

Substantive Criminal Law, Part B

Your second lesson consists of three assignments that cover Chapters 5, 6, and 7 of your textbook. These assignments provide a useful overview of crimes against person, property, and morality.

OBJECTIVES

When you complete this lesson, you'll be able to

- Identify first- and second-degree murder
- Define manslaughter
- Describe assault and battery and other common-law crimes such as mayhem
- Identify modern crimes such as malicious wounding and communicating a threat
- Discuss robbery and extortion
- Explain rape
- Describe false imprisonment and kidnapping
- Discuss larceny and embezzlement
- Outline how the crime of false pretenses works
- Explain the crime of receiving stolen property
- List offenses against habitation such as burglary and arson
- Describe victimless crimes such as disorderly conduct, unlawful assembly, and riot
- Discuss drunk-driving possession of drugs and intent to distribute



ASSIGNMENT 5

Read in your textbook, *Criminal Law and Procedure: An Introduction*, pages 81-107. Then read Assignment 5 in this study guide.

Criminal homicide comes in several flavors. Just as you can take flour and water and make a cake or a cookie or a biscuit or a bagel, criminal law takes the facts of a person killing another person and makes several different offenses.

For the judges who made the common law through a process that took many years and hundreds of cases, homicides fell into only two categories—murder and manslaughter. Modern law draws many more distinctions. Sometimes the taking of human life isn't a crime. For example, a corrections officer who executes a convicted criminal has a legal justification to kill other human beings. During war, soldiers may lawfully kill the enemy. Also, as you learned in the last chapter, you may use deadly force to protect yourself if your life is in danger.

Anyone who watches TV knows that murder is the premeditated killing of another person with malice aforethought. Malice aforethought is one of those wonderful, lawyer-like phrases that sound good on TV, but it's a very slippery concept. Malice aforethought means that the killing happened after the killer formed an intention to kill or inflict very serious harm. It means the killer had an extreme and reckless disregard for human life. Basically, the killer committed a dangerous felony, and somebody died during the crime. The elements that make up malice aforethought are listed on page 85 of your textbook.

An example of someone who kills with malice aforethought would be a case where the killer hates convenience stores and the people who work in them. But this person particularly hates Jimmy, the clerk at the local store. The killer decides to kill Jimmy by bludgeoning him with a tire iron at 2:00 A.M. on Wednesday. The killer clearly has the necessary state of mind to fulfill the malice element of murder. But if the killer just meant to hit Jimmy in the head with the tire iron but not kill him, that would be an example of an intent to inflict serious bodily injury and would also satisfy the element of malice. Under a third scenario, suppose the killer sat

outside the store in his or her car with a gun and just started randomly shooting into the store for fun. That would comprise the intent necessary to show a reckless disregard for human life.

The other way the killer could commit the crime of murder would be under the felony-murder doctrine. Suppose the killer was robbing the store with a tire iron, and Jimmy resisted. The killer hit him on the head to stun him, but Jimmy died from the blow. That would be an example of the felony-murder (or felony-merger) rule. The rule allows the killer to be prosecuted for murder because he or she killed someone while committing a felony. It doesn't matter that the killer didn't intend to kill anyone.

The first part of your textbook discussed how state legislatures and the U.S. Congress enact laws. Legislatures have many powers when they pass criminal legislation. Some actions may be crimes simply because the legislature forbids them. In addition, the legislatures may also add aggravating or mitigating factors to the punishment or sentence. An aggravating factor is one that, if found, will cause a longer sentence to be imposed. A mitigating factor is one that would lessen the sentence. For example, a capital murder is the killing of a human being along with an aggravating circumstance. Often, the special vulnerability of the victim is an aggravating factor. For example, crimes against children and the elderly are often punished more severely.

Murder has different degrees depending on the element of premeditation. Truman Capote wrote a famous novel entitled *In Cold Blood* about a very famous murder case. The title pretty much sums up the definition of the element of premeditation. Premeditation requires some amount of cold-blooded analysis and planning. It involves both the quality and quantity of time and planning the defendant put into plotting the murder of the victim. If homicides were diets to lose weight, first-degree murderers would be the people who decide to lose weight and then think about it and the next day throw out all the snack food in their house.

As with many areas of the law, debates rage about what degree of "thinking about it before doing it" constitutes premeditation. Under the doctrine of instantaneous premeditation, the intent

may occur at the very instant the killer forms the concept of killing the other person. Also, courts may assume that the intent of the killer may be transferred. Suppose the killer who hates Jimmy, the convenience store clerk, is back outside the store with a deer rifle planning to kill Jimmy. The killer lines up his shot at Jimmy and squeezes the trigger, but at that very moment Jimmy slips and falls. The shot misses him but hits and kills his co-worker Sarah. The killer is still guilty of murder under the doctrine of transferred intent. In addition, suppose the killer robs the convenience store and kills Jimmy accidentally because his or her gun went off in a scuffle with Jimmy. The killer would still be guilty of murder under the felony-murder doctrine because the killing was reasonably foreseeable.

Premeditation, or the lack of it, also figures into how a second-degree murder charge plays out. In the convenience store example, suppose the killer waits outside and decides to fire a shot or two into the building, hoping to get lucky and hit Jimmy. If the killer hits and kills a person, he or she has committed the crime of second-degree murder. Even though there was no specific target in mind, the act of shooting into a store shows that the killer was acting without any care or regard for the value of human life.

