violation of the law  
Actus Reus –

## II. The Guilty Mind

Mens Rea –

### A) 4 Levels of Mens Rea

#### 1) *Intentional*

- Actions undertaken to achieve some goal
- Transferred Intent –  
Example:

#### 2) *Knowing*

- Action undertaken with awareness  
Example:

#### 3) *Reckless*

- Action that increases the risk of harm
- To Disregard a substantial risk  
Example:

#### 4) *Negligent*

- Criminal Negligence –  
Example:

### B) Complexities of Mens Rea

- State of mind cannot be proven except in case of confession
- Different than motive
- Motive –

### C) Strict Liability and Mens Rea

- Strict Liability –
- You may not know that you are committing a crime...but the violation alone is a crime

Example: Speeding, Statutory Rape

## III. Concurrence

- The coexistence of (1) an act in violation of the law and (2) a culpable mental state.

Example: If you are driving to shoot someone and hit them and kill them with your care there is no concurrence of act and intent.

## OTHER FEATURES OF CRIME

Contemporary understandings of crime are more complex than in the past. Some scholars will content that the three basic features of crime are insufficient to appreciate the modern legal system. They propose 5 additional principles.

The 5 Principles:

- 1) Causation
- 2) A Resulting Harm
- 3) Principle of Legality
- 4) Principle of Punishment
- 5) Necessary Attendant Circumstances

### **Causation:**

*Concurrence* of a guilty mind and a criminal act may produce or CAUSE harm.

Legal Cause – Legally recognizable cause. Demonstrated in order to hold an individual criminally liable for causing harm.

Example: Assault with a deadly weapon with intent to kill; Victim goes into hospital seriously injured but not killed. Later dies of infection from wounds. A defense attorney would argue that the defendant did not CAUSE the death.

### **A Resulting Harm:**

Harm occurs in any crime.

Example: Throwing rocks at but not hitting a visually impaired individual.

- This is why Crime consists of 3 elements

### **Legality:**

Activity cannot be criminal if no law defines it as such.

No Ex Post Facto Laws – “After the Fact” Nobody can be held accountable for actions taken before a law is passed.

Example: Not a crime to drink alcohol if you are 21 now. However, during prohibition it was a crime.

### **Punishment:**

Punishment for a crime must be specified in the law or it will not be a crime.

### **Necessary Attendant Circumstances:**

Attendant Circumstances – The facts surrounding an event (Time, Place)

Examples:

Texas

- Felony 1 to break into an establishment that is not a home
- Felony 2 to break into a home (more serious)

Florida

Lewd behavior in presence of children

# Types of Defenses to a Criminal Charge

**A defense consists of evidence and arguments offered by a defendant and their attorneys to show why that person should not be held liable for a criminal charge.**

## **4 Broad Categories of Defense:**

- 1) Alibi – Participation in the commission of a crime was impossible due to other provable engagements.**
- 2) Justification – Defendant admits to crime but claims it was necessary to avoid some greater evil.**
- 3) Excuse – Defendant claims that some personal condition or circumstance at the time of the act was such that they should not be held accountable.**
- 4) Procedural Defense – Defendant was in some way discriminated against in the justice process or that some important aspects of official procedure were not properly followed in the investigation or prosecution of the crime.**

## **1 – ALIBI**

- **A claim of Alibi** - Alibi is unique because it is the only defense that is based on the premise that the defendant is truly innocent.

## **2 – Justification**

- **Self-Defense** – The protection of oneself or of one's property from unlawful injury. The action was necessary to protect self or property from immediate danger.
  - The amount of defense used should be proportional to threat (Reasonable Force)
  - Retreat Rule: If you can get away...do so
- **Defense of Others** – Protect others instead of oneself from immediate threat
  - Alter Ego Rule: Only defend 3<sup>rd</sup> party under circumstances and only to the degree that the 3<sup>rd</sup> party could act on their own behalf (Jurisdictional)
- **Defense of Home or Property** – Owner of property can use reasonable NONDEADLY force to prevent others from taking or damaging unlawfully.
- **Necessity** – Some illegal action was needed to prevent an even greater harm.
  - Only in cases that do not involve bodily harm
  - Example – Cannibalism
- **Consent** – Harm was incurred only after permission was given.
- **Resisting Unlawful Arrest** – Reasonable amount of force to resist unlawful arrest or search and seize. Additionally if the officer uses greater than necessary force.

