

## REQUIREMENTS: ACT + INTENT + RESULT = CRIME – DEFENSES (AIRCOC)

Abbreviations Key: A. = Amendment; Art. = Article

### ACT (ACTUS REUS)

1. Definition: A voluntary act
2. Action must be satisfied by either:
  - A. A traditional act
    - Thoughts alone are insufficient to establish the *actus reus* element
      - (a) Some kind of action in addition to thoughts is required for a valid criminal prosecution
      - (b) A legislature cannot criminalize thoughts that it disagrees with [U.S.A. v. N. City of St. Paul]
      - (c) Thoughts plus an overt act or substantial step toward a crime can constitute an attempt crime; historically, attempt crimes were treated as misdemeanors; however, modernly, attempt crimes are classified as felonies
    - B. Once an act is established, thoughts can be used by the prosecution as evidence of motive or intent
      - (a) The punishment for a battery offense can be enhanced because of the defendant's biased motive of selecting the victim on account of the victim's race [E.M.L. v. MiddleB.]
  - B. An omission to act where there is a legal duty to act

### OMISSION

1. Legal duty to act created by:
  - A. Statute
    - Good Samaritan statutes mandate a duty to assist if one can assist without causing danger or peril to any person; violations of a Good Samaritan statute typically constitutes a misdemeanor offense with a fine as punishment
  - B. Contract
    - A contract with a nursing home or private party to provide care; failure to provide the food and medical care that was contractually agreed on can establish the *actus reus* element necessary to prosecute the caregiver whose omission to act caused the death of a patient [Commonwealth v. Festiniak]
    - C. Voluntary assumption of care and risk
      - A parent-child relationship creates a duty to provide food, shelter, and protection for the child; a parent's failure to protect a child from physical abuse can establish the *actus reus* element necessary to prosecute the parent, even if the parent did not do any of the physical abuse, based on the parent's omission to affirmatively act to protect the child [Commonwealth v. Horan]
      - D. Special relationship
        - A stranger does not have a duty to protect a child from physical abuse unless specifically required by a state statute
  - B. Wrongful creation of peril

NOTE: Failure to act where there is no duty to act does not create criminal liability

### VOLUNTARINESS OF ACTS

1. Defenses to the *actus reus* element
  - A. Involuntary
    - Individual is drunk inside a private home and the police come into the home and forcibly carry the individual out to the street and charge the individual with drunkenness in public; the defense of involuntariness is valid [Martin v. State]
  - B. Reflexive
  - C. Unconscious
    - One who becomes unconscious and causes harm due to a sudden unexpected medical condition will have a valid defense that his/her act was involuntary and does not satisfy the requisite *actus reus* element, making the harm caused nonsimilal; a sudden seizure, heart attack, stroke, or other disabling attack would qualify in this category [State v. Dickey]
    - However, when an individual becomes unconscious due to a known medical condition, the involuntary defense may be invalid, as the disregard of the known risk of the possible unconsciousness negates the concept of the unconscious being involuntary; an epileptic with a known history of seizures when takes the risk of driving, becomes unconscious, and causes harm would not have the benefit of the involuntary defense [State v. Dickey]
    - Unconsciousness due to voluntary intoxication is not a valid defense that the act that caused harm was involuntary; a drunk driver who becomes unconscious behind the wheel of a car cannot benefit from the involuntary defense and is still criminally responsible for the harm caused by the recklessness regardless of the consequences of the act of driving while intoxicated [State v. Dickey]
    - D. Involuntary intoxication
      - E. Asleep (i.e., sleepwalking)
      - F. Convulsive (i.e., epilepsy)

NOTE: Not every act in the criminal transaction must be voluntary, but the crime must include a voluntary act to satisfy *actus reus*

