CHAPTER 3

Classification of Crimes and Basic Elements of Criminal Responsibility

CHAPTER OUTLINE

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CHAPTER OBJECTIVES

After reading and studying this chapter, you should be able to:

1. Differentiate criminal, tort, and moral responsibility.
2. Explain the difference between felonies, misdemeanors, and petty offenses.
3. Describe the requirement of a physical act (actus reus).
4. Understand the concept of a voluntary, willed act.
5. Explain the difference between thinking about committing an act and acting on the thought.
6. Describe the circumstances under which an omission constitutes an act for purposes of criminal responsibility.
7. Explain when words alone can constitute a criminal act.
8. State when possession can be a criminal act.
9. Understand and define the requirement of mens rea (guilty mind).
10. Distinguish between specific intent and general intent crimes.
11. Explain the doctrine of transferred intent.
12. Distinguish between the MPC’s definitions of acting purposely and acting knowingly.
13. Understand the difference between acting recklessly and acting negligently under the MPC.
15. Explain how a concurrence of events is needed for a crime to occur.
3.1 Classification of Crimes

The classification of specific conduct as criminal has significance for two reasons. First, only crimes can result in loss of liberty through incarceration; civil offenses, in contrast, may result in punitive damages but not incarceration. Also, in the United States, the U.S. Constitution and the constitutions of individual states require that special rights and protections be afforded to those accused of crimes. Relevant portions of the Bill of Rights, as we have seen, include the following:

- The Fifth Amendment’s protection against self-incrimination and double jeopardy, and right to a grand jury indictment.
- The Sixth Amendment’s rights to a speedy and public trial, trial by jury, confrontation and cross-examination of witnesses, and counsel.
- The Eighth Amendment’s protection against excessive bail, excessive fines, and cruel and unusual punishment.
- The Fourteenth Amendment’s right to due process of law, which means that the federal government must grant all of the aforementioned rights to every defendant, and state governments must grant most of them.

In short, criminal defendants have many more protections than do those accused of civil or moral wrongs, because criminal defendants have considerably more to lose through criminal punishment. For the same reason, the burden of proof in a criminal trial is guilt “beyond a reasonable doubt,” but in civil trials is only a “preponderance [50% plus a feather] of the evidence.” For moral wrongs that are neither criminal nor civil offenses, no burden of proof is necessary because such wrongs are not heard or tried in the American court system.

Criminal, Civil, and Moral Responsibility

In order to understand the complexities of criminal law, it is not only important to distinguish different classifications under the criminal law. It is also important to distinguish among crimes, civil offenses, and moral wrongs.

Crimes

Most people informally define a crime as an act that is deeply wrong, that is worthy of strong community disapproval, and that calls for a punitive sanction. In everyday conversation, people may refer to certain legal conduct as criminal, as in “It’s a crime that he got away with charging that much.”

Formal definitions of crime, in contrast, are stated in the criminal law of federal, state, or local legal systems. A crime is any act or omission that is forbidden by law (or penal code) as a violation of the public interest. Although the actual victim of a crime is often a person, legally the victim is the community. By definition, therefore, a crime involves social harm and requires vindication through a public process. It is prosecuted by government attorneys who represent the community as a whole, not the individual or individuals who have been victimized by the specific offense. A victim may initiate the investigation that leads to prosecution by going to the police, and may aid the prosecution by testifying at the criminal trial, but does not actually prosecute a perpetrator for a criminal act. Thus, criminal cases have names such as
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State v. Jones or U.S. v. Smith, showing that the defendant is accused of violating the laws of an entire society and must answer in turn to that society.

American criminal law has developed from English common law, which recognized the importance of holding individuals accountable for immoral actions that deserve punishment. What is considered immoral and deserving of punishment, however, can vary considerably depending on the time and culture. Consider that acts such as breaking the Sabbath, smoking (for women), and interracial marriage were once illegal in some American jurisdictions. Therefore, definitions of “immoral” and “deserving of punishment” are extremely flexible, depending on who defines them and when.

An important aspect of crime is punishment. Whereas a person who commits a civil wrong may have to pay damages or perform some specific act to compensate for the wrong, a person convicted of a crime is punished. Punishment can take many forms, all of which carry one essential characteristic that distinguishes criminal from civil wrongdoing in Anglo-American law: the condemnation and stigma that accompanies conviction of a crime. For example, even if a punishment is only a fine, such a fine serves a different purpose than an award of damages in a civil case. The criminal punishment (or sanction) of a fine expresses social disapproval; it is not a method of compensating an individual. Such differences in the nature and aims of civil judgments and criminal sanctions help to explain why they are handled through separate court systems. (For a more thorough discussion of punishment and sentencing, see Chapter 7.)

Civil Wrongs

A civil wrong can be classified as a tort—a wrongful act that results in injury and leaves the injured party entitled to compensation—or a breach of contract or trust. Although criminal and civil law both involve holding individuals accountable for actions that the law deems inappropriate, there are two significant differences between criminal liability and civil liability.

First, a crime is committed against the community at large, whereas a tort is a wrong against specific individuals only. Therefore, the pursuit of a tort remedy (as through a lawsuit) involves not government action against individual defendants, but the action of one or more private citizens against another individual or individuals who have violated civil law. For example, a lawsuit often involves one person seeking monetary damages from another. A class action lawsuit involves several people taking legal action against a person or corporation that has wronged them.

Second, the consequences of tort liability are less than the consequences of criminal liability. A party in a civil suit does not face the possibility of punishment, such as loss of liberty or life. Although many people would consider punitive damages a form of punishment, it is not considered equivalent to incarceration and does not carry the stigma of conviction.

A single act may constitute both a crime and a tort and thus may be punishable under both criminal and civil law. Suppose that a drunk driver kills a pedestrian. The driver can be prosecuted for vehicular homicide and sued in civil court for medical costs, funeral costs, and punitive damages. In cases such as this, the same action (hitting a pedestrian while driving drunk) is tried in different courts for somewhat different reasons and aims. The criminal prosecution is to punish the driver for the harm caused to society, and the civil prosecution is to compensate the individual's family for the expenses and suffering they have incurred by the death of their relative.
Moral Wrongs

If one commits an act that is morally bad, it may lead to both civil and criminal proceedings. For example, a murder can lead to criminal sanctions, civil action for wrongful death, and moral condemnation from others. However, not all morally wrongful conduct is classified as criminally or even civilly wrong. Because a foundation of American philosophy is individual freedom, the criminal law prohibits only extreme conduct, not all morally reprehensible conduct. Returning to the example of murder, this qualifies as extreme conduct and is considered criminal in every jurisdiction. On the other hand, standing by and watching while another person commits a robbery without offering assistance when one could easily do so may be considered morally reprehensible by some people, but is not extreme enough to require a civil or criminal remedy.

