**CrimLaw**

**Solicitation** –Solicitation requires inciting, counseling, advising, urging or commanding another to commit a crime with the specific intent that the person solicited commit the crime. It is not necessary that the person solicited respond affirmatively. Under the doctrine of merge, the solicitor cannot be punished for both the solicitation and the target offense.

**Conspiracy** – A conspiracy is an agreement between two or more persons to accomplish some criminal or unlawful purpose or to accomplish a lawful purpose by unlawful means. It requires (1) an agreement between two or more persons, (2) an intent to enter into the agreement, and (3) an intent by at least two persons to achieve the objective of the agreement. A majority of states require an overt act in furtherance of the conspiracy. No express agreement is required; it may be inferred from the joint activity of the parties.

**Co-conspirator liability** – A conspirator may be liable for crimes committed by other conspirators if the crimes were committed in furtherance of the objectives of the conspiracy and were foreseeable.

**Accomplice liability** – An accomplice is one who acts with the intent to aid, counsel or encourage the principal before the commission of a crime. An accomplice is responsible for the crimes he committed or counseled and for any other foreseeable crimes.

**Accomplice (accessory after the fact)** – An accessory after the fact is one who receives, relieves, comforts or assists another, knowing that he has committed a felony, to help the felon escape arrest, trial or conviction.

**Burglary** – At common law, burglary is the breaking and entering of a dwelling of another at nighttime with the intent to commit a felony therein. Modernly, there does not have to be a breaking, the structure need not be a dwelling and the crime does not have to be committed at nighttime.

**Larceny** – Larceny is the trespassory taking and carrying away of tangible personal property of another with the intent to permanently deprive a person of his interest in the property. A taking is trespassory if taken without consent or by consent induced by fraud.

**Robbery** – Robbery is the taking of personal property of another from the other’s person or presence by force or intimidation with the intent to permanently deprive him of it.

**Battery** – Battery is an intentional, unlawful application of force to the person of another resulting in either a bodily injury or an offensive touching. Battery is a general intent crime and thus there does not have to be a specific intent to cause bodily injury or an offensive touching.

**Common Law Murder** – The unlawful killing of another with malice aforethought. Malice aforethought can be shown by (1) intent to kill, (2) intent to commit great bodily injury, (3) reckless indifference to an unjustifiably high risk to human life, or (4) intent to commit a felony.

**Felony murder rule** – A defendant can be convicted of murder pursuant to the felony murder rule if the killing occurred during the commission of an inherently dangerous felony.

**First Degree Murder** – First degree murder is committed with deliberation and premeditation.

**Second Degree Murder** – Second degree murder is a killing done without premeditation and deliberation.

**Voluntary Manslaughter** – Voluntary manslaughter is a killing that would otherwise be murder but for the existence of adequate provocation. The provocation must arouse a sudden and intense passion in the mind of an ordinary person to cause him to lose self-control, with inadequate cooling time.

**Involuntary Manslaughter** – The criminally negligent killing of another or killing by an unlawful act not under the felony murder rule.

**Voluntary intoxication** – Voluntary intoxication is the self-induced intentional taking of a substance known to be intoxicating without duress. Voluntary intoxication may serve to negate specific intent.

**Involuntary intoxication** – Involuntary intoxication may be treated as mental illness, in which case a defendant is entitled to an acquittal if the test for insanity is met.

**M’Naghten Rule** – An accused is entitled to an acquittal if the proof establishes that a disease of the mind caused a defect of reason such that the defendant lacked the ability at the time of his actions to either know the wrongfulness of his actions or understand the nature and quality of his actions.

**Irresistible Impulse Test** – An accused is entitled to an acquittal if he can show that he was unable to control his impulse or to conform his conduct to the law.

**Durham Test** – The crime was the product of mental disease or defect.

**ALI/MPC test** – The accused suffered from a mental disease or defect and as a result lacked substantial capacity to either appreciate the criminality of his conduct or conform his conduct to the requirements of the law.

**Diminished Capacity** – Mental illness short of insanity may be asserted to a specific intent crime to mitigate the accused’s culpability or reduce the charge to a lesser offense.

**Fourth Amendment** – The fourth amendment protects citizens against unreasonable searches and seizures and is applicable to the states via the Due Process Clause of the Fourteenth Amendment.

**Government conduct** – For defendant to assert a Fourth Amendment challenge, he must show government conduct. Defendant must show that the police or government were involved in the search or seizure.

**Reasonable expectation of privacy (standing**) – For the defendant to assert a Fourth Amendment challenge, she must demonstrate a reasonable expectation of privacy. To establish a REP, defendant must show that he had at least an ownership or possessory interest in the place searched or items seized.

**Warrant requirement** – In order for a search and seizure to be valid, the government must have acted pursuant to a valid warrant. If the warrant is not valid or if there was no warrant, all the evidence will be deemed inadmissible unless an exception applies. A valid requirement requires that It be issued (1) based on probable cause that seizable material or evidence can be found at the premises to be searched, (2) by a neutral and detached magistrate, and (3) with specificity regarding the place to be searched and items to be seized.

**Good faith exception** – Police may raise good faith exception if relied on a warrant that turned out to be invalid.

**Exclusionary Rule** – Evidence obtained in violation of the Fourth Amendment is inadmissible.

**Fruit of the poisonous tree** – Generally, not only must illegally obtained evidence be excluded, but also all evidence obtained or derived from the exploitation of that evidence. The court deems such evidence the tainted fruit of the poisonous tree.

