

4.4: End-of-Chapter Material

4.4.1 Summary

Crimes are made up of parts, referred to as elements. The criminal elements are criminal act or *actus reus*, criminal intent or *mens rea*, concurrence, causation, harm, and attendant circumstances. Only crimes that specify a bad result require the causation and harm elements.

Criminal acts must be voluntary or controllable and cannot consist solely of the defendant's status or thoughts. Just one voluntary act is needed for a crime, so if a voluntary act is followed by an involuntary act, the defendant can still be criminally responsible. Omission or failure to act can also be criminal if there is a duty to act based on a statute, contract, or special relationship. Possession is passive, but it can still be a criminal act. The most common items that are criminal to possess are illegal contraband, drugs, and weapons. Possession can be actual if the item is on or very near the defendant's person, or constructive if within an area of the defendant's control, like inside the defendant's house or vehicle. More than one defendant can be in possession of one item. Criminal possession should be supported by the intent of awareness because it is passive.

Criminal intent is an important element because it is often one factor considered in the grading of criminal offenses. The three common-law criminal intents are malice aforethought, which is intent to kill, specific intent, and general intent. Specific intent is the intent to bring about a particular result, a higher level of awareness than is required to perform the criminal act, or *scienter*, which is knowledge that a criminal act is unlawful. General intent is the intent to do the act and can often give rise to an inference of criminal intent from proof of the criminal act. Motive should not be confused with or replace intent. Motive is the reason the defendant develops criminal intent.

The Model Penal Code describes four criminal states of mind, which are purposely, knowingly, recklessly, and negligently. Purposely is similar to specific intent to cause a particular result. Knowingly is awareness that results are practically certain to occur. Recklessly is a subjective awareness of a risk of harm and an objective and unjustified disregard of that risk. Negligently is not being aware of a substantial risk of harm when a reasonable person would be. Offense elements, including specified attendant circumstances, may require different mental states. If so, the prosecution must prove each mental state for every element beyond a reasonable doubt.

Strict liability crimes do not require an intent element and are generally *malum prohibitum*, with a less severe punishment. Transferred intent is a legal fiction that transfers a defendant's criminal intent to an unintended victim for the purpose of fairness. Pursuant to transferred intent, the defendant may be responsible for two crimes: attempt and the completed crime, depending on the circumstances. Vicarious liability transfers a defendant's criminal liability to a different defendant based on a special relationship. Corporate liability is a type of vicarious liability that holds a corporation responsible for crimes apart from its owners, agents, and employees. Concurrence is also a criminal element that requires the criminal act and criminal intent exist at the same moment.

When the crime requires a bad result, the defendant must cause the harm. The defendant must be the factual and legal cause. Factual cause means that the defendant starts the chain of events that leads to the bad result. Legal or proximate cause means that it is objectively foreseeable that the end result will occur when the defendant commits the criminal act. An intervening superseding cause breaks the chain of events started by the defendant's criminal act and insulates the defendant from criminal liability. When the intervening superseding cause is an individual, the intervening individual is criminally responsible for the crime. Some states have rules that protect the defendant from criminal responsibility for homicide when the victim lives a long time after the criminal act. These death timeline rules require the victim to die within one or three years and a day from the defendant's criminal act and are becoming increasingly unpopular. Many states have abolished death timeline rules in favor of ordinary principles of legal causation.

4.4.2 YOU BE THE LAW STUDENT

Read the prompt, review the case, and then decide whether the issue is the defendant's **criminal act** or **criminal intent**. Check your answers using the answer key at the end of the chapter.

1. Read *State v. Andrews*, 572 S.E.2d 798 (2002). In *Andrews*, the defendant took Prozac and Effexor for one day. The next day, the defendant ran his wife and her friend down with his car. After hitting both victims, the defendant jumped out of the car and stabbed his wife three times. He was convicted of attempted murder and assault with a deadly weapon against *both victims*. He appealed on the grounds that the jury was given an improper instruction as to his criminal responsibility for the crimes

committed against his wife's *friend*. Did the Court of Appeals of North Carolina hold that this is an issue of **criminal act** or **criminal intent**? The case is available at this link: <http://caselaw.findlaw.com/nc-court-of-appeals/1197459.html>.

