

Gould's Bar Examination Flash Card Series
CRIMINAL LAW

**GOULD'S
BAR EXAM FLASH CARDS
FOR CRIMINAL LAW**



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<http://www.gouldslegaleducation.com>

OFFICE TELEPHONE

1-312-607-4143

E.MAIL

contact@gouldslegaleducation.com

Gould's Bar Examination Flash Card Series
CRIMINAL LAW

CRIMINAL LAW SHOPPING LIST

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- 1. MURDER.**
- 2. DEFENSES.**
- 3. VOLUNTARY MANSLAUGHTER.**
- 4. INVOLUNTARY MANSLAUGHTER.**
- 5. ATTEMPT AND ATTEMPTED MURDER.**
- 6. THEFT AND STRUCTURE CRIMES.**
- 7. CRIMES AGAINST THE PERSON.**
- 8. SOLICITATION AND CONSPIRACY.**
- 9. VICARIOUS LIABILITY.**
- 10. NEW CRIME SITUATIONS.**

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CRIMINAL LAW

MURDER: BASIC TEMPLATE

MURDER: BASIC TEMPLATE

MURDER.

HOMICIDE.

ACTUAL CAUSE.

PROXIMATE CAUSE.

MALICE.

DEGREES OF MURDER.

DEFENSES.

VOLUNTARY MANSLAUGHTER.

INVOLUNTARY MANSLAUGHTER.

**MURDER: HOMICIDE and
CAUSATION**

MURDER: HOMICIDE and CAUSATION

MURDER. Unlawful Killing of Another with Causation and Malice.

HOMICIDE.

- Human Killed by Another Human.
- Death Occurs with Lack of Brain Activity or Lack of Heart Beat.
- Year-and-a-Day. Victim Dies within Year-and-a-Day After Incident.

ACTUAL CAUSE.

- But For Test. But For Defendant's Actions, Victim Would Have Died.
- Substantial Factor Test. Interaction of Two or More Causes.

PROXIMATE CAUSE.

- Foreseeability. Victim's Pre-Existing Conditions, Stress or Fright Leading to Death, Unintended Victims, Slight Deviations in Mode of Death.
- Intervening Acts. Superseding if Independent, or Dependent and Unforeseeable and Abnormal.
- Duty to Aid or Rescue. Special Relationships, Creation of Peril, Leaving Victim in Worse Situation After Trying to Render Aid.

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MURDER: MALICE

MURDER: MALICE

MALICE AFORETHOUGHT/ *Mens rea*.

INTENT TO KILL. Defendant Evinces Intent through Conduct or Words.

Deadly Weapon Doctrine. Use of Deadly Weapon in Manner Consistent with Causing Death.

FELONY MURDER.

Independent Felony. Predicate Felony Must be Independent of the Killing,.

During Commission / Perpetration of Crime. Killing Must Take Place During the Commission / Perpetration of the Crime which Continues Until Defendant Reaches a Safe Harbor.

Agency Approach. Defendant Must Commit Killing.

Proximate Cause Approach. Defendant Liable for Killings by Police or Bystanders, if Death was Natural and Foreseeable Result of Felony.

Co-Felon Liability. If Killing was a Natural and Probable Result of the Felony.

Human Shield Rule. If Victim Killed by Police, then Defendant is Liable.

Red Line Rule. No Liability for Killing of a Felon, because Felons are Not Protected Under the Rule.

Inherently Dangerous by Statute or Commission. Manner in Which Degree of Murder is Established.

Defense. If Defendant has a Defense to the Independent Felony, then No Felony Murder.

INTENT TO CAUSE SERIOUS BODILY INJURY.

➤ Defendant Acts with Knowledge that Their Actions Pose a Significant Threat to Victim.

➤ Defendant Continues with Life-Threatening Actions.

DEPRAVED HEART.

➤ Actions by Defendant that Evince a Reckless Indifference to the Value of Human Life.

➤ Conscious Disregard that Actions Pose a Substantial Risk of Harm or Death to Another Person.

➤ Includes “Russian Roulette” Situations.

**MURDER: DEGREES OF
MURDER**

MURDER: DEGREES of MURDER

DEGREES OF MURDER.

FIRST-DEGREE.

INTENT TO KILL. Requires Both Premeditation and Deliberation.

Premeditation. Some Kind of Thought or Planning Activity Prior to the Killing, and Related to the Killing.

Deliberation. Cool Mind Capable of Deliberate Thought.

FELONY MURDER.

Inherently Dangerous Statutory Felony. Predicate Felony Dangerous Crime Such as Robbery, Burglary, Rape, Arson, Kidnapping, or Other Serious Crime.

