

10.5: End-of-Chapter Material

10.5.1 Summary

States vary as to how they categorize and grade sex offenses. In general, rape is knowing, forcible sexual intercourse without consent or with consent obtained involuntarily. Although the victim had to resist to indicate lack of consent at early common law, in modern times the victim need not resist if it would be futile to do so. Another modernization from common-law rape is the elimination of an exemption for spousal rape and the elimination of the requirement that victim testimony in a rape case be corroborated. Most states have rape shield laws that govern the admissibility of evidence of the victim's past sexual conduct at a trial for rape. Sodomy and oral copulation are sometimes combined and included with rape in one statute called sexual assault. If sodomy and oral copulation are the subject of separate statutes, sodomy is typically knowing forcible penis to anus penetration, and oral copulation is typically knowing forcible mouth to sexual organ or anus penetration. Statutory rape is generally sexual intercourse with an underage victim either recklessly, negligently, or with strict liability depending on the jurisdiction, and incest is generally knowing sexual intercourse between family members who cannot marry. States vary as to how they grade sex offenses, with force and penetration enhancing the grading to a felony in most jurisdictions.

Assault and battery are often included in the same statute (called assault) but are actually separate offenses with distinct elements. Battery is generally a purposeful, knowing, reckless, or negligent (depending on the jurisdiction) unlawful harmful or offensive touching without victim consent. Assault can be attempted battery, in which case all the elements of battery except the physical contact are present, or threatened battery, which is a purposeful act that causes apprehension of harmful or offensive physical contact in the victim. Simple battery and simple assault are typically misdemeanors, while aggravated versions of these offenses are often felonies. Factors that can aggravate the grading of assault and battery are the use of a weapon or serious injury.

Domestic violence statutes criminalize conduct such as assault, battery, sex offenses, or criminal homicide between family members and have special provisions that pertain to interfamily violence. Stalking criminalizes a purposeful course of conduct that poses a credible threat to the victim's safety. Cyberstalking is the use of the Internet or e-mail to commit stalking. Simple stalking is generally a misdemeanor, while aggravated stalking, which is stalking that causes injury or violates a restraining order, is generally a felony.

Kidnapping is the purposeful confinement and asportation (movement) of a victim for the purpose of injuring or harming the victim or another, hiding the victim in secret, obtaining a ransom, committing a separate offense, subjecting the victim to involuntary servitude, or interfering with the purpose of government or political function. False imprisonment is a lesser included offense of kidnapping that does not include asportation or specific intent. Interference with custody is parental kidnapping or violation of a child custody or visitation agreement. While kidnapping is typically a felony, false imprisonment and interference with custody are generally graded lower, as either a gross misdemeanor or low-level felony.

10.5.2 YOU BE THE LAW ENFORCEMENT OFFICER

You are a newly hired law enforcement officer starting out in the file room. You have been given five case files. To properly file them, first read over the facts of each case, determine **which crime** has been committed, and determine whether the crime is a **misdemeanor** or **felony**. Check your answers using the answer key at the end of the chapter.

1. The defendant was on a date with the victim. After a few drinks, the victim became extremely intoxicated, and the defendant had to have help carrying him to her vehicle. The defendant thereafter drove to a secluded area where she had sexual intercourse with the victim. The victim was unconscious and did not discover the act of sexual intercourse until two months later when the defendant told him she was pregnant. Which **crime** has been committed? Is the crime a **misdemeanor** or a **felony**?
2. The defendant, a security guard, forced the victim, a shopper in the store, to kiss him by threatening to falsely arrest her for shoplifting if she refused. Which **crime** is this? Is this a **misdemeanor** or a **felony**?
3. The defendant chased the victim with a knife for two miles. After the defendant was arrested, law enforcement determined that the "knife" was made of rubber and could not cause injury. Which **crime** has been committed? Is the crime a **misdemeanor** or a **felony**?
4. The defendant grabbed a law enforcement officer's gun and pointed it at him while the law enforcement officer was having coffee in a local restaurant. Which **crime** has been committed? Is the crime a **misdemeanor** or a **felony**?
5. The defendant, a jilted lover, picked up her ex-boyfriend's child from school and took her to an amusement park where they spent the afternoon going on rides and eating junk food. Which **crime** has been committed? Is the crime a **misdemeanor** or a **felony**?

10.5.3 Cases of Interest

- *U.S. v. Lanier*, 520 U.S. 259 (1997), discusses sexual assault by a judge as the subject of a federal criminal action: <http://www.law.cornell.edu/supct/html/95-1717.ZS.html>
- *Oregon v. Rangel*, 934 P.2d 1128 (1997), discusses the constitutionality of Oregon's stalking statute under the First Amendment: www.publications.ojd.state.or.us/S44151.htm.
- *Chatwin v. U.S.*, 326 U.S. 455 (1946), discusses federal kidnapping in the context of joining a religious cult: <http://supreme.justia.com/us/326/455/case.html>.