Manslaughter is more a crime of impulse than of planning. If homicides were diets, the voluntary manslaughterers of the world are the people who happily eat cheesecake but who drop their forks, bend over to pick them up, look at their overweight tummies, and impulsively throw out the cheesecake right away. In a murder, the murderer has to think about killing the victim. Exactly how long the murderer has to think is up for debate, but the murderer must have thought about it. Manslaughter is exactly the opposite. The killer of the victim has to be acting immediately under the influence of strong emotions. Telling the difference between murder and manslaughter requires the ability to tell time, and the ability to tell what time means. If a person is provoked by an event that would overwhelm any normal person—such as combat, an immediate threat to a loved one, or the sight of a cheating spouse—and the person snaps and kills the victim right away, that constitutes manslaughter. But if the person waits too long, it's murder because the killer had time to think about it.

Involuntary manslaughter, on the other hand, is about judgment—or lack thereof. Society has rules about how people should act. These rules are based on what a reasonable person would do in the same circumstances. However, involuntary manslaughter occurs when someone is killed because of the recklessness of another’s conduct. Or it may occur because a person is killed during the commission of a misdemeanor.

Obviously, not all crimes against people are fatal. Everyone has heard the phrase “assault and battery.” A battery is an unlawful touching. A touching is unlawful if done without justification or consent. Some consents to touching are done for you by the operation of law. For example, suppose other people touch you while you’re in line at a crowded bar. The law presumes that by being there you’ve given your consent to the touching that otherwise might be objectionable. Battery is an intent crime, and the batterer must either intend to touch or act so recklessly that the touching occurs.

Assault may be thought of as an attempted battery. The perpetrator tries to touch the victim but doesn’t quite make it. Or, the batterer may place the victim in a state in which he or she expects to be injured. Merely threatening someone isn’t enough unless it’s accompanied by some other gesture. In terms of intent, the assailant must intend to frighten you but need not actually frighten you. Like murder, there are degrees of assault and battery. Aggravated assault and battery have more serious consequences. For example, mayhem is a common-law crime involving dismemberment. Malicious wounding is a modern version, where the essence of the crime involves injuring with the intent to disfigure or disable.

Robbery, although classified as a crime against people, might seem better situated in the chapter on crimes against property. But robbery is a combination of the crimes of assault and larceny. It involves taking something from the victim’s person or personal area. Also, if there’s no actual force, then there must be a threat that’s enough to frighten. However, as with manslaughter, the key is in the timing. If the threat is sufficiently far off, then the crime of extortion or blackmail might be created. But robbery won’t, because the threat isn’t immediate.

Violent sex crimes are an area of law that has seen great transformation from its common-law roots. At common law, rape couldn't be prosecuted between husband and wife. In addition, the common-law crime of rape required penile penetration. And for it to be proved, the woman must have resisted to the utmost. Most jurisdictions haven't only eliminated these rules, but they've established what are known as rape shield laws. A rape shield law limits allowable evidence about the victim's sex life as evidence of a prior consensual relationship with the alleged perpetrator. Megan's Law regulates the conduct of sexual predators by requiring perpetrators to register with police departments where they live. Some states also allow perpetrators to be detained civilly when they present a risk to society at large.

Kidnapping and false imprisonment are very similar offenses. Both involve depriving a person of freedom of movement without legal justification. False imprisonment means that the victim has been wrongfully confined or detained. Kidnapping makes that situation worse, or aggravates it, because the perpetrator not only confines the person but also now transports him or her. Under federal law, the perpetrator doesn't have to do the actual transporting and need not use force to be found guilty. The question would come up of exactly how far the victim would need to be transported to constitute kidnapping. Parents who lose custody of their children in a divorce may be guilty of kidnapping if they compel their children to travel with them (because they no longer have the required legal authority).

Hate crimes and civil rights statutes are both part of society's ongoing attempts to eliminate harmful forms of discrimination. Civil rights statutes make it a crime to violate someone else's constitutional rights. Hate crimes are an attempt to discourage crimes based on prejudicial motives.

Before proceeding to the next assignment, take a moment to complete *Self-Check 5*. Then check your answers by turning to the back of this study guide.



Self-Check 5

1. You're a state's attorney hoping to prosecute your first big capital murder. Which fact would hurt your case?
 - a. The victim knew the defendant.
 - b. The victim was shot.
 - c. The victim was excited when he or she was killed.
 - d. The assailant shot the victim while in a fit of rage because the victim was having an affair with the assailant's spouse.
2. If you were a police officer investigating a robbery, which fact would be essential?
 - a. Something was stolen.
 - b. A threat of immediate harm was made.
 - c. Someone was injured.
 - d. The police investigated.
3. If you're a prosecutor during a rape trial, you know you can't ask about
 - a. whom else the victim might have had sex with.
 - b. whom else the defendant might have known.
 - c. how the parties met.
 - d. how the police investigated the crime.
4. If you were a defense attorney preparing to defend your client against a kidnapping charge, which element would be essential?
 - a. Testimony that the victim was never moved
 - b. Testimony that the victim was older than 18
 - c. Testimony that the victim had been convicted of a crime
 - d. Testimony that the defendant was elderly

Check your answers with those on page 96.
