

## **Chapter 3 Test Bank**

### **The Criminal Act: The First Principle of Criminal Liability**

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#### **MULTIPLE CHOICE**

1. Criminal conduct consists of how many elements?

- a. two
- b. one
- c. six
- d. eight

ANS: B                      REF: p. 95                      OBJ: 1

2. The majority of minor crimes against public order and morals do not include

- a. *mens rea*.
- b. the voluntary requirement.
- c. *actus reus*.
- d. a legal duty to obey.

ANS: A                      REF: p. 94                      OBJ: 2

3. Criminal conduct that qualifies for criminal punishment is the definition of

- a. result liability.
- b. civil liability.
- c. criminal liability.
- d. conduct liability.

ANS: C                      REF: p. 94                      OBJ: 1

4. Those crimes requiring a criminal act triggered by criminal intent are

- a. result crimes.
- b. conduct crimes.
- c. intentional crimes.
- d. felonies.

ANS: B                      REF: p. 95                      OBJ: 2

5. Criminal liability is defined as criminal conduct that qualifies for criminal:

- a. punishment
- b. *mens rea*
- c. conspiracy
- d. murder

ANS: A                      REF: p. 95                      OBJ: 2

6. The requirement that mental attitudes have to turn into deeds is called
- manifest criminality.
  - a voluntary act.
  - mens rea*.
  - attendant circumstance.

ANS: A                      REF: p. 97                      OBJ: 4

7. Only voluntary acts qualify as criminal
- pro se*.
  - mens rea*.
  - actus reus*.
  - caveat emptor*.

ANS: C                      REF: p. 97                      OBJ: 4

8. In the English case *King v. Cogdon* (1951), Mrs. Cogdon was acquitted of murder because
- her acts were done while asleep and thus were not voluntary.
  - she was insane at the time of the crime.
  - she did not cause the death.
  - there was no concurrence between the acts and the result.

ANS: A                      REF: p. 100                      OBJ: 4

9. Most offenses that don't require a *mens rea* do include which of the following?
- a moral but not legal transgression
  - a lapse of good judgment but not criminal
  - a criminal omission
  - an attendant circumstances element

ANS: D                      REF: p. 96                      OBJ: 3

10. The character or condition of a person or a thing is known as its
- status
  - reus
  - manus
  - prospectus

ANS: A                      REF: p. 104                      OBJ: 6

11. Which doctrine imposes a legal duty to help or call for help for imperiled strangers?
- "Family Member" doctrine
  - health care professionals rule
  - the American Bystander rule
  - the "Good Samaritan" doctrine

ANS: D                      REF: p. 106                      OBJ: 8

12. Most states follow which of the following?

- a. "Family Member" doctrine
- b. health care professionals rule
- c. the American Bystander rule
- d. the "Good Samaritan" doctrine

ANS: C                      REF: p. 107                      OBJ: 8

13. Which of the following are the two kinds of criminal possession?

- a. actual possession and constructive possession
- b. real possession and constructive possession
- c. actual possession and fictional possession
- d. actual possession and factual possession

ANS: A                      REF: p. 116                      OBJ: 9

14. Which type of possession is it when one has physical control of banned stuff?

- a. constructive possession
- b. actual possession
- c. knowing possession
- d. mere possession

ANS: B                      REF: p. 116                      OBJ: 9

15. When you possess something you don't know you possess, it is called

- a. constructive possession.
- b. actual possession.
- c. knowing possession.
- d. mere possession.

ANS: D                      REF: p. 116                      OBJ: 9

16. Which of the following refers to who we are?

- a. action
- b. Status
- c. possession
- d. Duty

ANS: B                      REF: p. 104                      OBJ: 6

17. Which of the following refers to what we do?

- a. action
- b. status
- c. possession
- d. duty

ANS: A                      REF: p. 104                      OBJ: 6

18. In *Robinson v. California* (1962), the Supreme Court held that Robinson's conviction must be
- upheld because his addiction resulted from a voluntary act.
  - upheld because people addicted to narcotics are a danger to themselves and others.
  - reversed because a person cannot be punished for a status or condition.
  - reversed because there was no showing that Robinson was dangerous.