- **Mental Incompetence or Incompetent to Stand Trial** – Finding by a court that as a result of mental illness, defect, or disability, a defendant is incapable of understanding the nature of the charges and proceedings against him/her, of consulting with an attorney, or of aiding in his/her own defense.

#### 4) Procedural Defenses

- **Entrapment** – An improper or illegal inducement to commit a crime by agents of law enforcement.
- **Double Jeopardy** – A common law and constitutional prohibition against a second trial for the same offense.
- **Selective Prosecution** – based on 14 amendment “equal protection” clause. Two or more are suspected of criminal involvement but not all are prosecuted.
- **Denial of Speedy Trial** – Guaranteed by the 6<sup>th</sup> Amendment.
- **Prosecutorial Misconduct** – Actions undertaken by prosecutors that give the government an unfair advantage or that prejudice the rights of a defendant or witness.
- **Police Fraud** – Police conspire to violate the rights of an individual.

#### 5) Innovative Defenses

- **Abuse Defense** - Battered Women’s Syndrome (BWS) – Series of common characteristics in women that are abused physically or mentally over an extended period of time by a dominant male figure. A pattern of symptoms and responses that develop as a result of these relationships.
- **Premenstrual Syndrome** – PMS renders women irritable, aggressive...and confused, with loss of self-control.
- **Biological Defenses** – Chemical imbalances or biological factors lead to criminal activity.
- **Black Rage** – White society’s mistreatment of blacks led to inescapable rage.
- **Urban Survival Syndrome** – a need to engage in violence to prevent oneself from being victimized.
- **Cultural Defenses** – A defense to a criminal charge in which the defendant’s culture is taken into account in judging his/her culpability.
- **Political Defenses** – An innovative defense to a criminal charge that claims that the defendant’s actions stemmed from a set of political beliefs and standards significantly different from those on which the American style of government is passed.

## Types of Crime

**Violent Crime** - Crimes against persons that include violence or potentially violent acts. 4 Major Categories:

- 1) *Murder* -
  
- 2) *Assault and Battery* -
  
- 3) *Sexual Assault* -
  
- 4) *Robbery* -

**Property Crime** -The goal of the offender is some form of economic gain or the damaging of property. The most common form of criminal activity.

- 1) *Larceny/Theft* -  
  
*Burglary* -  
  
*Motor Vehicle Theft* -  
  
*Arson* -

**Public Order Crimes** - Behavior that has been labeled criminal because it is contrary to shared social values, norms, and customs. These are sometimes referred to as *victimless crimes* because they often harm only the offender.

**Ex.** Public drunkenness, Prostitution, Gambling, Illicit Drug use.

**White-Collar Crimes** - Nonviolent crimes committed by corporations and individuals to gain personal or business advantage. These crimes have the most far-reaching effects (\$400 Billion Annually). Conflict

over punishments between "white" and "blue" collar crimes. *Examples of White Collar Crime:*

- 1) Embezzlement-
- 2) Pilferage-
- 3) Credit Card/Check Fraud-
- 4) Insurance Fraud-
- 5) Securities Fraud-
- 6) Bribery-
- 7) Consumer Fraud-
- 8) Tax Evasion-

**Organized Crime** - A conspiratorial relationship between any number of persons engaged in the market for illegal goods and services. These crime rings are usually structured hierarchically.

*Kerry's Big Five:*

- The Mafia
- Russian Mobs
- Japanese Yakuza
- Chinese Triads
- Colombian Drug Cartels

**High Tech Crime** - Crimes relating to the use of computers or advanced technology. 85% of businesses and large governmental agencies had internet security breaches in the last year.

*Cybercrime against persons:*

- Obscene material
- Cyber-Stalking
- Cyber-harassment

*Cybercrimes against property:*

- Hacking
- Cracking (unauthorized access)
- Piracy
- Viruses

*Cybercrimes against the Government*

- Cyber-Terrorism

## **Aim: What is Crime?**

Two major categories of crime:

- 1) Felony – in NY any crime punishable by imprisonment of one year or more  
i.e. murder, robbery, burglary, rape, arson, etc.
- 2) Misdemeanor – in NY crimes punishable by less than one yr in prison (15 days - 1 yr)  
i.e. gambling, harassment, petit larceny, trespassing, etc.

Two other categories of minor offenses are:

- 1) Violations 2) Infractions  
Punishable by no more than 15 days in jail and or a fine not over \$250

4 States of mind that make up criminal intent (IKRC)