I. ELEMENTS

A. GUILTY CONDUCT

Actus rea describes the requisite conduct to be held culpable for criminal activity. The **act must be voluntary** and involuntary conduct committed while the defendant is not conscious or is the result of an unthinking response is not adequate to hold a defendant liable for her activity.¹

1. Examples of Involuntary Conduct

Conduct performed while unconscious or reflexive actions such as sneezing.

a. Failure to Act

A defendant may be held liable for failing to act if:

(1) The defendant had knowledge that created a duty to act;

(2) Based upon the given facts, the defendant was reasonably capable of acting; or

(3) The defendant had a legal duty to act.\textsuperscript{2}

(a) Creation of Legal Duty

A legal duty may be created by a statute or if an actor creates an increased risk of harm.

B. GUILTY THOUGHTS

Mens rea describes the criminal intent or reckless required to create culpability.\textsuperscript{3}

1. General Intent Crimes

General intent crimes require an intent to commit the unlawful act.

2. Specific Intent Crimes

Specific intent crimes require an intent to cause the unlawful result.

C. SIMULTANEOUS ACTUS REA AND MENS REA

The defendant's guilty conduct and thoughts must work together simultaneously in order for the defendant to be culpable for her conduct.

D. CAUSATION

Actual and proximate causation must exist for the defendant to be held liable for her conduct.\(^4\)

1. Proximate Cause

Proximate cause exists when a plaintiff's injury is within the peril produced by the defendant's conduct.

E. HARM

The plaintiff must suffer some form of injury that was caused by the defendant's actions.

F. THE THEORY OF TRANSFERRED INTENT

Transferred intent describes when a defendant intends to cause harm to one party and harms another party. The intent to harm the first party is transferred to the second party. 5

II. STATUTORY LANGUAGE

The terms knowing, purposeful, reckless or willful are terms used in statutes to determine a standard of conduct.

A. KNOWING

Knowing describes when an actor performs with a mindfulness of her conduct and is aware of the likely result of her actions. 6

B. PURPOSEFUL

Purposeful describes when an act is performed with a specific result in mind.

C. RECKLESS

Reckless behavior describes careless conduct that involves a higher degree of fault than negligence but falls short of intentional misconduct.\(^7\)

D. WILLFUL

Willful behavior is conduct that is intended and voluntary.\(^8\)

III. MERGER

Merger describes the absorption of a lesser criminal offense into a more serious criminal act when a defendant is charged with two criminal offenses.

A. EXAMPLES

1. Attempt merges into the completed criminal act.

2. Assault merges into battery.

3. Solicitation merges into conspiracy.

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a. Felony Murder

If a felony that results in a homicide supports a felony murder charge then the felony does not merge with the felony murder.

IV. STRICT LIABILITY CRIMES

A. DEFINITION

A strict liability crime is a crime that does not require mens rea but punishes a defendant for conduct.\(^9\) Examples include bigamy and statutory rape.

1. Bigamy is when a defendant marries while still having a living spouse.

2. Statutory rape is when a defendant has sexual intercourse with a female who is not of age to consent to the sexual act.\(^{10}\)

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\(^8\) Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 875-76 (3d ed. 1982).


\(^{10}\) *Regina v. Prince*, L.R. 2 Cr. Cas. Res. 154 (1875).
V. GENERAL INTENT CRIMES

A. DEFINITION

A general intent crime is a crime that involves negligence or recklessness. General intent exists when the actor intends to commit the act.\textsuperscript{11} A mistake that is reasonable is a valid defense to a general intent crime but intoxication is not a valid defense.

1. Negligence or Recklessness

A negligent action describes when an actor has violated a duty and the breach of duty has caused another party harm. A reckless action is when an actor, foresees the potential for harm, consciously takes a risk, and causes harm.

2. Examples

a. Arson.

b. Battery.

c. Involuntary Manslaughter.

\textsuperscript{11} United States v. Neiswender, 590 F.2d 1269 (4th Cir. 1979).
VI. SPECIFIC INTENT CRIMES

A. DEFINITION

A specific intent crime is a criminal act that is committed with the intent to achieve the unlawful result. An unreasonable or reasonable mistake may be a valid defense to a specific intent crime. Further, intoxication may be a valid defense to a specific intent crime if the intoxication negates a mental element required for culpability for the criminal act.

1. Burglary

Burglary is the breaking and entering of another party's dwelling at night with the intent to commit a felony therein.

a. Constructive Breaking

The breaking element may be satisfied by the use of intimidation or fraud.