ANS: C                      REF: p. 104                      OBJ: 6

19. The existence of a legal duty is what element of a crime?
- attendant circumstance
  - Adjunct
  - concurrent
  - permissive

ANS: A                      REF: p. 106                      OBJ: 8

20. Which of the following is not one of the most common of criminal possession crimes?
- possession of weapons
  - possession of illegal drugs
  - possession of drug paraphernalia
  - possession of child pornography

ANS: D                      REF: p. 116                      OBJ: 9

21. The criminal law refers to a failure to act when there is a legal duty to act as
- an omission.
  - a commission.
  - a breach of contract.
  - a refusal.

ANS: A                      REF: p. 108                      OBJ: 8

22. A legal fiction turns what into an act, although it is really a passive state?
- legal duty
  - omission
  - possession
  - convolutionism

ANS: C                      REF: p. 115                      OBJ: 9

23. Legal duties can arise from
- statutes, contracts, and omissions.
  - statutes, contracts, and special relationships.
  - moral obligations that are generally recognized.
  - laws that require certain events to be reported.

ANS: B                      REF: p. 106                      OBJ: 8

24. If there is no criminal conduct, there's no criminal
- a. possession.
  - b. liability.
  - c. omission.
  - d. issue.

ANS: B                      REF: p. 94                      OBJ: 1

25. A friend of yours puts illegal drugs into your backpack without your knowledge. This is known as
- a. constructive possession of the drugs.
  - b. knowing possession of the drugs.
  - c. mere possession of the drugs.
  - d. real possession of illegal drugs.

ANS: C                      REF: p. 116                      OBJ: 10

26. What type of possession is required by most states before an act can be criminalized?
- a. knowing
  - b. mere
  - c. constructive
  - d. perfunctory

ANS: A                      REF: p. 116                      OBJ: 10

27. The concurrence element means that a criminal intent has to
- a. trigger the criminal act.
  - b. lead directly to the harm.
  - c. be the legal cause of the result.
  - d. flow from the act.

ANS: A                      REF: p. 95                      OBJ: 1

28. Serious crimes that include (1) a voluntary act, (2) the mental element (3) circumstantial elements, (4) causation and (5) criminal harm are also called
- a. harm crimes.
  - b. *mens rea* crimes.
  - c. causation crimes.
  - d. bad result crimes.

ANS: D                      REF: p. 96                      OBJ: 2

29. Some serious crimes include five elements. Which of the following is not one of those elements?
- a. a voluntary act
  - b. the mental element
  - c. causation
  - d. omission

ANS: D                      REF: p. 96                      OBJ: 2

30. For an omission to be considered a crime, what must exist?
- a. a compulsion to act
  - b. a legal duty to act
  - c. a moral duty to act
  - d. a necessity to act

ANS: B                      REF: p. 97                      OBJ: 8

31. Which of the following cannot be a criminal act?
- a. fantasizing
  - b. speech
  - c. possession
  - d. omission to act

ANS: A                      REF: p. 97                      OBJ: 4

32. What modern phrase comes from the ancient idea of manifest criminality?
- a. a bird in the hand is worth two in the bush
  - b. between a rock and a hard place
  - c. stuck in a rut
  - d. caught red-handed

ANS: D                      REF: p. 97                      OBJ: 2

33. Which of the following is a voluntary act?
- a. being addicted to the use of narcotics
  - b. knowing possession
  - c. attacking someone while sleepwalking
  - d. assaulting someone while suffering from automatism

ANS: B                      REF: p. 116                      OBJ: 4

34. In the plurality opinion in *Powell v. Texas* (1967), the conviction for public drunkenness was
- a. affirmed because Powell was not punished for being an alcoholic but for the act of being drunk in a public place.
  - b. affirmed because Powell was being punished for being afflicted with alcoholism.
  - c. reversed because Powell was being punished for being a chronic alcoholic.
  - d. reversed because Powell committed no *actus reus*.