Furthermore, the criminal law does not seek to punish thoughts or moral character, only conduct such as actions and specific omissions that cause social harm. For example, thinking about a criminal act or writing stories about imagined criminal acts is not a crime. Possessing questionable moral character is not a crime, as long as it does not lead to criminal conduct. In contrast, committing an illegal act or an illegal omission (such as neglecting to take care of a sick child, which leads to that child's death) is a crime.

Felonies, Misdemeanors, and Petty Offenses

Perhaps the most common way to classify crimes is according to their punishment. Crimes can be broken into three major categories: felonies, misdemeanors, and petty offenses (see Figure 3.1).

<table>
<thead>
<tr>
<th><strong>Felonies</strong></th>
<th><strong>Misdemeanors</strong></th>
<th><strong>Petty Offenses</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious crime</td>
<td>Less serious than felonies</td>
<td>Insignificant crime involving minor misconduct</td>
</tr>
<tr>
<td>Punishable by more than a year of imprisonment or death</td>
<td>Punishable by fines, penalties, or incarceration of less than one year</td>
<td>Punishable by fines and community service</td>
</tr>
<tr>
<td>Sentences usually served in prison</td>
<td>Sentences usually served in local or county jail or alternative programs</td>
<td>Examples: traffic violations and other infractions</td>
</tr>
</tbody>
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**Felonies**

At common law, felonies were the most serious class of criminal offense and were uniformly punishable by death. All other offenses were considered misdemeanors and thus were not punishable by death. The modern definition of a *felony* is any serious crime that is punishable by more than a year of imprisonment or by death. Felonies include, but are not limited to, various degrees of homicide, rape, robbery, possession or distribution of illegal narcotics, and arson. It is important to understand that a crime does not have to be violent or even be perpetrated against a specific individual victim to constitute a felony. For example, *white-collar crime*, a term that covers several types of felonies relating to dishonesty in commercial matters, is generally nonviolent. Both federal and state legislatures have enacted laws that criminalize other nonviolent acts as well, such as drug crimes.

The majority of modern jurisdictions divide felonies into various categories or degrees, in order to treat some offenses as more serious than others. This can be seen in homicide cases, where a person may be charged with first-degree murder, second-degree murder, voluntary manslaughter, or involuntary manslaughter in jurisdictions that make these distinctions. One reason for these distinctions is the level of punishment: First-degree murder can be punishable by death, while other levels of homicide usually are not.

**Misdemeanors**

The common law classified all crimes that were not felonies as misdemeanors. Similarly, modern law defines a *misdemeanor* as a crime that is less serious than a felony and is usually punishable by fines, penalties, or incarceration of less than one year. Examples of misdemeanors include shoplifting and disorderly conduct. A person who is convicted of a misdemeanor and incarcerated usually serves his or her sentence in a local or county jail. In contrast, a convicted felon serves his or her sentence in a state penitentiary, and the term will exceed one year. Misdemeanor punishment may also include forms of incarceration other than jail, such as boot camps and in-patient drug treatment programs.

In modern law, the line between felonies and misdemeanors can be quite unclear. In fact, many jurisdictions have enacted laws that allow certain offenses to be prosecuted as either felonies or misdemeanors (wobblers), depending on the circumstances. Some factors that a prosecutor may consider in deciding whether to charge an offense as a felony or a misdemeanor include:

- Prior offenses.
- Seriousness of the offense.
- Number of victims.
- Age of the perpetrator.

In plea bargaining, a defense attorney will often attempt to reduce a felony to a misdemeanor when this option exists.

**Petty Offenses**

A *petty offense* is any insignificant crime involving very minor misconduct. Petty offenses often consist of violations that protect the public welfare. In fact, they are
Petty Offenses  Most of us have committed petty offenses, such as jaywalking or speeding.

 usually called violations or infractions rather than crimes; a common example of a petty offense is a traffic violation. Petty offenses are usually not punishable by incarceration, but by monetary fines or community service requirements. The stigma attached to a conviction for a petty offense is usually minimal; one possible exception occurs when a person commits enough traffic violations to have his or her license suspended or revoked.

Although petty offenses may be technically offenses classified under criminal codes, the MPC classifies them as noncriminal. It limits the sentence for a petty offense to a fine, fine and forfeiture, or other civil penalty such as the cancellation or suspension of a license. Many citizens have experienced petty offense convictions, such as for speeding or jaywalking. The position of the MPC and the states that follow this approach is that penal sanctions are justified only for conduct warranting the moral condemnation implicit in the concept of a crime. Note that constitutional protections that are accorded persons charged with crimes often do not apply to those facing noncriminal charges.

CRITICAL THINKING 3.1

1. Give one example each of a felony, a misdemeanor, and a petty offense. In what important ways do these offenses differ?
3.2 Basic Elements of Criminal Culpability

You have just learned about the broad categories of liability and criminal liability as defined by modern law. However, before looking at the specific elements of any specific offense, you must first understand the basic requirements of criminal culpability—that is, the actions and state of mind required in order to hold an individual criminally responsible.

Under the general principles of American criminal law and its predecessor, English common law, criminal liability requires a concurrence, or unity, of two general criteria: an act or physical element, known as the *actus reus*; and a certain mental state or intent, known as the *mens rea*. In addition, under the general principles of criminal responsibility developed from the common law tradition, the physical act must be voluntary and cause social harm. Criminal responsibility or liability, therefore, has five elements:

1. The *actus reus*.
2. The *mens rea*.
3. A unity of *actus reus* and *mens rea*.
4. Causation.
5. Resulting social harm.

Unless a person who fulfills these five elements is justified or excused, he or she can be punished under the criminal law.

The next two sections will discuss the first two elements, the *actus reus* and the *mens rea*.

**CRITICAL THINKING 3.2**

1. Explain why these five elements of criminal responsibility are required.

3.3 The Physical Act: *Actus Reus*

The *actus reus* is the physical action that a person must take in order to be responsible for a criminal offense. As will be discussed later, it is also possible for one to commit a crime by an omission rather than by an affirmative act; that is, a failure to do something may constitute the necessary *actus reus*. In this context, one may look at the *actus reus* element as any act or omission containing the ingredients of causation and social harm. Suppose that Rick shoots Allan in the leg, causing Allan serious injury. Rick committed the voluntary act of shooting Allan, which caused the social harm of Allan’s serious injury. Now suppose that Amber neglects to file or pay income tax for five years. Amber’s voluntary failure to perform the legally required act of filing and paying taxes causes the social harm of unpaid taxes.