Inherently Dangerous as Committed. Looks to the Nature of Each Crime.

SECOND-DEGREE.

Applicable to All Malice States, Including:

- Intent to Kill Lacking Premeditation or Deliberation.
- Felony Murder Lacking Inherently Dangerous Felony.
- Intent to Cause Serious Bodily Harm.
- Depraved Heart / Reckless Indifference to Human Life.

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**VOLUNTARY and INVOLUNTARY
MANSLAUGHTER**

VOLUNTARY and INVOLUNTARY MANSLAUGHTER

VOLUNTARY MANSLAUGHTER. Mitigation.

HEAT OF PASSION DEFENSE.

Reasonable Provocation.

➤ Provocation From Victim Such that a Reasonable Person Would Have Lost Self-Control.

➤ Reasonable Person is Sober, and Not Intoxicated.

Actually Provoked. Defendant was In Fact Provoked.

Insufficient Time to Cool Off. Short Enough that a Reasonable Person Would Not Have Lost Self-Control.

Did Not Cool Off. Defendant.

Rekindling Of Passion. New Provocation Rekindling Original Provocation.

IMPERFECT DEFENSE.

Unreasonable Mistake. But Close to Meeting Parameters of Defense.

INVOLUNTARY MANSLAUGHTER.

GROSS NEGLIGENCE.

➤ Disregard of a Substantial Danger of Serious Bodily Harm.

➤ Lack of Due Caution.

-Misdemeanor-Manslaughter. Unlawful Act is a Substitute for Gross Negligence.

CAUSATION.

-**But For Test.** But For Actions of Defendant Victim Would Not Have Died.

-**Proximate Cause.** Death is Natural and Probable Consequence of Act.

Malum Prohibitum. Statute Prohibits Act, and Death is Natural and Foreseeable Act.

Malum In Se. No Proximate Cause Needed, because Act is Inherently Evil.

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CRIMINAL LAW
JUSTIFICATIONS and EXCUSES

CRIMINAL LAW JUSTIFICATIONS and EXCUSES

SELF-DEFENSE.

-Reasonable Force in Defense of Force from Another.

-Degree of Force is that Force Necessary to Defend Themselves from Attack.

Deadly Force. Only if Application of Force Against Defendant is Imminent, and Intended or Likely to Cause Death, and Defendant's Force is Applied with Good Faith and Objectively Reasonable.

Initial Aggressor. Cannot Use Self-Defense, Unless Communicates Withdrawal.

MISTAKE. Defendant Honestly and Reasonably Lacks Mental State for Crime., and Act Would Have Been Lawful if Facts were as Defendant Believed the Facts to Be.

DEFENSE OF PROPERTY.

➤ Non-Deadly, and Reasonably Necessary.

➤ Deadly Force if Violent Felony Intrusion, or Met with Deadly Force.

➤ Mechanical Devices if Reasonable, and Warning, but No Deadly Force.

➤ Re-Capture with Reasonable Force Immediately.

DEFENSE OF OTHERS.

-Reasonable Force Defending Another from Imminent Unlawful Force.

-Modernly, Unlike *Alter Ego*, Allowed Reasonable Unnecessary Force.

LAW ENFORCEMENT. Arrest, Prevention of Escape, Apprehension of a Felon, Crime Prevention.

➤ Citizens Bear Risk of Mistake, and May Normally Only Use Non-Deadly Force.

➤ Law Enforcement Officials May Use Reasonable Force, or Deadly Force for Dangerous Felonies.

NECESSITY. Non-Human Circumstances where Harm Avoided is Greater than Harm Committed.

-Greater Evils. Choice Between Two Harms, but Not Applicable for Murder.

MAINTAINING AUTHORITY.

-Supervisory or Parental Authority to Use Reasonable Force within Scope of Duty, or Pursuant to Protecting Charges.

DURESS. Significant Force or Threat from Another Indicating Imminent Harm or Death to Defendant or Their Family.

CONSENT If Crime Requires Lack of Consent and Victim has Capacity to Consent, but Not for Consent Induced by Fraud, or for Murder.

ENTRAPMENT. Law Enforcement Official or Person Acting in Cooperation with Law Enforcement.

Predisposition. Government Originated Crime, Induced Commission, and Defendant Otherwise Not Predisposed to Commit Crime.

Police Conduct. Government Originated Crime, and Police Conduct Likely to Induce Un-Predisposed Person to Commit Crime.