ANS: A                      REF: p. 104                      OBJ: 6

35. Which of the following are the two kinds of criminal omission?
- a. failure to observe and failure to intervene
  - b. failure to report and failure to observe
  - c. failure to move and failure to intervene
  - d. failure to report and failure to intervene

ANS: D                      REF: p. 106                      OBJ: 8

36. Which of the following is not one of the four building blocks of criminal codes?
- a. criminal act
  - b. criminal intent
  - c. concurrence
  - d. bad intent

ANS: D                      REF: p. 94                      OBJ: 1

37. Crimes requiring a criminal act triggered by criminal intent are called
- a. bad intent crimes
  - b. public order crimes
  - c. conduct crimes
  - d. special crimes

ANS: C                      REF: p. 95                      OBJ: 2

38. Which of the following is the most prominent result crime?
- a. criminal homicide
  - b. criminal manslaughter
  - c. criminal rape
  - d. criminal voyeurism

ANS: A                      REF: p. 95                      OBJ: 2

39. Most statutes adopt what MPC rule?
- a. one-voluntary-act-is-enough rule
  - b. no-voluntary-act-is-enough rule
  - c. any-voluntary-act-is-enough rule
  - d. most-voluntary-act-is-enough rule

ANS: A                      REF: p. 98                      OBJ: 4

40. Automatism is the name given to
- a. unconscious bodily movements
  - b. intoxicated bodily movements
  - c. conscious bodily movements
  - d. static bodily movements

ANS: A                      REF: p. 100                      OBJ: 4

41. Defenses based on creating a reasonable doubt about the prosecution's proof of a voluntary act are called
- a. fault-based defenses
  - b. default-based defenses
  - c. non-fault-based defenses
  - d. voluntary-act-based defenses

ANS: A                      REF: p. 100                      OBJ: 5

42. Which of the following is a status that is voluntary?
- a. addiction
  - b. sex
  - c. race
  - d. age

ANS: A                      REF: p. 104                      OBJ: 6

43. According to the general principle of *actus reus*, every crime has to include at least one
- a. act
  - b. voluntary act
  - c. involuntary act
  - d. intended act

ANS: B                      REF: p. 104                      OBJ: 7

44. The Supreme Court has left adoption of general principles of liability and elements of specific crimes in criminal codes to
- a. legislatures
  - b. fact-finding commission
  - c. the American Law Institute
  - d. local courts

ANS: A                      REF: p. 104                      OBJ: 7

45. Failure to act is a crime only when
- a. there is a legal duty to act
  - b. there are no police to do anything
  - c. a law is specifically written to address the act
  - d. the failure to act is reported

ANS: A                      REF: p. 106                      OBJ: 8

### Case 3.1

Bill is leaving work when a co-worker asks him to drop off a package at the post office on his way home. The co-worker explains that he must work late and can't get to the post office before it closes. Bill stops at the post office and is met by police officers with drug-sniffing canines who discover the package his co-worker gave him contains cocaine.

46. Bill is guilty of what kind of possession?
- a. knowing possession
  - b. mere possession
  - c. concurrent possession
  - d. constructive possession

ANS: B                      REF: p. 116                      OBJ: 10

47. Bill would not be guilty of a crime in most states, because most states require
- knowing possession
  - mere possession
  - concurrent possession
  - constructive possession

ANS: A                      REF: p. 116                      OBJ: 10

### Case 3.2

John is a construction worker. He is walking down the street when he notices two children playing in the street. John continues on his way. Shortly after he passes, one of the children is hit by a car and killed.

48. John is not guilty of a criminal omission based on
- the *Apprendi* doctrine.
  - the Good Samaritan doctrine.
  - the American bystander rule.
  - the ban on forced intervention laws.

ANS: C                      REF: p. 107                      OBJ: 8

49. If John were the parent of the child who was killed, what kind of criminal omission might he be guilty of?
- failure to report
  - failure to intervene
  - failure to omit
  - failure to launch

ANS: B                      REF: p. 106                      OBJ: 8

### Case 3.3

Julio is sleeping on the couch in his living room when his wife arrives home from work. He is having a nightmare in which a man is trying to kill him. His wife bends towards him on the couch to give him a hug and a kiss. Julio strangles his wife thinking she is the man in the dream.

