

CRIMINAL LAW

OMISSION of an Act

- a) Legal duty to act
- b) Knowledge of the facts that give rise to the duty
- c) Ability to help

CAUSATION

1. Actual Causation: But for D's conduct, the bad result (death) wouldn't have happened.
2. Proximate Causation: The result must be a natural and probable consequence of D's conduct.

IV. CRIMES AGAINST PERSON

A. Common Law Battery: Unlawful application of force to another, resulting in either (i) bodily injury, or (ii) offensive touching.

B. Common Law Assault: 2 different crimes

1. Attempt to commit a battery
2. Intentional creation (other than by mere words) of a reasonable apprehension in the minds of V of imminent bodily harm

E. COMMON LAW HOMICIDE

1. A Year and a Day Rule: (数日後に死亡した場合)
2. Common Law Murder: Causing a death of another person with **malice aforethought**

Malice aforethought requires that the defendant possess one of the following states of mind at the time of the killing:

- a) Intent to kill
 - (1) 1st degree premeditated murder: Premeditated and deliberate murder
- b) Intent to inflict great bodily injury
- c) Reckless indifference of an unjustifiable high risk to human life
- d) Intent to commit a felony (Felony murder)

Felony Murder: Any death caused **during the commission of, or attempt to, commit a felony** is regarded as first degree murder. The felony murder rule applies if death is a foreseeable result of the commission of the felony.
(<注>必ず、Common Law Murderも検討する!! “Malice Aforethought”)

3. Common Law Manslaughter

(1) Voluntary manslaughter: A killing that would be murder **but for the existence of adequate provocation**.

Adequate provocation - All 4 factors must be met:

- (a) It must be a provocation that would arouse **sudden and intense passion** in the mind of **reasonable person**.
- (b) D must be **in fact** provoked.
- (c) There was **not sufficient time** for a **reasonable person** to **cool off**.
- (d) D **in fact** did not cool off.

(2) Involuntary manslaughter:

- (i) A killing committed with **criminal negligence**, or
- (ii) a killing committed **during a crime** that is NOT felony murder (**misdemeanor manslaughter**)

G. Common Law False Imprisonment: Unlawful confinement of a person without his valid consent

H. Common Law Kidnapping: False imprisonment that involves (i) moving V, or (ii) concealing V in a secret place

K. Common Law Rape: Sex without the victim's consent accomplished by (i) force; (ii) threat of force; or (iii) when the victim is unconscious.

M. Statutory Rape: Sex with someone under the age of consent

V. CRIMES AGAINST PROPERTY

A. THEFT CRIME

1. **Common Law Larceny**: A taking and carrying away of tangible personal property of another by trespass, with the intent to permanently deprive that person of her interest in the property
 - a) Taking
 - b) Carrying away
 - c) Tangible personal property (**NOT real property**)
 - d) Of another
 - e) By trespass (**Without permission**)
 - f) With the intent to permanently deprive that person of her interest in the property
2. **Common Law Embezzlement**: Conversion of personal property of another by a person already in lawful possession of the property, with the intent to defraud
 - a) Conversion
 - b) Personal property
 - c) Of another
 - d) By a person already in lawful **possession** of the property
 - e) With the intent to defraud
3. **Common Law False Pretense**: Obtaining title to personal property of another by an intentional false statement of past or existing fact, with the intent to defraud
 - a) **Obtaining title**:
 - b) Personal property (**NOT real property**)
 - c) Of another
 - d) By an **intentional false statement of past or existing fact**.
 - e) With the intent to defraud
4. **Common Law Larceny by Trick**: When V is tricked by misrepresentation into giving up mere **possession** of property.

B. VIOLENT THEFT CRIME

1. **Common Law Robbery**: A taking of personal property of another from the other's person or presence by force or threats of immediate death or physical injury to V, with the intent to permanently deprive him of it
 - a) Taking (= larceny)
 - b) Personal property of another
 - c) **From the other's person or presence**
 - d) By **force** or **threats of immediate death or physical injury** to V
 - e) **With the intent to permanently deprive him of it**

C. OTHER PROPERTY CRIMES

1. **Receipt of stolen property**: Receiving possession and control of "stolen" personal property, known to have been obtained in a manner constituting a criminal offense by another person, with the intent to permanently deprive the owner of his interest in it
2. **Forgery**: Making or altering a writing, with **apparent legal significance**, so that it is **false**, with the **intent to defraud**
3. **Uttering**: Offering as genuine an instrument that may be the subject of forgery and is false, with the intent to defraud
4. **Malicious Mischief**: Destroying or damaging someone else's property, with the intent or contemplation

VI. CRIMES AGAINST HABITATION

A. BURGLARY

1. **Common Law Burglary:** Breaking and entering a dwelling of another at nighttime, with the intent to commit felony inside.

a) Breaking

(1) **Actual breaking:** Creating or enlarging an opening by minimal force.

(2) **Constructive breaking:** Use of threat or fraud.

b) Entering

(1) If any portion of D's body is inside the structure, even for momentary, there is entry.