In order to be responsible for a particular crime, a person must in some way perform the act legally required for that crime. For example, the *actus reus* required for burglary is that the defendant must break and enter into a roofed structure or into a...
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vehicle. Many specific actions could potentially constitute this *actus reus*, such as pulling the trigger to shoot through a closed door or smashing a window to break into a car.

As you will read later in this section, the *actus reus* is different from a hope, a desire, or a wish. A person may wish to commit a crime and may think about that crime often, but until he or she actually carries out that action, the crime has not been committed, and the person cannot be held responsible.

**Voluntary Action**

The *actus reus* usually consists of a voluntary action. That is, except for a few limited circumstances, people are not responsible for actions over which they have no control. A good example would be a person who suffers from epilepsy and experiences uncontrolled seizures. If that person were at a grocery store shopping, had a seizure, and as a result caused property damage, she probably would not be criminally responsible. On the other hand, if that same person were not allowed to drive a car because of an epileptic condition but went out and did so anyway, she would be responsible for injuries or damage caused if she had a seizure and lost control of the car. (See Application Case 3.1.)

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**Application Case 3.1**

*People v. Decina*

In the 1956 New York case of *People v. Decina*, the defendant, who suffered from epilepsy, killed four children when his car went out of control during a seizure. The defendant was convicted of criminal negligence because he knew that he was highly susceptible to seizures and failed to take proper precautions. Although the ultimate act that caused the deaths was involuntary, the act of driving a car under these circumstances constituted the necessary *actus reus*.


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For an act to be voluntary, the defendant must possess sufficient free will to exercise choice and be responsible for his conduct. Even if a person who has acted voluntarily later regrets the act, he is still held responsible. This requirement is consistent with the fundamental principle of individuality on which the Anglo-American legal system is based. For example, a person who is forced at gunpoint to steal a car will probably not have the same level of criminal responsibility as a person who single-handedly and voluntarily breaks into a car. Likewise, conditions such as mental infirmity or extreme youth can also diminish a person's criminal responsibility.

**Thoughts versus Acts**

To fully understand *actus reus*, it is important to understand the difference between voluntary actions and mere thoughts. You cannot be punished for thinking about
committing a crime. Only if you act on those thoughts and perform the physical actions connected to your thoughts do you become criminally liable. No doubt you can think of times when you were angry at someone and wished that something bad would happen to that person. However, even if something bad did happen, you would not be criminally responsible unless you had acted to cause the harm.

Omissions as Acts

An actus reus usually involves a physical act. In certain circumstances, however, a person may be guilty of a crime by failing to act. In this sense, omissions are legally viewed as actions that can lead to criminal liability, usually in one of two situations. The first situation occurs where the definition of a crime specifically designates an omission as punishable. Examples include failure to register for the draft or failure to file an income tax return. The second situation occurs when a person has an affirmative duty to act in some way but fails to do so, and such failure causes a criminal result.

An example of this second situation is child neglect. Almost every jurisdiction has laws that require parents and legal guardians to take care of children in a way that will not injure them or threaten their well-being. By failing to protect a child, a parent or guardian may be criminally liable without having engaged in any physical acts, such as battering the child. If, for example, a parent stopped feeding a child and that child died from starvation, the parent would be criminally liable. The omission of necessary care for a child would constitute the actus reus of the crime.

A legal duty to act can arise from a relationship, such as those between a parent and a child or between a doctor and a patient. It can also be imposed by law, such as the requirement that a driver must stop and help if he or she is involved in an automobile accident. It can also arise from a contractual relationship, such as that imposed upon a lifeguard or nurse. However, absent a relationship that is not defined as these are, a person usually does not have a duty to provide assistance in all situations. Even though most people would feel obligated to act if someone’s life were in danger, numerous judicial decisions have held that there was no criminal liability when a person stood by and did nothing to help someone else in jeopardy. (See Application Cases 3.2, 3.3, and 3.4.)

Application Case 3.2

Jones v. United States

The case of Jones v. United States (1962) states the basic principles upon which criminal responsibility for omission to act may rest. In this case, the accused was found guilty of involuntary manslaughter in the death of 10-month-old Anthony Lee Green, the illegitimate child of Shirley Green. The baby died from a lack of care while staying with the defendant, a family friend of Ms. Green, who lived in the same house. There was conflicting evidence on the question of whether the defendant was paid for taking care of the baby, but there was no conflict on the evidence that the defendant had ample means to provide food and medical care, but did not do so. The
trial court had refused to instruct the jury that it had to find beyond a reasonable doubt as an element of the crime that the defendant was under a legal duty to supply food and necessities to the child.

The U.S. Court of Appeals for the District of Columbia Circuit reversed the conviction because of the trial court’s failure to give this instruction. In doing so, the court stated:

There are at least four situations in which the failure to act may constitute breach of a legal duty. One can be held criminally liable: first, where a statute imposes a duty to care for another; second, where one stands in a certain status relationship to another; third, where one has assumed a contractual duty to care for another; and fourth, where one has voluntarily assumed the care of another and so secluded the helpless person as to prevent others from rendering aid.


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**Application Case 3.3**

*People v. Beardsley*

The court that decided the *Jones* case relied on another case, *People v. Beardsley* (1907), which is instructive of the law’s view of the duty requirement before criminal liability will be imposed for an omission. In that case, Beardsley spent a weekend at his home with a female friend, Blanche Burns, while his wife was away. Ms. Burns took a fatal dose of morphine, and Beardsley failed to call a physician to help her. She died, and Beardsley was charged with and convicted of manslaughter. The Supreme Court of Michigan reversed the conviction on the ground that Beardsley had no legal duty to help Ms. Burns, even though he may have had a moral duty to help her.


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**Application Case 3.4**

*Barber v. Superior Court*

In *Barber v. Superior Court*, the California Court of Appeals held that doctors who turned off the life support equipment sustaining the life of Clarence Herbert, who was in a coma, did not commit an unlawful act for which they could be charged with homicide. The doctors were acting with the permission of Mr. Herbert’s family. In resolving the legal question, the court concluded that, even though physicians have a relationship from which a legal duty to act may result, the doctors’ omission to act in this case did not constitute an unlawful failure to perform a legal duty.