50. What kind of defense would Julio's lawyer most likely use at trial?
- a fault-based defense
  - an affirmative defense
  - an actus reus defense
  - a status defense

ANS: A                      REF: p. 100                      OBJ: 4

51. Julio's behavior during his dream is also known as

- a. automatism
- b. somnambulism
- c. hypnotism
- d. paroxism

ANS: A                      REF: p. 100                      OBJ: 4

52. Julio is not guilty because of what missing element?
- a. a voluntary act
  - b. a criminal harm
  - c. a bad result
  - d. a circumstantial element

ANS: A                      REF: p. 121                      OBJ: 2

Case 3.4

Ling expected his parents to buy him a car for his graduation from high school. His parents did not buy him a car. After his graduation Ling began to think of ways to murder his parents so that he could have his inheritance. Ling decided to cut the brake line on his parent's car before they went to dinner. Ling cut the brake line and his parents died as a result of a car crash due to the failure of the brakes in their car.

53. The part of Ling's crime in which he thinks about murdering his parents is called
- a. *actus reus*
  - b. *mens rea*
  - c. concurrence
  - d. attendant circumstances

ANS: B                      REF: p. 94                      OBJ: 1

54. The part of Ling's crime in which he cuts the brake line is called
- a. *actus reus*
  - b. *mens rea*
  - c. concurrence
  - d. attendant circumstances

ANS: A                      REF: p. 94                      OBJ: 1

55. The triggering of the criminal act by the criminal intent is called
- a. *actus reus*
  - b. *mens rea*
  - c. concurrence
  - d. attendant circumstances

ANS: C                      REF: p. 95                      OBJ: 2

**TRUE/FALSE**

1. If there's no criminal conduct, there's no criminal liability.

ANS: TRUE      REF: p. 93      OBJ: 3

2. The term *actus reus* refers to the act element of a crime.

ANS: TRUE      REF: p. 94      OBJ: 1

3. All crimes have to include a criminal act. That's why it's the *first* principle of criminal liability.

ANS: TRUE      REF: p. 94      OBJ: 1

4. In *Robinson v. California*, the Supreme Court stated that it would be cruel and unusual punishment to punish someone for a disease or illness.

ANS: TRUE      REF: p. 104      OBJ: 6

5. Offenses that don't require a *mens rea* do include an attendant circumstances element.

ANS: TRUE      REF: p. 94      OBJ: 8

6. The general principle of *actus reus* includes a voluntary act.

ANS: TRUE      REF: p. 94      OBJ: 4

7. Failure to file income taxes is an example of a failure to intervene crime.

ANS: FALSE      REF: p. 106      OBJ: 8

8. Under the Good Samaritan rule, strangers have a duty to aid other strangers in danger.

ANS: TRUE      REF: p. 106      OBJ: 8

9. Legal duties are created in three ways: statutes, contracts, and specific relationships.

ANS: FALSE      REF: p. 106      OBJ: 8

10. An omission to act is a crime only if there was a legal duty to do the act.

ANS: TRUE      REF: p. 109      OBJ: 8

11. A parent-child relationship is an example of a “special relationship.”

ANS: TRUE      REF: p. 109      OBJ: 8

12. Criminal conduct is conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests.

ANS: TRUE      REF: p. 120      OBJ: 3

13. Constructive possession means the person has the item on them.

ANS: FALSE      REF: p. 120      OBJ: 10

14. Serious crimes include both a criminal act and *mens rea*.

ANS: TRUE      REF: p. 94      OBJ: 1

15. Failure to act can never be a crime.

ANS: FALSE      REF: p. 106      OBJ: 8

16. We punish people for what they do, not for who they are.

ANS: TRUE      REF: p. 97      OBJ: 6

17. A status or condition cannot be an *actus reus*.

ANS: TRUE      REF: p. 94      OBJ: 6

18. The requirement that attitudes have to turn into deeds is called manifest criminality.

ANS: TRUE      REF: p. 97      OBJ: 3

19. The *actus reus* requirement reserves the harsh sanction of the criminal law for cases of actual danger.

ANS: TRUE      REF: p. 94      OBJ: 3

20. Criminal acts are voluntary bodily movements.

ANS: TRUE      REF: p. 95      OBJ: 3

21. Most states follow the Good Samaritan rule.

ANS: FALSE      REF: p. 106      OBJ: 8

22. It's a rare crime that includes only a criminal act.

ANS: TRUE      REF: p. 95      OBJ: 1

23. *Actus reus* is the criminal intent; the mental element in crime.