(2) **Insertion of Instrument:** ONLY if the instrument is inserted for the purpose of accomplishing the felony.

c) Dwelling: A structure used with regularity for sleeping purposes.

d) Of another

e) At nighttime

f) With the intent to commit felony inside

C. **Common Law Arson:** Malicious burning of a building of another

a) Malicious:

b) Burning:

c) Building:

d) Of another:

VII. ACCOMPLICE LIABILITY (liability for the conduct of others) *[general intent]*

In order to be liable as an accomplice, the accused must have **given aid, counsel, or encouragement with the intent to aid or encourage the principle in the commission of the charged crime.** *If D is an accomplice, D is guilty of:

(1) Crimes he **did** or **counseled**; AND

(2) Any other crimes committed **in the course of committing the crime contemplated**, as long as the other crimes are **probable and foreseeable**.

WITHDRAWAL

a) If D **encouraged** the principal, D can withdraw from a crime **merely by discouraging** the principal.

b) If D **aided** the principal (**provided assistance**), D can withdraw from a crime by **attempting to neutralize the assistance or prevent the crime from the happening** (including notifying the authorities).

ACCESSORY AFTER THE FACT (事後從犯)

a) **assist** a principal who has committed a felony;

b) with **knowledge** that the crime has been committed; and

c) with the **intent** to help the principal avoid arrest or conviction

V. INCHOATE OFFENSES (incomplete offenses)

A. **Solicitation (教唆)** *[special intent]*

Asking someone to commit a crime, with the **intent** that they do so (completion unnecessary)

B. **Conspiracy (謀議)** *[special intent]*

(i) agreement between 2 or more

(ii) intent to enter into the agreement

(iii) intent by at least 2 to achieve the objective of the agreement

(iv) overt act (most states)

Withdrawal is not a defense to a charge of conspiracy, because it is complete as soon as the agreement is made and an overt act is committed

C. **Attempt (未遂)** *[special intent]*

(i) specific intent

(ii) a substantial step in the direction of the commission of the crime (mere preparation not enough)

D. **Aider and Abettor (幫助)**

Purposely assists, aids, helps, encourages or otherwise causes the perpetrator of the given crime to commit the crime through the assistance of the aider and abettor

VII. DEFENSE (要件を検討する各抗弁は、何れも”legal defense”) / (“Mistake of Fact”は”factual defense”)

Self-Defense/ Defense of Others/ Defense of Property/ Insanity/ Entrapment/ Mistake/ Age, Infancy/ Necessity/ Duress/ Crime Prevention/ Intoxication (voluntary intoxicationは、specific intent crimeのみ)

A. CRIMINAL CAPACITY DEFENSE

1. Insanity

- (1) M’Naghten Test: D, because of mental disease or defect, either **did not**:
 - (i) know his act was (morally) wrong; or
 - (ii) understand the nature and quality of his act.
- (2) Irresistible Impulse Test: D, because of mental illness, was unable to:
 - (i) control his act; or
 - (ii) conform his conduct to law.
- (3) Model Penal Code Test (combines the two common law test): D, because of mental disease or defect, **lacked** the **substantial capacity** to either:
 - (i) appreciate the criminality of his conduct; or
 - (ii) conform his conduct to law.

2. Intoxication

- a) Involuntary Intoxication **may be treated as mental illness**.
 - (i) **Without knowledge** of its nature;
 - (ii) Under direct **duress** imposed by another; OR
 - (iii) **Pursuant to medical advice** while unaware of the substance's intoxicating effect.
- b) Voluntary Intoxication **is the self-induced intentional taking of a substance known to be intoxicating without duress**. *Voluntary intoxication may serve to negate specific intent. (e.g. first degree murder, attempted murder)

B. JUSTIFICATION

1. Self-Defense

- a) Non-Deadly Force: A person may use non-deadly force for self-defense, if it **reasonably appears necessary** to protect himself **from imminent use** of **unlawful force** upon himself.
- b) Deadly Force (Guns and Knives (Weapon)): A person may use **deadly force** for self-defense, only if all 3 requirements are met:
 - (1) He is **without fault**;
 - (2) He is **confronted** with **unlawful force**; AND
 - (3) He is **threatened** with **imminent death or serious injury**.

Some states recognize an imperfect self-defense doctrine under which a murder may be reduced to manslaughter even though the defendant was at fault in starting the altercation or unreasonably but honestly believed in the necessity of responding with deadly force.

6. The Necessity Defense:

It is a defense to criminal conduct if the defendant **reasonably believed** that the conduct was necessary to prevent a **greater harm**. (homicideは×)

C. OTHER DEFENSES

1. Duress

D **reasonably believed** that another person would imminently **inflict death or great bodily harm** upon him or his family, **if he did not commit a crime**. (homicideは×)

2. Entrapment

- (1) Criminal design originated with law enforcement officers; AND
- (2) D was **not predisposed** to commit the crime, prior to **contact by the government**.

3. 不能犯は、**Factual Impossibility**⇒Defenseにならない。(Attemptになる。)