The 1964 murder of Kitty Genovese is a notorious example of a failure to act that did not lead to criminal liability. Genovese was brutally attacked late one night outside her Queens, New York, home. She cried out for help for half an hour before being stabbed to death. A reported 38 neighbors heard her screams and witnessed the attack, yet did nothing to help her. It was not simply that they refused to go outside and try to stop the assailant; they did not even call the police from the comfort of their homes. While the unwillingness of Genovese’s neighbors to act is morally reprehensible, they were not prosecuted for their failure to act because they were under no legal duty to do so.

Another notorious case involving the question of the failure to act was the heinous killing of seven-year-old Sherrice Iverson by Jeremy Strohmeyer. Strohmeyer’s friend David Cash watched the assailant haul the victim into a bathroom stall, begin to assault her, and threaten to kill her. Cash just turned away as she fought for her life. Strohmeyer pled guilty to murder and, in exchange for his plea, was sentenced to life imprisonment without the possibility of parole. Cash, who could have tried to stop the killing, went off to college and was never charged with any crime.

The law’s failure to hold Cash responsible, or the neighbors who did not come to the aid of Kitty Genovese, raises difficult moral questions and leaves many Americans dissatisfied with this aspect of the American legal system. Many jurisdictions have been reluctant to impose criminal liability in the absence of a legal duty, and lawmakers have been reluctant to enact statutes that create liability in such circumstances. In contrast, an Israeli court convicted Margalit Harshefi, a friend of the assassin of Prime Minister Rabin, under a law that holds a person criminally liable for having knowledge or full awareness of the possibility that another person is about to commit a felony. This law, which exists in Israel as a remnant of colonialism, has been rarely used and is generally unpopular. Nonetheless, after Rabin’s assassination, there was no public objection to using the law against Ms. Harshefi.¹

**Words as Acts**

In most cases, as has been discussed, the *actus reus* requirement for criminal liability is satisfied by overt, willed physical acts. In other cases, it is met by specific omissions. In still other cases, under certain circumstances, mere words can constitute the *actus reus*. Such words are so offensive that they can constitute a threat or cause further physical actions that society views as a social harm.

Where and how a person makes a statement has a lot to do with whether the statement could be considered a criminal act. Often, context alone can determine whether a statement counts as an *actus reus*. For example, falsely yelling “Fire!” in a crowded theater can be criminally prosecuted. The effect of yelling that word in that context would be to cause such a panic among the crowd that the word itself meets the *actus reus* requirement. Another example is certain types of threats. Because of the high social value in preventing harm to the president, making a threat to harm the president of the United States is a criminal act. Even if a person has no intention of carrying out the threat, the words alone are enough to trigger the *actus reus* requirement.

Defining words as criminal acts can create conflict with the First Amendment, which guarantees freedom of speech. Free speech advocates argue that prosecuting
people for self-expression directly violates the First Amendment. Those who defend the concept of criminal speech argue that words that have a very good possibility of causing physical harm should be illegal. Ideally, the law should balance the interests of people wishing to protect their right to free speech and people who may be harmed by another’s words.

**Possession as an Act**

Virtually all jurisdictions have statutes for possessory offenses, which criminalize the possession of certain items or substances. A person can be guilty of such crimes without any further act than possession of the prohibited article. For example, possession of illegal drugs and possession of criminal instruments such as burglar’s tools both constitute criminal acts. Actual possession is usually required. For example, a houseguest at a dwelling where illegal narcotics are found would not be in actual possession of the drugs, and thus would not be guilty of the crime of possession.

To prove a possessory offense, the prosecutor must prove that the accused person knowingly possessed the illegal item. The MPC states that possession is a criminal act if the possessor either knowingly obtained the object possessed, or knew he or she was in control of it for a sufficient period to have been able to terminate possession.²

Possessory offenses are limited to circumstances in which it is likely that an individual will use what he or she possesses to commit a crime. Their purpose is to deter future criminal activity; holding someone criminally liable for possessing the tools to commit a crime is intended to minimize future social harm. Thus, a locksmith who possesses tools that burglars also use would not be criminally liable, because it would be clear that the locksmith plans to use the tools for a legitimate purpose.

**CRITICAL THINKING 3.3**

1. How can omissions be legally treated as the actus reus?
2. How can words be legally treated as the actus reus?

**3.4 The Mental State: Mens Rea**

Actus reus makes up only one part of the criminal culpability requirement. Only in rare circumstances can someone be convicted of a crime without both the physical act and the guilty mind. (Statutory rape, for example, is a strict liability crime in which only the physical act needs to be proved to obtain a conviction.) The guilty mind is known as mens rea; it is also called intent or culpability. You will read about mens rea several times throughout this book.

Broadly speaking, mens rea is the mental state that a person has at the time that he or she performs the acts that constitute the commission of a crime. For example, if the accused stabbed the victim with desire to cause the victim’s death, then the accused had the mens rea of “specific intent to kill,” which is one variety of mens rea.
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that makes a person criminally liable for murder. You will learn more about different types of intent later in this section.

_Motive,_ a term sometimes used to mean intent, is actually slightly different from _mens rea_. _Motive_ usually means the emotion prompting a person to act. For instance, the motive for a man’s killing his wife’s lover would be jealousy. In this sense, motive is not a form of _mens rea_ and is not an element of required proof for criminal culpability. In other words, the criminal actor is not liable for the jealousy that motivated him to commit the killing (although he may be liable for the killing in other ways). Nonetheless, motive is often important as a matter of proof because it may help to identify the perpetrator of a crime or explain why a suspect may have acted in a particular way.

As you will learn, _mens rea_ may be satisfied in different ways for different crimes, or even for the same crime. The _mens rea_ requirement for murder in many jurisdictions is _malice aforethought_, a form of _mens rea_ that can exist in four different mental states:

1. A specific intent to kill.
2. An intent to inflict serious bodily injury.
3. A wanton disregard for human life.
4. The commission of a dangerous felony.³

For voluntary manslaughter, many jurisdictions require the _mens rea_ of intent to kill, but in the sudden heat of passion. Involuntary manslaughter requires only the _mens rea_ of negligence or the commission of an unlawful act not amounting to a felony. Although a variety of mental states may satisfy the requirement of _mens rea_, some form of _mens rea_ will be required. Thus, it is essential for prosecutors to understand what mental state is required for criminal culpability with respect to any particular crime.