ANS: FALSE      REF: p. 94      OBJ: 1

24. Crimes requiring a criminal act triggered by criminal intent are called result crimes.

ANS: FALSE      REF: p. 96      OBJ: 2

25. The most prominent result crime is criminal homicide.

ANS: TRUE      REF: p. 96      OBJ: 2

26. Only voluntary acts qualify as *mens rea*.

ANS: FALSE      REF: p. 94      OBJ: 4

27. Fault-based defenses are defenses based on creating a reasonable doubt about the prosecution's proof of a voluntary act.

ANS: TRUE      REF: p. 100      OBJ: 5

28. Affirmative defenses take place before the prosecution has proved defendant's criminal conduct.

ANS: FALSE      REF: p. 100      OBJ: 5

29. Status can arise in two ways.

ANS: TRUE      REF: p. 104      OBJ: 6

30. Every crime has to include at least one voluntary act.

ANS: TRUE      REF: p. 98      OBJ: 7

**COMPLETION**

1. The voluntary act is the first principle of criminal \_\_\_\_\_.

ANS: liability

REF: p. 98

OBJ: 1

2. The *actus* \_\_\_\_\_ is the act element of the crime.

ANS: *reus*

REF: p. 94

OBJ: 5

3. The *mens* \_\_\_\_\_ is the mental element of the crime.

ANS: *rea*

REF: p. 94

OBJ: 1

4. The \_\_\_\_\_ element requires that the mental element trigger the act.

ANS: concurrence

REF: p. 95

OBJ: 1

5. Defenses that take place after the prosecution has proved defendant's criminal conduct are \_\_\_\_\_ defenses.

ANS: affirmative

REF: p. 100

OBJ: 3

6. Failure to report and failure to intervene are criminal omissions only if defendants had a \_\_\_\_\_ to act.

ANS: legal duty

REF: p. 106

OBJ: 8

7. A failure to act is called a/n \_\_\_\_\_.

ANS: omission

REF: p. 106

OBJ: 8

8. Nearly all jurisdictions follow the approach of the \_\_\_\_\_ bystander rule.

ANS: American

REF: p. 107                      OBJ: 8

9. It's only by means of a legal \_\_\_\_\_ that the principle of *actus reus* includes possession.

ANS: fiction

REF: p. 115                      OBJ: 9

10. \_\_\_\_\_ involves a connection between the *mens rea* and the *actus reus*.

ANS: Concurrence

REF: p. 95                      OBJ: 1

## ESSAY

1. Define, compare, and contrast constructive, actual, mere, and knowing possession. Be sure to provide an example of each.

ANS: Constructive possession is banned items not on my person, but places I control, for example, in my car or apartment. Actual possession is physical control of banned items on my person, for example, marijuana in my pocket. Mere possession means you don't know what you possess. Knowing possession is being aware of what is possessed.

REF: p. 116                      OBJ: 10

2. Explain the importance of the general principle of *actus reus*. Be sure to discuss the three purposes served by the principle of *actus reus*.

ANS: The *actus reus* requirement is important because we punish people for what they do, not who they are. It is important because without this general principle it could be a crime to want to kill someone. The *actus reus* requirement serves several purposes. First, acts help to prove intent. Second, it reserves the harsh sanction of the criminal law for cases of actual danger. Third, it protects the privacy of individuals.

REF: p. 94                      OBJ: 1

3. What is the principle of manifest criminality? Provide an example. Explain why you agree or disagree with this principle.

ANS: This principle states that bad thoughts alone cannot be criminalized. The person must show or manifest their criminality by committing an act. There can be no crime without an act. For example, if bank customers see several people enter the bank, draw guns, threaten to shoot if the tellers don't hand over money, take the money the tellers give them, and leave the bank with the money, their criminality—the actus reus and the mens rea of robbery—is manifest (Fletcher 1978, 115–16).

REF: p. 97                      OBJ: 3

4. Identify and define the two kinds of criminal omission. Describe the circumstances in which omissions are treated as acts.

