BASIC PREMISES OF AMERICAN CRIMINAL LAW: ELEMENTS OF CRIMES

1. Defining Crimes
   a. All crimes in the Anglo-American system of criminal law consist of at least one and usually two or more of five basic elements. This lecture examines each of those elements and discusses how those elements are mixed and matched to define a crime
      i. The five basic elements are
         (1) Mental state or mens rea
         (2) Forbidden act or actus reus
         (3) Concurrence
         (4) Causation
         (5) Special circumstances
   b. Mental state or mens rea
      i. The concept of mens rea is one of the most complex in American criminal law
         (1) In the United States jurisdictions have adopted one of two types of criminal codes:
            (a) One type of code does not define the mens rea terms used in the definition of crimes and instead uses mens rea terms that were developed by the common law
            (i) Those codes look to the common law and legislative intent to give the mens rea terms meaning
(ii) The Federal Criminal Code is an example

1) The Federal Criminal Code uses several different mental states in its definitions of crimes, but does not contain a definition of any of those mental states

a) As will be examined in more depth below, in these types of codes the same *mens rea* term often has different meanings in different statutes

(b) The second type of criminal code contains a comprehensive list of the *mens rea* terms that are used in the definitions of the crimes which the code defines and precisely defines the meanings of those terms

(i) The criminal codes of many states which are based on the Model Penal Code are examples of this type of code

ii. *Mens rea* at common law

(1) The common law recognized two different forms of *mens rea* which many American jurisdictions still use and whose definitions have been codified in many state criminal codes. The two common law forms of *mens rea* are:

(a) Specific intent

(i) When the defendant has the specific design to engage in an act condemned by a criminal statute or has the specific design to bring about a result which a criminal statute condemns

(ii) Generally specific intent does not require that the defendant know what the law forbids

1) It is a basic premise of Anglo-American law that all persons are deemed to know the law

(b) General intent

(i) When the defendant knowingly engages in the physical act condemned by a criminal statute or engages in a physical act and there was a high probability that a result condemned by a criminal statute will follow from the act

1) As long as the condemned result is
substantially certain to follow from the act, it can be inferred that the defendant intended that result

a) The defendant’s actual intent is irrelevant

(c) Doctrine of transferred intent

(i) Under the doctrine if the defendant intended to commit a particular crime against one specific person or some specific property and through mistake or otherwise commits it against a different person or different property the defendant is deemed to have intended to commit that crime against that different person or property

1) In other words the intent follows the bullet

2) The doctrine of transferred intent can only be applied to the same type of crime that the defendant intended to commit

(ii) Those jurisdictions that have adopted the approach of the Model Penal Code have retained the doctrine of transferred intent.

iii. Mens Rea and the Model Penal Code

(1) Some American jurisdictions have rejected the common law forms of mens rea and have instead adopted the mental state terms and definitions contained in the Model Penal Code.

(2) The Model Penal Code recognizes and defines four mental states.

(a) Purpose

(i) A person acts purposely when it is his conscious object to engage in specific conduct or accomplish a specific result

1) Purpose generally corresponds to the common law concept of specific intent

(b) Knowledge

(i) A person acts knowingly when he is consciously aware of the nature of his conduct, that a particular result is practically certain to follow from it, or that certain circumstances exist

1) Knowledge generally corresponds to the
common law concept of general intent

(c) Recklessness

(i) A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that a result will follow

(d) Negligence

(i) A person acts negligently when he fails to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow that is described in a criminal statute and failing to be aware of either constitutes a substantial deviation from the standard of care a reasonable person would exercise

iv. Other Forms of Mens Rea

(1) Criminal statutes frequently contain other terms to describe their mental state element

(2) Two of the most common are

(a) Willfully

(b) Maliciously

(3) Willfully

(a) The term “willfully” is one of the most chameleon-like terms in American criminal law

(i) It can be used in the sense of specific intent and it can include knowledge of the law, as in the criminal provisions of the Internal Revenue Code, or it can be used in the sense of ordinary specific intent without knowledge of the law as one of its components

(ii) It can also be used in the sense of general intent or knowledge as in the criminal provisions of many state tax codes

(iii) In which of those three senses it is used in the definition of a particular crime is determined by the court by reference to the common law (particularly if the statutory crime had a common law antecedent) and by reference to legislative intent