### Specific Intent and General Intent

Specific intent and general intent have been used in Anglo-American law for centuries, but have been confusing to many lawmakers and judges. **Specific intent** can be any one of the following:

- The intention to do an act for the purpose of doing some additional future act.
- The intention to do an act to achieve some further consequences beyond the conduct or result that constitutes the _actus reus_ of the offense.
- The intention to do an act with the awareness of a statutory attendant circumstance.⁴

A crime that does not require any of these states of mind is a general intent crime. **General intent** is the intent only to do the _actus reus_ of the crime.

For example, common law burglary is a specific intent crime. It requires that a person break and enter the dwelling of another at night, not merely knowingly or on purpose, but with the further purpose of committing a felony inside the dwelling. The _actus reus_ of common law burglary, therefore, is the breaking and entering of a particular dwelling. If the perpetrator plans the future act of committing a felony, then the requirement of _mens rea_ is also satisfied. The crime is complete upon the
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entry, and the accused can be convicted of burglary, even if he or she does not actually commit a felony inside. (See Application Case 3.5.)

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**Application Case 3.5**

*United States v. Melton*

In *United States v. Melton*, Ms. Vessels was awakened by the sounds of a loud noise. She went downstairs to investigate and found several pieces of plywood that had been stacked against a door that opened inward from an unheated sunroom. She went next door to a neighbor’s house and called the police. When the police arrived, they found the door to the sunroom partially open and discovered the defendant lying on the floor. He was charged with and convicted of first-degree burglary, which requires the unlawful breaking and entering into the dwelling of another with intent to commit a criminal offense—in this case, larceny.

The court reversed the defendant’s conviction on the basis that there was insufficient evidence to sustain a conviction for burglary. The court reasoned that intent was the element that separates unlawful entry, or trespassing, from burglary. Unlike trespassing, burglary requires intent to commit a crime once unlawful entry is accomplished. What was lacking in this case was circumstantial evidence that showed a purpose other than unlawful entry. Such circumstantial evidence includes flight upon discovery, carrying or trying to conceal stolen goods, or an assault upon a resident. Since the defendant did not attempt to escape or resist arrest, even though there was an open window nearby, and since no stolen goods, weapons, or burglary tools were recovered from him, there was insufficient proof that the defendant was on the premises to commit larceny.

*SOURCE: United States v. Melton, 491 F.2d 45 (D.C. Cir. 1973).*

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Other examples of specific intent crimes are assault with intent to kill, larceny, and receiving stolen property with the knowledge that it is stolen. Each of these crimes consists of an *actus reus* that involves intentional acts, but each also requires either an additional purpose or knowledge of an attendant circumstance.

- Assault with intent to kill requires that a person commit a battery, which is the intentional application of unlawful force upon another, with the specific further purpose of killing that person.
- Larceny is the trespassory taking and carrying away of the personal property of another with the further specific purpose of permanently depriving the other person of that property.
- A person is guilty of receiving stolen property with knowledge that it is stolen only if the accused has knowledge that the property was stolen.

In contrast are the general intent crimes. A perpetrator who breaks and enters a dwelling is guilty of the general intent crime of trespass even if he or she had no
additional intent to commit a felony inside. The general intent crimes of bigamy and statutory rape provide further examples. The crime of bigamy is committed when a married person remarries while having a spouse living; since it does not require that the perpetrator specifically know that his or her spouse is living, it is a general intent crime. In most jurisdictions, statutory rape requires sexual intercourse with a child who is underage, but the perpetrator does not have to be shown to have specific knowledge that the girl or boy was underage.

**Transferred Intent**

Transferred intent holds a person criminally liable even when the consequence of his or her action is not what the actor actually intended. If a person intends to harm one person but mistakenly injures or kills another, the required criminal element of intent transfers to the harm committed against the unintended victim. If a perpetrator fires a gun out of his car window with the intent of killing a rival gang member, but the bullet misses the gang member and kills a three-year-old girl, he is guilty under the doctrine of transferred intent. Even though the perpetrator had no intention of shooting the child, his intent to kill the gang member transfers to her. As a result, he will be found to have had the same mens rea as if he intended to kill the child.

Transferred intent is sometimes called a “legal fiction” because a prosecutor cannot definitely prove that the actor had the intent necessary to punish him for the injury to the innocent bystander. The transferred intent doctrine exists to ensure that a person is punished for his criminal culpability, even though the intended harm was accidentally directed at the wrong person. In other words, if a perpetrator is a lousy shot or burgles the wrong address, that should not make him free from guilt. (See Application Case 3.6.)

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**Application Case 3.6**

**People v. Scott**

In *People v. Scott* (1996), the defendants were convicted of murder in the second degree for the killing of an innocent bystander and of attempted murder of the intended victims. As a result of a family vendetta, the defendants tried to kill Calvin Hughes, the ex-boyfriend of their mother, Elaine Scott. Following a physical altercation with Scott, Hughes returned to their apartment with a friend to remove his personal belongings. Scott refused to let him in, but Hughes forced his way in and removed his belongings. Scott threatened to page the defendants, who were her sons.

Hughes and his friend then went to a local park. They parked next to Nathan Kelly, whose teenage son Jack Gibson was parked nearby. As Hughes stood beside Kelly’s car, talking to him through the open window, three cars entered the park. The first vehicle contained the defendants, who sprayed the area with bullets. Hughes ran for cover behind the front bumper of Kelly’s car, then sprinted toward the park and was immediately followed by a hail of gunfire. One bullet hit the heel of his shoe, and the shooting did not stop until Hughes took cover behind the gym. During the
shooting, both Kelly’s and Gibson’s car were riddled with bullets. Kelly was shot in the leg and buttocks, and his son Jack Gibson was shot in the head and killed.

Following their conviction for one count of murder in the second degree and two counts of attempted murder, the defendants argued that the jury should not have been instructed to apply the doctrine of transferred intent to the unintended victim because they were also charged with the attempted murder of an intended victim. The court rejected the appeal and affirmed the convictions, holding that intent is not capable of being “used up” once it is used to convict a defendant of the crime that he or she intended to commit. Hence, the prosecutor successfully used the doctrine of transferred intent to convict for both the intended and unintended crimes.


Strict Liability

Strict liability means that a person can be convicted of a crime without having any requisite mental state or intention to commit the crime. The most common examples are those involving mistake as to the age of a victim or, in the case of liquor sales, of the purchaser. For example, the offense of statutory rape requires only proof of the physical act of sex with a minor in order to secure a conviction. The imposition of strict criminal liability is rare in Anglo-American law, and the MPC “expressly rejects the general notion of strict criminal liability.”