2. Read *State v. Sowry*, 155 Ohio App. 3d 742 (2004). In *Sowry*, Ohio police arrested the defendant and brought him to jail. Before booking the defendant, the police asked him whether he had any drugs on his person. He responded "no." The police thereafter searched him and discovered a plastic bag of marijuana in his pocket. The defendant was later convicted of knowingly conveying drugs onto the grounds of a detention facility. The defendant appealed and was successful. Did the Court of Appeals of Ohio hold that this is an issue of **criminal act** or **criminal intent**? The case is available at this link: <http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2004/2004-Ohio-399.pdf>.
3. Read *Regalado v. U.S.*, 572 A.2d 416 (1990). In *Regalado*, the defendant was convicted of animal cruelty for punching a puppy repeatedly in the face. The defendant appealed, claiming that he was merely "disciplining" the puppy. Did the District of Columbia Court of Appeals hold that this is an issue of **criminal act** or **criminal intent**? The case is available at this link: http://scholar.google.com/scholar_case?case=10084482120424691457&hl=en&as_sdt=2&as_vis=1&oi=scholar.
4. Read *State v. Slayton*, 154 P.3d 1057 (2007). In *Slayton*, the defendant received a hunting permit, hired a guide, and thereafter shot an elk and carried it out of the area. The defendant's hunting permit was valid in only a limited location, and the defendant shot the elk outside that location. The defendant was convicted of unauthorized hunting and transporting wildlife. The Arizona Superior Court vacated the defendant's convictions, the state appealed, and the Court of Appeals of Arizona reversed. Did the Court of Appeals of Arizona hold that this is an issue of **criminal act** or **criminal intent**? The case is available at this link: http://scholar.google.com/scholar_case?case=13377680343653410685&q=State+v.+Slayton&hl=en&as_sdt=2,5&as_ylo=2006.

4.4.3 Cases of Interest

- *State v. Kanavy*, 4 A.3d 991 (2010), discusses omission to act: http://scholar.google.com/scholar_case?case=13238547420575358722&q=State+v.+Kanavy&hl=en&as_sdt=2,5&as_vis=1.
- *U.S. v. Grajeda*, 581 F.3d 1186 (2009), discusses criminal intent: http://scholar.google.com/scholar_case?case=10326332733812062874&hl=en&as_sdt=2&as_vis=1&oi=scholar.
- *People v. Roberts*, 826 P.2d 274 (1992), discusses proximate cause: http://scholar.google.com/scholar_case?case=128455976362726317&hl=en&as_sdt=2&as_vis=1&oi=scholar.

4.4.4 Articles of Interest

- The duty to rescue: www.utexas.edu/law/journals/tlr/abstracts/84/84hyman.pdf
- Strict liability: <http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume86n2/documents/CARPENTERv2.pdf>
- Vicarious liability: http://www.nj.com/news/index.ssf/2010/05/jury_finds_godinez_guilty_in_n.html

4.4.5 Websites of Interest

- State and federal laws and cases: <http://law.onecle.com>
- State and federal laws and cases: <http://www.findlaw.com>

4.4.6 Answers to Exercises

From Section 4.1

1. Jacqueline can be convicted of a crime in this situation. Although an epileptic seizure is not a voluntary act, Jacqueline's conduct in driving while aware that she has epilepsy is. Only *one* voluntary act is required for a crime, and Jacqueline was able to control her decision making in this instance. Punishing Jacqueline for driving with epilepsy could specifically deter Jacqueline from driving on another occasion and is appropriate under the circumstances.
2. The Texas Court of Appeals upheld the defendant's indictment and conviction. The court stated that the defendant's conduct in deliberately seeking out four physicians and presenting his medical problem to them with the intent to gain a prescription for a controlled substance in violation of Texas law is a criminal *act*, not an *omission to act*.
3. The US Supreme Court reversed the defendant's conviction and held that the prosecution must prove that the defendant *knew the weapon was automatic* to convict him of failure to register an automatic weapon.