10.5.4 Articles of Interest

- High-profile criminal cases, including rape criminal cases: lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=2240&context=bclr
- The sexual assault case of former IMF chief, Dominique Strauss-Kahn: www.nytimes.com/2011/05/26/nyregion/strauss-kahns-lead-prosecutor-is-said-to-be-replaced.html
- Cyberstalking among college students: btci.stanford.clockss.org/cgi/reprint/5/3/279
- Parental kidnapping and domestic violence: www.vaw.umn.edu/documents/pkreport/pkreport.html

10.5.5 Websites of Interest

- State statutes on statutory rape: <http://aspe.hhs.gov/hsp/08/SR/StateLaws/statelaws.shtml>
- Information about various sex offenses: http://www.sexlaws.org/what_is_statutory_rape
- Information about stalking: <http://www.stalkingbehavior.com>

10.5.6 Statistics of Interest

- Rape and other sex offenses: <http://www.rainn.org/statistics>
- Nationwide crime by state: <http://www.disastercenter.com/crime>

10.5.7 Answers to Exercises

From Section 10.1

1. The sexual intercourse could be **rape** or **statutory rape** if either Jorge or Christina (or both) are incapable of rendering legal consent because they are below the age of consent, have mental or intellectual disabilities, or are intoxicated. If Jorge and Christina are incapable of marrying because of a family relationship, their sexual intercourse could be **incest**.
2. The South Carolina Supreme Court upheld the defendant's conviction on the grounds that force and victim resistance are *not required* when a victim is under the age of legal consent. The court specifically stated that the victim's inability to legally consent vitiates the need to prove the defendant's use of force for rape.
3. The Court of Appeals of Texas held that state legislatures have broad powers to define crimes and criminal intent requirements, including the power to *eliminate* a culpable mental state. Thus the court upheld the defendant's conviction and did not strike the strict liability aggravated sexual assault statute. The court reviewed significant state and federal precedent to determine that the majority of states disallow the mistake of age defense, and that this does not violate federal or Texas state **due process** because it is supported by the legitimate government interest of protecting children.

10.5.8 Answers to Exercises

From Section 10.2

1. In the first scenario where Bob swings once and misses, then swings again and connects, two crimes have been committed: assault and battery. The first swing that misses is an assault. The swing that punches Rick in the stomach is a battery. In the second scenario, where Bob only swings and misses, only an assault has been committed.
2. The defendant threw a cup of urine in the victim's face. Although the battery statute in Wisconsin requires **bodily harm**, the court held that the stinging sensation in the victim's eyes was sufficient and upheld the defendant's conviction.
3. The Supreme Judicial Court of Massachusetts upheld the defendant's conviction, reasoning that the defendant's **apparent ability** to consummate the shooting is what is essential to the crime of assault with a deadly weapon, not the secret fact that the gun is loaded with blanks rather than bullets.

10.5.9 Answers to Exercises

From [Section 10.3](#)

1. Most domestic violence statutes include **individuals residing together**, so this could be domestic violence battery or assault.
2. The Supreme Court of North Dakota upheld the defendant's conviction, stating that the constitutional right to travel is not absolute and can be restricted to protect a victim from **harm**, as in this case.
3. The Court of Appeals of Georgia reversed the defendant's conviction because aggravated stalking in Georgia requires a **course of conduct** violating a protective order. In this case, the prosecution only proved that the defendant committed *one act* violating the protective order.

10.5.10 Answers to Exercises

From [Section 10.4](#)

1. If Coby's state does not require **asportation** for kidnapping when the kidnapping is for ransom, then Coby has probably committed kidnapping. He confined a victim against her will with the purpose of committing another offense (theft) and demanded a ransom, which are all the elements of kidnapping.
2. The Connecticut Supreme Court rejected precedent and *changed the rule* that an act of kidnapping could be incidental to the commission of a separate offense. Thereafter, the court ordered a new trial on the kidnapping charge, although it surmised that a jury could reasonably find the defendant guilty of kidnapping separate from the assault.
3. The Superior Court of Pennsylvania affirmed the defendant's convictions, holding that the kidnapping statute applied to *any* individual—including a **parent**.

10.5.11 Answer to Law and Ethics Question

1. Rape shield laws focus on the protection of the victim *at trial* and preclude the admission of evidence of the victim's sexual history (other than a sexual history with the defendant). They do not necessarily prevent the media from publishing information about the victim or from taunting the victim. Of course, in the Bryant case, this publication ended up badly demoralizing and frightening the victim, leading to the eventual demise of the rape case against Bryant. However, blanket prohibitions against publication of information by the media would be **overbroad** and would violate the **First Amendment**. A balance must be present between protection of the victim, preservation of the right to a fair trial, and freedom of speech. This case illustrates the damage the media can do to a fair trial, unprejudiced jury, and a willing and cooperative victim. However, the public's right to know is also paramount and cannot be sublimated without narrow tailoring and a compelling government interest.

10.5.12 Answers to You Be the Law Enforcement Officer

1. The crime is **rape**. Although *nonforcible*, sexual intercourse with an inebriated or unconscious victim is still rape. Rape can be committed by a woman in most jurisdictions. Rape is a **felony**.
2. The crime is **simple battery**, as long as your jurisdiction criminalizes "offensive" physical contact. Simple battery is a **misdemeanor**.
3. The crime is **threatened battery assault**. Threatened battery assault typically requires apparent, rather than present, ability. Threatened battery assault that does not involve a deadly weapon is a **misdemeanor**.
4. The crime is **assault with a deadly weapon**. The defendant committed the assault with a deadly weapon and inflicted it against a law enforcement officer, so the assault is a **felony**.
5. The crime is **kidnapping**. Although the child was unharmed, children cannot give legal consent, so the crime was complete once there was confinement and asportation with the proper criminal intent (most likely the intent to "confine the child in secret"). Kidnapping is a **felony**.

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