Model Penal Code

Classifications of Mental States

The MPC, which has greatly influenced modern American criminal law, designates four kinds of mens rea by which a person can be found criminally liable. The MPC provides that “a person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.” This makes a person criminally liable only if he or she possesses one of these specific states of mind, but not for mere immorality. This provision is an attempt to simplify the concept of mens rea by doing away with specific intent, general intent, and other older terms.

Under the MPC, to be held criminally liable, a person must act with one of four types of mental states, described in the following paragraphs and summarized in Figure 3.2. The first two are broken in two subcategories each.
Chapter 3  Classification of Crimes and Basic Elements of Criminal Responsibility

Acting with Purpose

When a perpetrator acts purposefully with respect to result or conduct, it is his or her voluntary wish to act in a certain way or produce a certain result. A perpetrator who buys a gun and ammunition, points the gun at a victim, and fires the gun has manifested a purpose to kill the victim. When a person acts purposefully with respect to attendant circumstances, he or she is aware of conditions that will make the intended crime possible, or believes or hopes that they exist. If a perpetrator enters an occupied dwelling in order to commit a felony inside, he or she has acted purposefully with respect to the attendant circumstance that the dwelling was occupied—if he or she was aware it was occupied, believed it was, or hoped it was.

Acting Knowingly

A person knowingly causes a result if the person knows or is practically certain that his or her conduct will cause a certain result. A person who fires 50 rounds into a crowd and kills five persons has knowingly killed the victims if he or she was aware of or practically certain that firing the weapon would likely result in one or more deaths.

A person acts knowingly with respect to conduct and attendant circumstances if the person knows that his or her actions are criminal, or that attendant circumstances make an otherwise legal act a criminal one. With regard to conduct, if the accused is charged with knowingly endangering the life of a person by shooting a gun at him, he would be guilty if he was aware that his conduct endangered the person's life. If he was unaware of the presence of the victim, he did not act knowingly, even if the victim's presence seemed obvious. With respect to knowledge of attendant circumstances, a person would be guilty of receiving stolen property if, at the time she received the property, she was aware that it had been stolen. Sometimes people

Acting Negligently

Perpetrator should be aware that a substantial and unjustifiable risk exists or will result from the negligent conduct.

Acting Recklessly

Perpetrator voluntarily ignores a substantial and unjustified risk that a certain circumstance exists or will result from the reckless conduct.

Classifications of Mental States

FIGURE 3.2

Acting with Purpose

Purposefully with respect to result of conduct
- Perpetrator's voluntary will is to act in a certain way or produce a certain result.

Purposefully with respect to attendant circumstances
- Perpetrator is aware of conditions that will make the intended crime possible.

Acting Knowingly

Knowingly causes a result
- Perpetrator commits an act aware that it is practically certain that his or her conduct will cause a certain result.

Knowingly with respect to conduct and attendant circumstances
- Perpetrator commits an act aware that his or her actions are criminal or that attendant circumstances made an otherwise legal act a criminal one.

Acting Negligently

Perpetrator should be aware that a substantial and unjustifiable risk exists or will result from the negligent conduct.

Acting Recklessly

Perpetrator voluntarily ignores a substantial and unjustified risk that a certain circumstance exists or will result from the reckless conduct.
engage in “willful blindness,” not asking questions in highly suspicious circumstances and then claiming a lack of knowledge and hence a lack of mens rea. To avoid such manipulation, the MPC provides that knowledge is established if a person knows that there is a high probability of such an attendant circumstance.

### Acting Recklessly

The MPC states that a person acts recklessly if the person voluntarily ignores a substantial and unjustified risk that a certain circumstance exists or will result from his actions. A risk is considered substantial and unjustified if a reasonable law-abiding citizen considers it a clear deviation from how a reasonable person would behave. Since this standard is rather vague, juries are required to look at the defendant’s perspective when determining whether his actions created a substantial and unjustified risk. Particular characteristics of the defendant may be taken into account when determining whether he acted recklessly. For example, physical traits such as blindness may compel a person to act differently than someone with sight, and a jury can be instructed to take that into account.

### Acting Negligently

Under the MPC, a person acts negligently if the person should be aware that a substantial and unjustified risk exists or will result from the negligent conduct. As with recklessness, the risk involved for negligence must be substantial and unjustified. The difference between negligence and recklessness is that the reckless person consciously disregards the risk, whereas a negligent person does so unknowingly. It could be said, however, that the negligent person should have known that her actions would create the risk. A jury determines whether someone is negligent by deciding whether the risk taken would have been taken by a reasonable person in the same situation. If the risk would not have been taken, the person is found to be negligent. As in determining recklessness, a jury is required to look at the perspective of the accused individual to decide whether she should have known that her actions created a substantial and unjustified risk.
Chapter 3  Classification of Crimes and Basic Elements of Criminal Responsibility

3.5 Causation and Concurrence

Although causation is an ingredient of the actus reus requirement for all criminal culpability, it is only an issue in the case of result crimes—crimes that cause a specific result. The best example of a result crime is homicide, in which the defendant’s conduct results in the death of another human being. Inchoate offenses and possessory offenses are not result crimes.

There are two steps in determining whether an act caused a specific result:

1. The accused person’s act must be the cause-in-fact of the result.
2. If it was, then the accused person’s actions must also be the proximate cause of the result.

If both conditions are satisfied, the accused can be said to have caused the result.

Critical Thinking 3.4

1. Explain the doctrine of transferred intent. Though a “legal fiction,” is this doctrine valid? Why or why not?
2. How do purpose and knowledge differ in regard to criminal liability?
3. Discuss intent when undercover agents act as decoys to trap Internet stalkers and child molesters.

Cause-in-Fact and But-For Tests

To determine whether the defendant’s actions were the cause-in-fact of the result, courts apply the but-for test. This test asks, “But for the defendant’s conduct, would the social harm have occurred when it did?” In other words, would the result have occurred if the defendant had not acted?

Suppose that a defendant shoots a victim, causing only minor injuries. During surgery for these injuries, a doctor acts negligently and causes the victim’s death. The defendant’s act of shooting the victim is still the cause-in-fact of the death because “but for” the shooting, the victim would never have required surgery in the first place. With one limited exception, the prosecution must prove beyond a reasonable doubt that the accused was the but-for cause of the social harm in order to hold the accused criminally responsible. The single exception is the situation in which two independent causes operate simultaneously, either of which could have caused the result. This could occur, for example, if two people independently shot a victim at exactly the same time. In this case, both can be viewed as the cause-in-fact.