4.4.7 Answers to Exercises

From Section 4.2

1. Jordan is acting **recklessly** or **negligently**. If Jordan is an experienced driver, then she knows that there is a substantial risk of injury or harm when a driver takes his or her eyes off the road. If Jordan is not an experienced driver, she may not be aware of the risk, but she *should be* because she has been trained to drive and has passed exams and practical driving tests that emphasize this fact. Whether Jordan's intent is reckless or negligent is probably irrelevant because most states make running a stop sign a **strict liability** offense with no criminal intent required.
2. The US Supreme Court reversed the defendant's conviction. The Court disagreed with the lower court that this was a strict liability public welfare offense and determined that a *presumption* of intent was inappropriate. The Court held that criminal intent was an element of the offense that the trier of fact needed to find beyond a reasonable doubt.
3. The Oregon Supreme Court reversed and held that the substantial risk applied to the victim's *death* (bad result), not the victim's *bedsores* (attendant circumstances).
4. The Ohio Supreme Court held that the indictment was valid and that the statute clearly intended for aggravated robbery to be a *strict liability* offense lacking mens rea.

4.4.8 Answers to Exercises

From [Section 4.3](#)

1. Phillipa's act is the **factual** and **legal cause** of Fred's death. Phillipa's act in jumping out of the bushes screaming caused Fred to run onto the highway, so Phillipa's act is the factual cause of Fred's death. In addition, a reasonable person could *foresee* that frightening someone next to a major highway might result in them trying to escape onto the highway, where a vehicle traveling at a high rate of speed could hit them. Thus Phillipa's act is *also* the legal cause of Fred's death.
2. The Delaware Supreme Court reversed the defendant's conviction based on a jury instruction that did not include the *victim's actions*. The Delaware Supreme Court held that the defendant's acts could not be the legal cause of death unless the result of the defendant's acts was foreseeable. Foreseeability in this case could only be analyzed if the jury instructions address the victim's behavior.
3. The Massachusetts Supreme Judicial Court upheld the defendant's indictment, and did not create a new death timeline rule.

4.4.9 Answer to Law and Ethics Question

1. Although ten years is a lengthy prison sentence, it may be ethical even for a criminal act committed without criminal *intent* if there is a potential for **harm**. In *Dean*, the defendant may have discharged the firearm unintentionally, but there was a great potential for injury. The defendant was inside a bank filled with employees and customers. Although the defendant's shot did not cause physical injury to any of the bank's occupants, this was mere happenstance. The defendant could have shot and killed someone. If a security guard was startled by the gunshot, a shootout may have occurred, injuring many more individuals. Thus punishing a defendant for an act that lacks criminal intent (and harm) could fulfill **specific** and **general deterrence**. Criminal intent and harm are only two factors to be considered when grading crimes. If other purposes of punishment are applicable, they can also be considered as factors.

4.4.10 Answers to You Be the Law Student

1. The Court of Appeals of North Carolina held that the defendant was criminally responsible for hitting his wife's friend under a theory of *transferred intent*. Thus this is an issue of **criminal intent**. The Court of Appeals held that transferred intent applies even when the defendant injures the *intended* victim.
2. The Court of Appeals of Ohio held that the defendant did not *choose* to bring drugs to the jail; the police forcibly took him there. Thus there was no voluntary **criminal act**.
3. The District of Columbia Court of Appeals affirmed the defendant's conviction, holding that the animal cruelty statute required proof of *general intent plus malice*, which the defendant demonstrated with his beating of the puppy. Thus this is an issue of **criminal intent**.
4. The Court of Appeals of Arizona held that the statutes the defendant violated are *strict liability*, so the fact that the defendant may have been mistaken as to the limited location authorized by his hunting permit is *irrelevant*. Thus this is an issue of **criminal intent**.

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