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CRIMINAL LAW
JUSTIFICATIONS and EXCUSES

CRIMINAL LAW RESPONSIBILITY DEFENSES

INSANITY. At Time of Commission of Criminal Act.

M’Naghten.

➤ Cannot Discern Right from Wrong Due to Mental Defect in Reasoning.

➤ Includes Developmentally Disabled.

Irresistible Impulse. Cannot Control Conduct that Occur sin Unexpected Manner and Too Powerful to Control.

MPC Standard. Substantial Capacity Test, Where Mental Defect Prevents Substantial Awareness or Ability to Conform Conduct.

Durham Test. Whether Conduct was Product of Mental Illness.

INTOXICATION.

Voluntary. Not a Defenses to General Intent Crimes, for Specific Intent Crimes Lacks Intent, Unless Pre-Intoxication Intent.

Involuntary. Mistaken Belief that Substance Not Intoxicating, Type of Temporary Insanity.

INCAPACITY.

Infancy. Below 7 No Criminal Liability, Below 14 Rebuttable Presumption No Criminal Liability.

Diminished Responsibility. Mental Impairment, thus Unable to Form Intent.

Automatism. Mental or Physical Condition Prevents Voluntary Act.

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ATTEMPT

ATTEMPT

ATTEMPT. Merges with Completed Crime.

SPECIFIC INTENT.

Defendant Intends to Do Acts Resulting in Commission of a Crime.
Attempted Murder. Intent to Kill.

SUFFICIENT ACT. Overt Act in Furtherance of Criminal Objective, Beyond Mere Preparation.

- Equivocality Test. Conduct Evinces Unequivocal Intent.
- Proximity Test. Defendant Took Last Proximate Act.
- MPC Substantial Step Test. Act or Omission Strongly Corroborative of Criminal Intent, and Constituting a Substantial Step.

DEFENSES.

Impossibility. Factual Not Allowed, True Legal for Lack of Illegality.

Renunciation / Withdrawal. Not Allowed for Abandonment Due to Imminent Apprehension, to Forward Crime at Later Time, or for Dissuasion by Victim.

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LARCENY

LARCENY

LARCENY. Specific Intent Crime, that is Complete Upon Taking Property with Sufficient Intent.

TRESPASSORY TAKING.

- Mere Custody without Rightful Possession, Such as Low-Level Employee Taking Company Property.
- If Receive Property from Third Person for Company, then Rightful Possession, and Embezzlement.
- Lost, Mislaid, Mid-Delivered. Initial Intent to Keep and Knowledge of the Identity of Victim then Trespassory Taking, but If Formulates Intent at Later Date then No Trespassory Taking.

CARRYING AWAY / ASPORTATION. Slight Movement of Entire Entity.

PERSONAL PROPERTY. Includes Intangibles Such as Stocks, Trade Secrets, Utilities.

OF ANOTHER. Of Victim.

WITH INTENT TO PERMANENTLY DEPRIVE / STEAL.

- At Time of Taking.
- Intent to Use Item Such that Owner Deprived of Value, or Owner Unlikely to Receive Property Back.
- If Defendant Intends to Return Item, then Must Have Substantial Capacity to Return.
- Continuing Trespass. Where Intent Formulated After Taking that was Without Consent.

DEFENSES.

Claim of Right. Collection of Debt or Other Claim, Even if Unreasonably Mistaken.

Re-Taking Own Property. Property Belonging to Defendant, Even if Unreasonably Mistaken.

**EXTORTION / BLACKMAIL,
FORGERY, and RECEIPT OF
STOLEN PROPERTY**

EXTORTION / BLACKMAIL, FORGERY, **and RECEIPT OF STOLEN PROPERTY**

EXTORTION / BLACKMAIL.

-Specific Intent Crime.

-Threat of Future Force.

Threats. Physical Harm to Victim or Family; Economic Harm to Victim;
Accuse Victim of Crime, etc.

FORGERY.

-Specific Intent Crime.

-Material Alteration of Writing with Legal Significance Constituting a Lie.

-Purpose to Defraud.

-If Receives Property, then Also False Pretenses.

UTTERING.

-Passing of a Forged Document, with Intent to Defraud.

RECEIPT OF STOLEN PROPERTY.

-Receipt of Stolen Property through Dominion Over Property in Some Way.

-With Knowledge that Property is Stolen at Time of Dominion.

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EMBEZZLEMENT

EMBEZZLEMENT

EMBEZZLEMENT. Specific Intent Crime.

FRAUDULENT CONVERSION.

- Deprive Owner of Significant Usefulness of Property.
- Normally Must Use Property for More than a Short Time.