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b. Minimal Force Sufficient

Opening a closed but unlocked window or door is sufficient to satisfy the breaking element.

c. Exit Insufficient

The breaking must occur while the defendant entered the dwelling and the use of force to leave the dwelling is not sufficient to establish the breaking element.

d. Entry

The entry element may be satisfied by penetration of an inanimate object into another’s dwelling to commit the felony or a momentary insertion of a body part into another’s dwelling.

2. Assault

Assault is to cause another person to reasonably apprehend an imminent harmful or offensive contact or an attempted battery on another party.¹⁴

a. Words Alone

Words alone are not sufficient to constitute an assault.

b. Valid Defenses

Anything that may negate an element of assault, such as intoxication.15

3. Robbery

Robbery is the unlawful taking of another party's property by force or the threat of force.16

a. Victim's Presence

A robbery must occur while the victim is present and the property must be taken from the victim.

4. Intentional Murder

Intentional murder describes voluntary manslaughter and intent-to-kill homicide.

15 Id.
16 Rollin M. Perkins & Roland N. Boyce, Criminal Law 343 (3d ed. 1982).
a. Voluntary Manslaughter

Voluntary manslaughter exists when there are mitigating circumstances that negate a defendant's malice aforethought and reduces a murder charge to manslaughter.\(^1^7\)

(1) Examples of Mitigating Circumstances

Examples of mitigating circumstances include erroneous justification and adequate provocation.

(a) Erroneous Justification

Erroneous justification describes when an actor incorrectly uses deadly force in self-defense and the surrounding circumstances do not justify the use of deadly force.

i. Sincere Belief

If deadly force is used based on an inaccurate but sincere belief then the crime of murder may be reduced to the crime of voluntary manslaughter.

\(^{17}\) State v. Thornton, 730 S.W.2d 309 (1987).
(b) Adequate Provocation

Adequate provocation describes circumstances that would cause a reasonable person to lose control and commit a homicide in the heat of passion.

i. Cooling Off Period

The homicide must have been committed prior to the defendant having a chance to cool off and regain her composure.

b. Intent-to-Kill Homicide

Intent-to-kill homicide describes when an actor makes another person's death inevitable or consciously desires to take the life of another individual.

(1) Example

An example of an intent-to-kill crime is the killing of another person with a deadly weapon.
5. Conspiracy

A conspiracy is when two or more parties agree to commit a criminal act.\(^\text{18}\)

a. Intent

There must be intent to form an agreement and achieve the criminal goal of the agreement for a defendant to be liable.

b. Merger

The crime of conspiracy does not merge with the completed crime.

c. Withdrawal and Impossibility

Withdrawal and impossibility are not generally valid defenses.

(1) Notification

However, a co-conspirator may limit her liability to the principal crime and not be liable for additional crimes if the co-conspirator notifies all members of the conspiracy of her withdrawal.

d. Provider of Goods

A party that provides goods to conspirators is liable for furnishing assistance to a criminal act.

(1) Awareness and Interest in Completion

The provider must be aware that the goal of the conspiracy is a serious crime or have an interest in the completion of the crime.

(a) Mere Awareness

A party is not culpable for the crime of conspiracy for being merely aware of a conspiracy if the party did not intend to assist with the conspiracy.

e. False Agreement

A conspiracy may not be formed with a party that pretends to agree.

f. Protected Class

A conspiracy may not be formed with a member of a protected class.
g. More Than One Criminal Act

If two or more parties agree to a trend of criminal activity, the parties have formed one conspiracy as opposed to numerous conspiracies for each individual criminal act.

h. Termination

A conspiracy is terminated when the criminal act is completed.

(1) Specific Agreement

A conspiracy terminates when the criminal act is completed unless if there is a specific agreement between the co-conspirators to conceal the criminal act. If there is a specific agreement to conceal, then the concealment period is part of the conspiracy.

6. Embezzlement

Embezzlement is the fraudulent taking of another's property by a defendant that has lawful possession of the property.19

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a. Examples of Employee's With Possession

Vice-presidents and general office managers are examples of employees that have possession as opposed to custody of their employer's property.

b. Example of Embezzlement

A pawn shop owner that sells a customer's property prior to the agreed upon drop dead date.

7. Larceny

The \textit{taking and carrying away of another's property via trespass} with the intent to permanently deprive.\textsuperscript{20}

a. Taking and Carrying Away

The taking and carrying away must occur simultaneously with the intent to permanently deprive.

\textsuperscript{20} Rollin M. Perkins & Ronald N. Boyce, \textit{Criminal Law} 389 (3d ed. 1982).
Carrying Away

The formal term for carrying away is asportation and is achieved with even the smallest movement of the property.

b. Employees that have custody of property as opposed to possession are guilty of larceny.