Proximate and Intervening Causes

If the defendant’s actions were the cause-in-fact of the social harm, the next step is to determine whether the action was the proximate cause of the result. Proximate cause is that cause, from among all of the causes-in-fact that may exist, that is the legally defined cause of the social harm. Often, there is no question about proximate cause.
because the accused person’s conduct is the direct cause of social harm. For example, if the accused shoots a victim who dies at the scene of the shooting, there is no other possible cause of the social harm of death. In such a case, where the defendant’s act is the direct cause, no other possible proximate causes need to be considered.

Sometimes, though, a case involves various types of intervening causes. An intervening cause is a cause other than the defendant’s conduct that contributes to the social harm. For example, if a defendant recklessly hits a child with his car and then another driver runs over the child, this second action is an intervening cause. One way to deal with intervening causes is to ask, “Under what circumstances does the intervening conduct of a third party, the victim, or a natural force make it no longer seem fair to say that the social harm was caused by the defendant’s conduct?”

Generally, when an intervening cause relieves the accused of criminal responsibility, it is because the law has described the intervening event as a more important cause of the harm.

When there are competing causes that could qualify as the proximate cause, a court or jury must select one. Usually, proximate cause will be decided by distinguishing between dependent and independent intervening causes. Dependent intervening causes are intervening causes that are either largely foreseeable or related to the defendant’s conduct, so their existence still makes the defendant liable for the resulting social harm. Returning to the earlier example of the shooting victim, if the accused shoots a victim who is then taken to a hospital and receives poor medical treatment, the accused’s conduct will still be the proximate cause of the victim’s death because the shooting is still the proximate cause of the social harm.

An independent intervening cause is one that is deemed separate enough from the defendant’s actions that it would be unfair to hold him or her responsible for its results. If this same shooting victim were taken to the hospital and, while recovering there from the nonfatal wound, was poisoned by another person, the conduct of the accused who shot him would not be the proximate cause of the victim’s death.

Concurrence of Elements

In addition to the two elements of actus reus and mens rea, a crime also requires the concurrence of these two elements. This concurrence of elements requirement means that a person cannot be convicted of a crime unless the prosecution proves beyond a reasonable doubt that the accused performed a voluntary act accompanied by the required mental state that actually and proximately caused the prohibited social harm. This requirement of concurrence has two components:

1. The mens rea must have been present at the same moment in time that the accused did the act (or omission) that caused the social harm.
2. The concurrence must be motivational.

The first requirement of concurrence, known as the temporal requirement, simply means that the accused must have had the required mens rea at the same time that he or she did the voluntary act or omission. The fact that the defendant had the requisite mens rea at some other point in time does not satisfy the concurrence requirement. For example, it is not enough that the defendant had the intent to kill the victim but did not act upon it, then later accidentally kills the victim.
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The second requirement of concurrence, known as the *motivational requirement*, means that the motivation to commit a specific crime must be present. If, for example, a defendant plans to kill someone and picks up a gun he believes to be unloaded to test the trigger, but then accidentally shoots the victim when he unexpectedly walks into the line of fire, the motivational requirement is not present. In this example, the temporal requirement was met because the intent to cause death was present, but the motivational concurrence was not present because the actuating force behind pulling the trigger was the desire to test the gun.

**CRITICAL THINKING 3.5**

1. Explain how causation is tested.
2. What concurrence of elements is necessary to constitute a crime?

**REVIEW AND APPLICATIONS**

**Summary by Chapter Objectives**

1. **Differentiate criminal, tort, and moral responsibility.** Criminal responsibility leads to the imposition of punishment, including the possibility of incarceration. Tort responsibility leads to monetary loss only, does not involve the stigma of being labeled a criminal, and involves a lawsuit by one party against another, not an action in the name of the public. Moral responsibility carries no legal consequences.

2. **Explain the difference between felonies, misdemeanors, and petty offenses.** A felony is punishable by imprisonment for more than a year or by death. A misdemeanor is a crime usually less serious than a felony and is usually punishable by fine, penalty, forfeiture, or confinement in a place other than prison. A petty offense is a minor or insignificant crime.

3. **Describe the requirement of a physical act (actus reus).** The *actus reus* is the requirement for criminal culpability that consists of a willed, voluntary act that causes proscribed social harm.

4. **Understand the concept of a voluntary, willed act.** A voluntary, willed act occurs when a person does something as a matter of choice, as opposed to involuntary conduct such as a twitch or an epileptic seizure.

5. **Explain the difference between thinking about committing an act and acting on the thought.** The law imposes no criminal punishment for merely thinking about committing an act, as opposed to acting on the thought.

6. **Describe the circumstances under which an omission constitutes an act for purposes of criminal responsibility.** Omissions constitute criminal acts in two situations. The first is when the law requires an act and a person omits doing the act, such as failing to file an income tax return. The second is when
Part I  Criminal Law and the Criminal Justice System

a person has an affirmative duty to act in some way, the person fails to act, and the failure causes a criminal result. An example of this would be child neglect.

7. **Explain when words alone can constitute a criminal act.** Words can constitute a criminal act when the words themselves constitute a threat that society views as a social harm that may lead to actual physical acts.

8. **State when possession can be a criminal act.** Actual possession of a prohibited object can constitute a criminal act, such as possession of illegal drugs.

9. **Understand and define the requirement of *mens rea* (guilty mind).** To be criminally culpable, a person must perform a proscribed act with the accompanying mental state required for the crime, such as intent.

10. **Distinguish between specific intent and general intent crimes.** General intent usually means that the person intended to do the act that constitutes the *actus reus* of the crime. Specific intent usually means that the person intended to do an act for the purpose of doing some additional future act, to achieve some further consequences beyond the conduct or result that constitutes the *actus reus*, or with awareness of a statutory attendant circumstance.

11. **Explain the doctrine of transferred intent.** The doctrine of transferred intent is the legal fiction that holds a person criminally liable even when the consequence of his or her action is not what the person actually intended. If a person intends to harm one person but, by mistake, unintentionally harms another, the doctrine of transferred intent carries over to the harm committed against the unintended victim.

12. **Distinguish between the MPC’s definitions of acting purposely and acting knowingly.** A person acts purposely with respect to a result if it is his or her conscious objective to produce a certain result. A person acts purposely with respect to an attendant circumstance if he or she is aware of conditions that will make the intended crime possible, or believes or hopes that they exist. A person acts knowingly with respect to a result if the person is aware that it is practically certain that his or her conduct will cause this result. A person acts knowingly with respect to conduct and attendant circumstances if the person is aware that his or her conduct is criminal or that attendant circumstances make an otherwise legal act a criminal one.