PROPERTY OF ANOTHER.

- Often Company Property.
- May Be Intangibles Such as Stock and Bonds.

WHILE IN RIGHTFUL POSSESSION.

- Defendant Must Have Rightful Possession of the Property Before the Taking.
- Often a High-Level Manager.

CLAIM OF RIGHT DEFENSE.

- May Be Unreasonably Mistaken.

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ROBBERY

ROBBERY

ROBBERY. Specific Intent Crime.

LARCENY.

-Robbery is a Larceny in the Presence of the Victim, while Using Force or Threat of Force.

PRESENCE OF VICTIM.

-The Victim Must be in the Area of the Crime Scene.

FORCE OR THREAT OF FORCE.

-Present if Victim Placed in Apprehension of Harm, Even if They are Easily Intimidated.

RE-TAKING CLAIM OF RIGHT PROPERTY NOT A DEFENSE.

-Because Violence May Not be Used to Re-Take Property.

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FALSE PRETENSES

FALSE PRETENSES

FALSE PRETENSES.

- Specific Intent Crime.
- Similar to Mail Fraud and Writing Bad Checks.

FALSE REPRESENTATION.

- Of a Material Past or Present Fact.
- Includes Reinforcement of Defendant-Generated False Impressions, Affirmative Concealment, or Silence within a Fiduciary Relationship.
- Material Fact is Fact that Plays Important Part in a Reasonable Person's Decision to Enter into a Transaction.

RELIANCE BY VICTIM.

- Victim Must Believe and Rely Upon the False Representation.

PASSING OF TITLE.

- Title to the Property Must Pass.

INTENT TO DEFRAUD.

- Where Defendant Knows Representation is False, or Is Unsure and Does Not Clarify Facts.

DEFENSES.

- Claim of Right, Gullibility of Victim, and Lack of Pecuniary Loss Are Not Defenses.

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BURGLARY

BURGLARY

COMMON LAW BURGLARY.

Breaking. Any Opening is to House that is Created by Defendant.

Entering. Any Part of Defendant's Anatomy Crosses Threshold.

Constructive Breaking and Entering. Fraudulent Inducement of Another Leading to Unlawful Entry.

Inner Door Doctrine / Unlawful Remaining. Formulation of Intent while in a Structure, and Then Opening Another Entryway.

Dwelling House of Another. Traditional Home.

At Night. Between Half an Hour After Sunset and Half an Hour Before Sunrise.

Intent to Commit a Felony Therein. Must be Formulated Before Entry.

MODERN BURGLARY.

Breaking. Any Opening is to House that is Created by Defendant.

Entering. Any Part of Defendant's Anatomy Crosses Threshold.

Constructive Breaking and Entering. Fraudulent Inducement of Another Leading to Unlawful Entry.

Protected Structure of Another. May be a Home, Business or Vehicle, Especially if Victim Sleeps in the Structure.

Intent to Commit a Crime Therein. Must be Formulated Before Entry, but Not Necessarily a Felony.

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ARSON

ARSON

ARSON. Burning of Dwelling Place of Another with Malice.

MALICE.

Intent to Burn.

-Express.

Gross Recklessness / Willful and Wanton Misconduct.

-Creating a Substantial Likelihood of Burning.

BURNING.

Charring of Structure.

-Some Amount of Damage through Charring.

DWELLING HOUSE OF ANOTHER. Common Law.

Modernly Includes Many Structures. Such as Warehouses.

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**CRIMES AGAINST THE
PERSON**

CRIMES AGAINST THE PERSON

ASSAULT. Specific or General Intent Crime, Merges with Completed Battery.

- Attempted Battery in Specific Intent Jurisdictions.
- General Intent where Reasonable Apprehension of Imminent Touching.

BATTERY. General Intent Crime.

- Offensive Touching or Bodily Injury to Victim.
- Intent to Cause Harmful or Offensive Touching.
- Aggravated if Defendant Acts with Intent to Cause Grievous Bodily Harm.

FALSE IMPRISONMENT. General Intent Crime.

- Intentional and Unlawful Confinement.
- Lesser Included Offense for Kidnapping.

KIDNAPPING. General Intent Crime.

- Unlawful Confinement and Moving / Secreting Away of Victim.

RAPE. General Intent or Strict Liability Crime (Statutory).

- Non-Statutory Rape Requires Voluntary Act Purposefully Committed.
- Without Consent.
- Force or Threat of Force.
- Sexual Penetration.
- Reasonable Resistance of Victim, as Determined by Each State.
- Defendant Allowed Reasonable Mistake as Related to Consent.