ANS: There are two kinds of criminal omission. One is the simple failure to act and the other type of omission is the failure to intervene to prevent injuries and death to persons or the damage and destruction of property. Both omissions are criminal omissions only if defendants had a legal duty to act. Legal duties are created in three ways: by 1. Statutes, 2. Contracts, and 3. Special relationships.

REF: p. 106                      OBJ: 8

5. Define, compare, and contrast the “Good Samaritan” rule and the American bystander rule. Which rule is dominant in the United States? Which rule is best? Explain your position.

ANS: The “Good Samaritan” doctrine creates a legal duty for persons to aid strangers who are in peril. The American bystander rule generally creates no duty for a person to aid a stranger in peril. The bystander rule is the law in most states.

REF: p. 106                      OBJ: 8

6. Explain the difference between conduct crimes and bad result crimes. Provide examples of each.

ANS: Crimes requiring a criminal act triggered by criminal intent are conduct crimes. Burglary as an example of a criminal conduct crime. It consists of the act of breaking and entering a house, triggered by the *mens rea* of, say, intending to steal an iPad once inside the house. The iPad does not actually have to be stolen. So the crime of burglary is criminal conduct whether or not it causes any harm beyond the conduct itself. Bad result crimes include five elements; in addition to (1) a voluntary act, (2) the mental element, and (3) circumstantial elements, they include (4) causation and (5) criminal harm. The most prominent and often discussed bad result crime is criminal homicide.

REF: p. 96                      OBJ: 2

7. Only voluntary acts qualify as *actus reus*. Why do only voluntary acts qualify as criminal acts? Be sure to explain the rationale which includes four steps. Explain the one-voluntary-act-is-enough rule.

ANS: The rationale consists of four logical steps: Criminal law punishes people, we can only punish people we can blame, we can only blame people who are responsible for their acts, and people are responsible only for their voluntary acts. The American Law Institute's (ALI) Model Penal Code's (MPC) widely adopted definition of "criminal act" provides: "A person is not guilty of an offense unless his liability is based on conduct that *includes* a voluntary act ..." (emphasis added) (ALI 1985, § 2.01). the MPC code does not state that every act must be voluntary. Only that the crime includes a voluntary act.

REF: p. 98

OBJ: 4

8. What is the legal definition of a voluntary act? Explain fault-based defenses and affirmative defenses and their relationship to the legal definition of a voluntary act. Provide examples.

ANS: The MPC—and many state criminal codes—define "voluntary," not by telling us what a voluntary act is, but by listing acts that are not voluntary. The list usually includes movements during various forms of automatism (bodily movements while unconscious). The MPC adds a fourth catchall to these, namely "a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual" (ALI 1985 § 2.01(2)). Fault-based defenses are defenses based on creating a reasonable doubt about the prosecution's proof of a voluntary act (sleepwalking). Affirmative defenses are defenses that take place after the prosecution has provided defendant's criminal conduct and provide excuses for criminal liability.

REF: p. 97

OBJ: 5

9. Explain the concept of status. Status can arise in two ways: from voluntary acts and from characteristics. Explain the difference between these two types of status and how this impacts *actus reus*.

ANS: "Action" refers to what we *do*; status (or condition) denotes who we *are*. Most statuses or conditions don't qualify as *actus reus*. Status can arise in two ways. Sometimes, it results from prior voluntary acts—methamphetamine addicts voluntarily used methamphetamine the first time, and alcoholics voluntarily took their first drink. Other conditions result from no act at all, and individuals have no control over them. The most obvious examples are the characteristics we're born with: sex, age, sexual orientation, race, and ethnicity. The constitution forbids making status a crime (i.e. being a heroin addict). A crime can, however, be made from a status combined with an action (an alcoholic being drunk in public).

REF: p. 104      OBJ: 6

10. Identify the circumstances in which possession can be treated as an act. Explain why possession is treated as an act in these circumstances and not in others.

ANS: There are two types of possession: active and constructive. Active means I have control of something on my person. Constructive means I have control of something but it is not on my person. Possession can also be knowing or mere. Knowing possession means that you know what you have. Mere possession means you are not aware of what you have. Most states require knowing possession. Although possession is not an act most people charged with possession have acquired possession by the voluntary act of acquisition.

REF: p. 116      OBJ: 9