Examples of Employees With Custody

Security guards and janitors have custody of their employer's property.

c. Larceny by Trick

To obtain possession but not title to the property of another by misrepresentation of fact.

Examples

(a) Obtaining a loan by misrepresenting material facts.
(b) Making a bet based on a material misrepresentation of fact.

8. Attempt

Attempt is the intent to commit a criminal act that concurs with the defendant taking a substantial step towards committing the act.\(^{21}\)

a. Merger

Attempt merges into the completed crime.

b. Defenses

Legal impossibility is a valid defense to the crime of attempt but factual impossibility and abandonment are not valid defenses.\(^{22}\)

9. Solicitation

Solicitation describes when a defendant incites, urges or advises another party to commit a criminal act.

\(^{21}\) People v. Jones, 81 Ill. 2d 1, 405 N.E.2d 343.
\(^{22}\) State v. Stewart, 143 Wis. 2d 28, 420 N.W.2d 44 (1988).
a. Withdrawal and Impossibility

Under common law, withdrawal and impossibility are not valid defenses.

b. Protected Class

If the solicitor is a member of a protected class, then the solicitor is not culpable.

10. False Pretenses

False pretenses are when a party obtains title to another's property by making an intentionally false statement about a material fact with the purpose to defraud.  

a. Examples

(1) Buying merchandise with a stolen credit card.

(2) Altering the price of an item in a convenience store and paying the altered price.

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b. Bets

A bet for money that is based on a false material fact is a larceny by trick because the defendant obtains possession of the money but not title to the money.

c. Larceny by Trick

When a defendant obtains possession of another's property by knowingly making a false statement.

11. Forgery

Forgery is the creation of a false document or the alteration of a writing with the intent to defraud.

VII. ADDITIONAL CRIMINAL OFFENSES

A. BATTERY

Battery is the unlawful application of force that results in harmful or offensive contact with another person.  

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1. Mental State

The requisite mental state for culpability exists when the following are found:

(a) Negligence;

(b) The intent to harm;

(c) The intent to kill; or

(d) The intent to commit an unlawful act.

(1) Valid Defenses

Valid defenses to the crime of battery include:

i. The prevention of a criminal act;

ii. Consent;

iii. Self-defense; and
iv. The defense of other parties.\textsuperscript{25}

2. Mayhem

Mayhem is the maiming of another human being with the intent to commit bodily harm.\textsuperscript{26}

3. Rape

Under common law, rape is nonconsensual sexual intercourse with a woman through force by a man who is not the woman's husband.

4. Kidnapping

Kidnapping is the \textit{wrongful confinement of a person by force} or the threat of force.\textsuperscript{27}

\textsuperscript{25} \textit{Id.}
\textsuperscript{26} Rollin M. Perkins & Ronald N. Boyce, \textit{Criminal Law} 239 (3d ed. 1982).
\textsuperscript{27} Arnold H. Loewy, \textit{Criminal Law in a Nutshell} 64 (2d ed. 1987).
5. Receiving Stolen Property

Receiving stolen property describes when a defendant knowingly receives stolen property with the intent to permanently deprive the lawful owner of the property.

a. Inferential Circumstances

If property is obtained for unreasonably inexpensive rates or via clandestine means, it is reasonable to assume that the property is stolen.

b. Police Involvement

If the authorities recover stolen goods and attempt to sell the goods to another party, the goods are no longer considered stolen.

6. Arson

Arson is the reckless or intentional burning of another party's dwelling. The charring (minor burning) of another party's dwelling may constitute arson but the scorching (darkening of the property's surface) of another party's dwelling may not.28

VIII. HOMICIDE CRIMES

Homicide is the killing of another human being. Generally, there are two types of homicide crimes, manslaughter and murder.

A. MANSLAUGHTER

**Manslaughter is the killing of another person without malice aforethought.**

Generally, there are two types of manslaughter, involuntary and voluntary. Involuntary manslaughter is the unintentional killing of another person caused by reckless or negligent conduct. Voluntary manslaughter is the intentional killing of another person that is the result of mitigating circumstances.\(^29\)

1. Involuntary Manslaughter

   Involuntary manslaughter is the unlawful killing of another human being caused by criminal negligence or committed during the commission of a non-felony crime.\(^30\)

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\(^30\)
2. Voluntary Manslaughter

Voluntary manslaughter is the intentional killing of another human being in the heat of passion.

a. Provocation

A defendant must be adequately provoked to commit voluntary manslaughter.

(1) Adequate Provocation

Adequate provocation exists when a reasonable person would have lost control under the circumstances and there has not been sufficient time for the actor to cool down prior to the killing.

B. MURDER

Murder is the killing of another person with malice aforethought.