MAYHEM. General Intent Crime.

- Intentional Maiming of Victim.

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**SOLICITATION AND
CONSPIRACY**

SOLICITATION AND CONSPIRACY

SOLICITATION.

- Complete Upon Asking Another to Complete Crime, Even if Other Person Does Not Agree or Was Not Aware of the Solicitation.
- Solicitor Has Liability for the Crime Solicited, Even if They Do Not Take Later Criminal Actions.
- Encouragement, without More, is Not Enough.
- Merger with Conspiracy.

CONSPIRATORIAL AGREEMENT.

Between Two or More People to Do a Criminal Act, or Refrain from Doing Legal Duty.

- Implied. Circumstantial Evidence May Establish Implied Intent.
- Feigned. No Bilateral Agreement.
- MPC Unilateral View. Agreement of Only One Person to Commit Crime.

SPECIFIC INTENT FOR TARGET CRIME. Must Intend a Specific Harmful Result.

OVERT ACT IN FURTHERANCE OF TARGET CRIME.

- Approximately Half of the States Require an Act in Furtherance, Such as Preparation.

PINKERTON RULE.

- Co-Conspirators Liable for Additional Crimes that Were in Reasonable Furtherance of the Criminal Target Crime.

WHARTON'S RULE.

- No Conspiracy for Bigamy, Adultery, Gambling, Dueling.

WITHDRAWAL. Not Liable for Future Crimes.

- Voluntary, Communication, Thwarting of Conspiracy.
- Still Liable for the Conspiracy Itself.

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VICARIOUS LIABILITY

VICARIOUS LIABILITY: “BUDDY” CRIMES

CO-CONSPIRATORIAL LIABILITY.

Target Crime. Co-Conspirators are Liable for the Target Crime.

Pinkerton Rule. Co-Conspirators are Liable for Crimes that were Completed while in Reasonable Foreseeable Furtherance of the Target Crime.

ACCOMPLICE LIABILITY.

➤ Aids, Abets, Encourages, Facilitates, or Counsels Another to Commit a Crime, with Intent that the Crime be Completed.

➤ Liable for Target Crime.

➤ Mere Presence at Scene of the Crime is Not Sufficient.

ACCESSORY BEFORE THE FACT.

Aid Before a Crime, but Not Liable for Substantive Crime.

ACCESSORY AFTER THE FACT / MISPRISON.

Aid to Another to Avoid Apprehension, and May Constitute Obstruction of Justice.

RECEIPT OF STOLEN PROPERTY.

Dominion of Property with Knowledge of Crime.

FELONY MURDER.

Co-Felon May be Liable for Actions of Other Co-Felons Under the Felony Murder Rule.

DEFENSES.

Common Often Unsuccessful Defenses are Withdrawal, Necessity and Mistake.

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CRIMINAL MIND:
MENS REA

CRIMINAL MIND: *MENS REA*

SPECIFIC INTENT CRIMES.

-Defendant Must Take Criminal Act with Specific Intent to Commit a Crime.

INCLUDES: Attempt, Solicitation, Conspiracy, Assault, Larceny, Robbery, Burglary, Forgery, False Pretenses, Embezzlement and Intent to Kill Murder.

-Intoxication is a Viable Defense.

MALICE / EXTREME RECKLESSNESS.

Murder that is Not Intentional, and Arson.

GENERAL INTENT CRIMES.

Rape, Battery, False Imprisonment, Mayhem and Kidnapping.

Mistake of Fact Must be Honest and Reasonable.

STRICT LIABILITY CRIMES.

-Defendant Must Only Take the Act that is Criminal.

INCLUDES: Statutory Rape, Public Welfare Regulations, Adultery, Bigamy, Traffic and Safety Regulations.

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CRIMINAL ACTION:
ACTUS REUS

CRIMINAL ACTION / ACTUS REUS

VOLUNTARY ACT.

- Guilty Thoughts Alone, Will Not Constitute a Voluntary Act.
- Involuntary Act Where Defendant is Pushed, Convulses, or Unconscious.
- Liability for Omission to Act where there is a Duty to Act Imposed by Statute, Contract, Special Relationship, Causing Peril, or Assuming Duty to Aid and Failing to Adequately Perform.

CONCURRENCE.

Between Mental State and Criminal Act.

CAUSATION.

By Defendant.

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CRIMINAL LAW

BURDENS

BURDENS

AFFIRMATIVE DEFENSE FOR DEFENDANT.

Preponderance of the Evidence.

PROSECUTION.

Must Prove Each Element of a Crime Beyond a Reasonable Doubt.