### INTENT (MENS REA)

1. Common law jurisdictions draw a distinction between specific and general intent crimes; Model Penal Code (MPC) jurisdictions do not
2. Requirements
  - A. Requires the doing of an act and doing it with specific intent to cause the social harm
    - (a) Must have the general intent to do the act
    - (b) Must have the specific intent to achieve the consequences of the crime, and
      - (i) The action itself and the specific intent must occur at the same time
        - (a) The requisite mens rea for 1st degree murder requires proof of a "specific intent to kill" (premeditated and deliberate killing of a human being), weighing the consequences, and specifically intending death
  - B. Defenses to specific intent
    - A. Voluntary intoxication is allowed in most states as a defense to a specific intent crime whereas the defendant's intoxication prevented the formation of the requisite specific intent needed to commit the crime (i.e., unable to intend the consequences of his/her actions); however, although voluntary intoxication may work to defend against a specific intent crime, it might not negate all criminal liability and other related general intent crimes could be validly charged
      - (i) If a defendant asserts voluntary intoxication to defend against the specific intent element of premeditation and deliberation in a 1st degree murder charge, a voluntary intoxication defense may not protect the same defendant against the lesser offense of 2nd degree murder that requires only general intent
      - (ii) Voluntary intoxication defenses are generally disfavored
    - B. States are not required to recognize the defense of voluntary intoxication, and it is constitutionally valid to instead ban the defense of voluntary intoxication entirely, which some states have done [EM.L. v. Egeland]
    - C. Involuntary intoxication is accepted as a valid defense to *mens rea*
    - D. Mistake of fact: Even if the mistake is unreasonable, if in good faith, is a defense to *mens rea*
    - E. Mistake of law: a small category of criminal statutes that requires, as an element of the crime, proof that the defendant knew the law prior to violating it (i.e., the defendant acted with knowledge that his conduct was unlawful)
      - (i) Knowledge of law element: found only in complex criminal codes (tax code, immigration law, regulatory laws, etc.)
      - (ii) Even if it is unreasonable that defendant did not know the law, the defense can work if defendant was acting in good faith
    - F. Examples of common law specific intent crimes
      - A. 1st degree murder (premeditated and deliberate)
      - B. Attempt
      - C. Solicitation
      - D. Conspiracy
      - E. Assault
      - F. Robbery and larceny
        - (i) Proof of "conditional" intent to harm satisfies statutory requirement [Middleton v. U.S.]
      - G. Forgery
      - H. False pretenses
        - (i) Statutory language must include "intent to defraud" [Bates v. U.S.]
      - I. Embezzlement

### GENERAL INTENT

1. Requirements
  - A. All crimes require general intent
  - B. The general intent must occur at the same time as the *actus reus*
2. Defenses
  - A. Mistake of fact must be honest and reasonable but cannot be a legal or moral wrong
    - (i) Legal wrong—moral wrong exception: Assuming the reasonable mistake, if the defendant's act would still be illegal or immoral, the mistake of fact defense is invalid because the defendant knew he was committing a wrong, just a different wrong
  - B. Involuntary intoxication is a defense, but voluntary intoxication is not a defense
  - C. Examples of common law general intent crimes
    - A. Rape
    - B. Burglary
    - C. Involuntary manslaughter
  - D. Transferred intent
    - (i) Where the defendant intends a harmful result to Victim A and, in trying to carry out that intent, causes a harmful result to Victim B
      - (a) Some courts apply transferred intent both to a completed crime and to an attempted crime
        - (i) Defendant A may be convicted of attempted murder of intended Victim B, who was not hit, and intentional murder of unintended Victim C [People v. Scott]
        - (ii) Transferred intent also applied to affirm the 1st degree murder convictions where both the unintended victim and intended were killed [U.S. v. U.S.]
      - (b) Some courts do not apply transferred intent to attempted crimes
        - (i) If Defendant A shoots to kill Victim B, wounding B and Victim C, Defendant A may be charged with attempted murder of B but not C [People v. Gashaw; Bell v. State]
    - E. Model Penal Code (MPC)

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