1) The Model Penal Code defines willfulness
as knowledge

(4) Maliciously
   (a) At common law the term maliciously meant that a person acted
       (i) with actual intent to commit the act condemned by the statute or
       (ii) with a heedless disregard of the plain and strong likelihood that the harm prohibited by the statute would occur

(5) The only way to know what one of these terms means is by looking at how the courts in the particular jurisdiction have construed the term in the specific criminal statute in which it is used
   (a) The fact that a term such as “willful” has been construed to mean one thing in one criminal statute does not necessarily mean that it has been construed in the same way in a different criminal statute
       (i) The only way to know that a term has been used in the same sense throughout a criminal code is if the criminal code in which the term appears has a definition section that defines the terms for all criminal statutes in the jurisdiction
       (ii) Even then, an American lawyer needs to be cautious because many special criminal statutes do not appear in the criminal code and instead appear with the regulatory or administrative statutes to which they relate
           1) Those statutes may give a different meaning to the term than it is given in the criminal code

v. Offenses without mental states
   (1) Some offenses contain no mens rea element in their definition
       (a) Such offenses may or may not be strict liability offenses
           (i) Courts will construe minor offenses as strict liability offenses
           (ii) With serious offenses courts look to legislative purpose to determine whether the legislature
intended to create a strict liability offense

(b) If a criminal statute does not contain a *mens rea* element and a court determines that the offense it defines nonetheless has a *mens rea* element, that raises the question of what mental state will be judicially inserted

(i) Some states have a default statute that contains a list of mental states from which a mental state for such offense can be chosen

(c) *People v. Sevilla*, 132 Ill.2d 113 (1989)

c. *Actus reus*

i. In Anglo-American criminal law for there to be a crime there must be a voluntarily committed act. That act is called the *actus reus*. Bad thoughts alone are not crimes

(1) Voluntary

(a) What constitutes a voluntary act as that term is used in criminal law has long been a matter of debate

(i) One definition that captures the core understanding of voluntariness as it is used in criminal law is:

1) An act performed consciously as a result of effort or determination

a) Unconscious acts, reflexes, and acts caused by another are not voluntary acts

(b) Voluntariness and acts committed under duress

(i) As used in reference to the *actus reus* voluntariness refers to a conscious physical movement. Thus, one acting under duress is still engaging in a voluntary physical act because though the actor is engaging in the act because of some type of compulsion, the actor is still engaging in a conscious physical movement

1) Duress is a defense

2) Beside the definition itself, the significance of the difference between voluntariness and duress is that the prosecution must prove that a defendant’s act is voluntary while a defendant has the burden of proving he
acted under duress

(ii) *Fain v. Commonwealth*, 78 Ky. 183 (1879)

(2) Act

(a) The term act refers to positive acts, such as making a false document, as well as failures to act and possession.

(b) Omissions to act

(i) An omission to act is only criminal when the law imposes a duty to act. In the absence of a legal duty a person has no obligation to act even when he might have a moral duty to do so.

(ii) Law imposes a duty to act in only a limited number of situations

1) Statutorily imposed duty

2) Familial relationship

   a) Parents/minor children

   b) Marital relationship

   c) Perhaps family-like relationship e.g. domestic partnership

   d) Not romantic/sexual relationship

   e) *People v. Beardsley*, 150 Mich. 206 (1907)

3) Business relationship

   a) Employer/employee

   b) Ship captains and crew or passengers

4) Contractual relationship

   a) Where a person undertakes to care for other through a contract. E.g. lifeguard

   b) Duty to act is limited to the duty set out in the contract. Thus, a lifeguard whose duties are contractually limited to saving drowning persons has no duty to come to the aid of a woman being raped on the beach where the lifeguard is employed
5) Undertaking care of persons

   a) When one undertakes to provide care to persons who need care and to whom one owes no such duty, such undertaking may ripen into a duty to provide care

(c) Necessity of Knowledge

   (i) To be held liable for failing to act a person must be aware of the facts that give rise to the duty

   (ii) Whether a person must be aware of the existence of the duty the law imposes depends on the \textit{mens rea} element of the offense

       1) If the \textit{mens rea} element is the element of specific intent or purpose then, depending on how that term is defined, knowledge of the law by the defendant may need to be proved

       2) If instead the \textit{mens rea} element is general intent or knowledge, then knowledge of the law is irrelevant