13. **Understand the difference between acting recklessly and acting negligently under the MPC.** A person acts recklessly with respect to a material element if the person consciously disregards a substantial and unjustified risk that the material element exists or will result from his or her conduct. A person acts negligently with respect to a material element if the person ignores a substantial and unjustified risk of which he or she should have been aware that the material element exists or will result from his or her conduct.

14. **Distinguish cause-in-fact from the proximate cause of a crime.** The cause-in-fact is that cause of the social harm in a criminal act that is determined by the but-for test. Proximate cause is that cause, from among all of the cause-in-fact that may exist, which is the legal cause of the social harm.
Chapter 3 Classification of Crimes and Basic Elements of Criminal Responsibility

15. **Explain how a concurrence of events is needed for a crime to occur.** A crime requires a concurrence of the two elements of *actus reus* and *mens rea*. In other words, a prosecutor must prove that a defendant performed a voluntary act accompanied by the required mental state that caused the social harm in order to convict. This requirement has two elements:

- The *mens rea* must have been present at the same moment in time that the accused did the act (or omission) that caused the social harm.
- The concurrence must be motivational as well.

**Key Terms**

- **crime** (p. 56)
- **tort** (p. 57)
- **felony** (p. 59)
- **misdemeanor** (p. 59)
- **petty offense** (p. 59)
- **omissions** (p. 63)
- **possessory offenses** (p. 66)
- **motive** (p. 67)
- **specific intent** (p. 67)
- **general intent** (p. 67)
- **transferred intent** (p. 69)
- **strict liability** (p. 70)
- **purposely with respect to result or conduct** (p. 71)
- **purposely with respect to attendant circumstance** (p. 71)
- **knowingly causes a result** (p. 71)
- **knowingly with respect to conduct and attendant circumstances** (p. 71)
- **recklessly** (p. 72)
- **negligently** (p. 72)
- **cause-in-fact** (p. 73)
- **but-for test** (p. 73)
- **proximate cause** (p. 73)
- **intervening cause** (p. 74)
- **concurrence of elements** (p. 74)

**Review Questions**

1. How can some actions be torts and crimes at the same time, and what is the essential difference between torts and crimes?
2. What is a voluntary, willed act?
3. What is the difference between thinking about committing an act and acting on the thought?
4. How do *actus reus* and *mens rea* work together to create a criminal act?
5. Why must an act be voluntary to be a crime, and how does this work in situations where a person commits a voluntary act with involuntary consequences (such as drunk driving)?
6. When does an omission constitute an act for purposes of criminal responsibility?
7. When do words alone constitute a criminal act?
8. Explain the difference between motive and intent.
9. Explain the doctrine of transferred intent.
10. What is the difference between the MPC’s definitions of acting purposely and acting knowingly?
11. According to the MPC, when does a person act recklessly? Negligently?
Problem-Solving Exercises

1. **Hazardous Waste**  Assume that negligent handling of hazardous waste is a strict liability crime and carries a penalty of up to a year in jail. Rollie Davis bought a manufacturing company, but had no intention of being involved in the operation of the business; he lives in a different part of the county and lets the business's long-time managers handle the day-to-day operations. A year later, authorities discover that Davis's company has been illegally dumping hazardous waste for the past 10 years, well before he bought the company. Can Davis be held criminally liable for the company's past conduct of illegal handling of hazardous waste? Why or why not? What about for the last year of dumping? Why or why not?

2. **Battery**  Brittany and Josh were girlfriend and boyfriend for the last three years of high school. At the end of Josh’s senior year, they had an amicable breakup, then both went off to college in different parts of the country. In the fall of their first year of college, both of them went to a high school reunion. They had not seen each other or spoken for almost six months. When Josh saw Brittany, he excitedly ran up to her, grabbed her, and kissed her in front of several of his friends. Brittany tried to push him away, but he did not let her go until after her third attempt to break free. She was not injured, but she was very angry and reported the incident to the police. You are the officer who receives the report. You consider the possibility that Josh may be guilty of committing a battery, which is defined as the intentional application of unlawful force upon another. Josh claims he did not intend to commit a crime. Did Josh’s conduct constitute the **actus reus** and **mens rea** of the offense of battery? Why or why not? Should he be charged with the crime? Why or why not?

Workplace Applications

1. **Deciding on Charges**  You are a police officer writing up the paperwork for someone whom you caught in the act of attempting a burglary. He is armed with an unloaded handgun, but seems remorseful and is embarrassed for his family. This is his first offense. You have the option of charging him with attempted burglary as a misdemeanor, attempted burglary as a felony, or aggravated attempted burglary because he possessed a weapon—although he told you that he wasn't planning to use it, and you believe him because he appears naïve. In your jurisdiction, a felony charge carries a minimum of three years' imprisonment.
   a. How will you charge this suspect, and why?
   b. How would you charge him if he seemed aggressive and unremorseful? If this was not his first offense? Why?

2. **Deciding on Defense**  You are a defense attorney whose client is charged with robbery. Your client states that she had formerly planned to rob the victim, her stepaunt, but was not thinking of it when she went to visit her on the day of the crime. That day, she visited to have lunch, they began to fight, and the fight
ended when the defendant physically intimidated her step-aunt and stole her jewelry, which was later recovered.

a. Is the element of actus reus present?
b. If the jewelry was recovered, is causation still a factor? Why or why not?

**Ethics Exercises**

1. **Child Neglect** You are a prosecutor negotiating a plea bargain for a woman who is accused of child neglect. It is her third offense of child neglect, and this time the child nearly starved to death. You have the option of accepting a plea bargain that would give her five years' probation and allow her to continue to raise her child. If you decline the plea bargain, she faces a minimum of three years' imprisonment; the child will be taken into state care, and possibly placed in a foster home. The child, who is eight, does not want to be separated from his mother. The mother, who has an IQ of 81, seems remorseful that the child has been harmed and does not fully understand the charges against her.

   a. Which choice will you make? What else can you do?
   b. Does the mother appear to possess the required mens rea? Does this matter regarding her sentence? Regarding the child's welfare?

**Notes**

1. The account of this case comes from an e-mail message distributed to the Crimprof Listserv, October 14, 1998, by Dr. Ron Shapira, Professor of Law, Tel Aviv University.