**Search incident to lawful arrest** – Upon a lawful arrest based upon probable cause, the police may contemporaneously search a person and areas within his wingspan. The police may also make a protective sweep of the area if they believe accomplices may be present.

**Hot pursuit** – Police in hot pursuit of a fleeing felon may make a warrantless search and seizure and may even pursue the suspect into a private dwelling.

**Evanescent evidence** – Police may seize without a warrant evidence likely to disappear before a warrant can be obtained.

**Consent** – A warrantless search is valid if the police have a voluntary consent to do so. Any person with an apparent equal right to use or occupy the property may consent to a search and any evidence found may be used against the other owners or occupants. Knowledge of the right to withhold consent, while not a prerequisite, is a factor to be considered. The scope of the search is limited by the scope of the consent.

**Search incident to incarceration/booking** – Police officers are allowed to conduct an inventory search of arrestees upon being booked pursuant to established department procedure.

**Stop and frisk / Terry Stop** – A police officer may stop a person without probable cause for arrest if the officer has an articulable and reasonable suspicion of criminal activity. If the officer reasonably believes the person may be armed and presently dangerous, the officer may conduct a protective frisk of the detainee’s outer clothing to search for weapons. An officer may reach into the detainee’s clothing if the officer reasonably believes based on plain feel there is a weapon or contraband, but the officer cannot manipulate clothing to get a better feel of the item.

**Plain view** – The police may make a warrantless seizure when they (1) are legitimately on the premises, (2) discover evidence, fruits or instrumentalities of a crime or contraband, (3) in plain view, and (4) have probable cause to believe that the item is evidence, contraband or a fruit or instrumentality of a crime.

**Exigent circumstances** – Police may enter premises without a warrant to address emergencies that could affect health or safety.

**Automobile exception** – If the police have probable cause to believe that a vehicle is contraband or contains fruits instrumentalities or evidence of a crime, they may search the whole vehicle and any container that might reasonably contain the items for which they had probable cause to search.

**Inventory/impound search** – The police are allowed to conduct an inventory search of arrestee’s vehicle upon being impounded pursuant to established department procedure.

**Police checkpoint** – Police are allowed to set up roadblocks to stop cars without individualized suspicion that the driver has violated some law. To be valid, such roadblocks must (1) stop cars on the basis of some neutral articulable standard, and (2) be designed to serve purposes closely related to a particular problem pertaining to automobiles and their mobility. Officers may not set up a roadblock to check cars for illegal drugs since this purpose is to detect evidence of ordinary criminal wrongdoing unrelated to use of cars or highway safety.

**Fifth Amendment** – The Fifth Amendment guarantees a freedom against compelled self-incrimination. To protect this right, the Supreme Court requires police to inform detainees of their rights via the Miranda warnings before conducting a custodial interrogation. Statements obtained as a result of a custodial interrogation without the warnings generally are inadmissible.

**Custody** – A suspect is in custody when he is placed in a situation where a reasonable person would not feel free to leave and the environment presents the same inherently coercive pressures as would a stationhouse interrogation.

**Interrogation** – Interrogation refers not only to express questioning but also to any words or actions on the part of police officers that the officers should know are reasonably likely to elicit an incriminating response. Miranda does not apply to spontaneous statements not made in response to interrogation.

**Failure to give Miranda Warnings** – Evidence obtained in violation of Miranda is inadmissible at trial. A confession obtained in violation of defendant’s Miranda rights, but otherwise voluntary, may be used to impeach the defendant’s testimony if she takes the stand at trial even though such a confession is inadmissible in the prosecution’s case in chief as evidence of guilt.

**Fourteenth Amendment** – For a self-incriminating statement to be admissible under the Due Process Clause, it must be voluntary as determined by the totality of the circumstances. A statement will be involuntary only if there is some official compulsion.

**Sixth Amendment Right to Counsel** – Under the Sixth Amendment, a suspect has a right to the presence of an attorney at all critical stages of a criminal prosecution after formal proceedings have begun, including any post-charge lineup or showup. However, the suspect does not have a Sixth Amendment right to have counsel during a photo identification.

**Due Process – Identification** – A lineup or showup violates due process when the identification is unnecessarily suggestive and there is a substantial likelihood of misidentification. The identification must be shown to have been extremely suggestive.

**Independent Source** – A witness may make an in-court identification despite the existence of an illegal lineup if the in-court identification has an independent source. The court will consider the opportunity to observe the defendant at the time of the crime, the ease with which the witness can identify the defendant, and the existence or absence of prior misidentifications.

**Double jeopardy** – prohibits retrying a defendant whose conviction reversed on appeal for any offense more serious than that which convicted in first trial.

**Confrontation Clause of Sixth Amendment** – Sixth Amendment grants the defendant in a criminal proceeding the right to confront adverse witnesses. When two defendants are tried together and one has given a confession that implicates the other, the right of confrontation prohibits the use of that statement, unless all portions referring to the other defendant can be eliminated, the confessing defendant takes the stand and subjects himself to cross-examination, or the non-testifying co-defendant’s confession is being used to rebut the defendant’s claim that the defendant’s confession as obtained coercively.