(d) Necessity of ability to act

   (i) To be considered to have violated a duty to act a person must have had the ability to act

   d. Concurrence

   i. When a crime is defined so that it contains both a \textit{mens rea} element and an \textit{actus reus} element there must be concurrence between the two elements

      (1) There is said to be concurrence when the \textit{mens rea} actuates the condemned act or actuates the act that brings about the condemned result

         (a) Consequently if the \textit{mens rea} is formed after the act is committed no crime has been committed

            (i) \textit{Wilson v. State}, 96 Ark. 148 (1910)

         (b) One recurring concurrence problem which has been resolved differently in different jurisdictions is where the defendant with an intent to accomplish a result that the law condemns commits an act which he mistakenly believes accomplishes that result, but does not, and then commits
another act with a different intent by which she unknowingly accomplishes the result she intended to accomplish with the first act.

(i) The problem has usually arisen in cases involving murder where the defendant with intent to kill a victim performs an act which he mistakenly believes has brought about the victim’s death and then with the intent to hide the body the defendant does another act, such as burning it, which actually causes the death.

1) In some jurisdictions the defendants in these cases are considered to have committed murder, in others they are not considered to have committed murder because at the time they performed the lethal act they no longer had the intent to kill, and in still others it depends on the first act and whether it would have resulted in the victim’s death if the later act had not been committed. If it would have resulted in the victim’s death, the defendant is considered to have committed murder and if not, he may be considered to have committed some other crime such as attempt murder.

2) *Queen v. Khandu*, 15 Indian Law Rep. (Bombay Series) 194 (1890)

e. Causation

i. With crimes that condemn a result there is always an element of causation, i.e. did the defendant’s act cause the condemned result?

ii. There are two aspects of causation

   (1) Cause in fact
   
   (2) Proximate or legal cause

iii. Cause in fact

   (1) This component of the element of causation simply asks whether the condemned result would not have occurred without the defendant’s act. If the result would not have occurred without the defendant’s act then there is cause in fact.

   (a) This is usually referred to as a “but for” test.
iv. Proximate or legal cause

(1) Proximate cause or what is sometimes called legal cause is really a limiting principle that determines when a person will not be held liable for a result that is caused by his act. Proximate cause thus represents a policy decision not to hold a person criminally liable for his conduct because the connection between his act and the condemned result has become too attenuated.

(2) Questions of proximate cause usually arise in two different situations

(a) One of those situations is where there is a pre-existing condition unknown to the defendant which because of the defendant’s act brings about the result condemned in a criminal statute. In that situation the defendant will be deemed to have caused that result even if that act would not have caused that result if the condition did not exist.

(b) The second situation is when some type of intervening act brings about the condemned result.

(3) Victim’s pre-existing condition

(a) A defendant takes the victim as he finds her and if as a result of the victim’s pre-existing condition the defendant’s act brings about a condemned result the defendant’s act will be considered the proximate cause of the result.

(i) What type of crime the defendant has committed in this situation will depend upon the defendant’s mens rea when he committed the act and the mens rea contained in the statutes which define the offenses with which the defendant may be charged.

(4) Intervening act brings about the condemned result

(a) If the intervening act that brings about the condemned result is an act of nature, the defendant will not be deemed to be the cause of the result.

(b) If the intervening act is the act of another person, then whether the defendant will be deemed to be the cause of the condemned result depends on the nature of the intervening act.

(i) If the intervening act is an act of negligence by a third person then the defendant’s act will be considered to be the proximate cause of the condemned result.
1) The reason for this is that negligence is considered to be foreseeable

(ii) If the intervening act is an act of gross negligence by a third person, then the defendant’s act will not be considered to be the proximate cause of the condemned result.

1) The reason for this is that gross negligence is not considered to be foreseeable

(c) If the intervening act is the act of the victim himself in most instances the defendant’s act will not be considered the proximate cause of the condemned result.

(5) Year and a day rule

(a) The common law developed a year and a day rule which provided that if a victim died more than a year and a day after the defendant perpetrated a criminal act against him, the defendant’s act will not be considered to have caused the victim’s death.

(i) Despite advances in medical knowledge many jurisdictions continue to follow the year and a day rule.

f. Circumstances

i. Certain crimes are defined in such a way that for the crime to be committed some specified circumstance or circumstances must be in existence at the time the actus reus is committed.

(1) For example, for a witness to commit the crime of perjury at the time the witness makes the false statement: 1) he must have been under oath and 2) made that statement in a proceeding where by law an oath or affirmation was required.