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1. Felony Murder

**Felony murder is a murder committed during a felony** that was not intentional but foreseeable. The defendant must be guilty of the felony to be convicted for a felony murder.

a. Felonies

A felony is a crime in which a defendant may be sentenced to more than one year in prison. The following crimes are considered felonies and may be the underlying crimes on the MBE resulting in a felony murder charge:

(1) Arson.

(2) Burglary.

(3) Kidnapping.

(4) Larceny.

(5) Mayhem.
(6) Rape.

(7) Robbery.

(a) Assault and Battery

Under common law, assault and battery are not considered felonies.

2. Depraved Heart Murder

Depraved heart murder is the murder of another human being that is caused by careless and reckless conduct that displays an indifference to human life.

3. First Degree Murder

First degree murder is murder that is premeditated, deliberate or committed during a felony.

4. Second Degree Murder

Second degree murder is murder that is not premeditated, deliberate or committed during a felony.
IX. INCHOATE CRIMES

Inchoate crimes are incomplete crimes and include attempt, conspiracy, and solicitation.

A. ATTEMPT

Attempt is the intent to commit a crime that concurs with a substantial step towards committing the criminal act.

1. Impossibility

Legal impossibility is a valid defense to the crime of attempt and exists when the attempted conduct is not a crime. However, factual impossibility is not a valid defense and exists when circumstances not known to the actor would make the attempted conduct impossible to complete.

B. CONSPIRACY

Conspiracy is an agreement between two or more parties to commit a criminal act with the intent to commit the crime.
1. Multiple Conspiracies

   a. Chain Conspiracy

      A chain conspiracy is a single criminal plan where each party is responsible
      for a different component in the criminal plot. All of the conspiring parties
      that are part of a chain conspiracy are responsible for all of the other parties'
      conduct in furtherance of the conspiracy.  

   b. Wheel Conspiracy

      A wheel conspiracy is a criminal scheme where one party forms several
      criminal agreements with multiple parties. The party that is at the hub of the
      conspiracy is the only party that is liable for all of the criminal agreements
      that form the wheel conspiracy.

2. Merger

   The crime of conspiracy does not merge with conspired criminal act.

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C. SOLICITATION

Solicitation is when a party incites or urges another party to commit a crime.

1. Specific Intent

The defendant must specifically intend for the solicited party to commit the solicited criminal act. A defendant that simply supports the commission of a criminal act will not incur liability.

2. Completion

The crime of solicitation is accomplished once the solicitation is made to the solicited party. The solicited crime does not have to be committed for the crime of solicitation to occur.

3. Merger

Under common law, solicitation merges with the solicited crime upon the completion of the solicited criminal act.
4. Defenses

Under common law, there are no defenses to the crime of solicitation.

X. ACCOMPLICES

An accomplice is a party that encourages, aids or commands an actor to commit a crime. The accomplice is liable for all foreseeable crimes stemming from her encouragement, aid or commands.

A. PRINCIPAL IN THE FIRST DEGREE

The principal in the first degree is the actor that commits the criminal action.

B. ACCESSORY

An accessory is a person that knowingly aids a principal in the first degree complete a criminal act but is not at the scene of the crime or hinders the arrest of the principal in the first degree.

C. CULPABILITY

An accomplice is liable for the reasonably foreseeable criminal actions of the encouraged, aided or commanded party.

D. CULPABILITY TERMINATION

Culpability may be terminated by an accomplice's withdrawal or if the accomplice is a member of a protected class.

1. Withdrawal

Withdrawal describes when a defendant encourages another party to commit a crime and then repudiates the encouragement prior to the commission of the criminal act.

a. Offset

The withdrawing accomplice must take adequate steps to offset her encouragement.
2. Protected Class

A protected class describes a group that may not be liable for violation of a particular statute because the statute was designed to protect the group.

XI. DEFENSES TO CRIMES

A. CONSENT

Consent to a crime may be a valid defense if the consent negates a required element of the criminal offense.

1. Requirements

The consent must be voluntary, obtained without fraud, and the consenting party must be legally capable of providing consent to the conduct.

B. DURESS

Duress is when wrongful force is used to compel a person to act against her will and is a valid defense against all crimes except murder.
C. INFANCY

1. Under Seven Years of Age

Under common law, a person under the age of 7 may not be held liable for criminal activity.

2. Between the Ages of Seven and Fourteen

Pursuant to common law, defendants between the ages of 7 and 14 are presumed incapable of knowing the wrongfulness of their conduct but this presumption can be rebutted by proof that the defendant appreciated the unlawfulness of her conduct.

3. Over the Age of Fourteen

Defendants over the age of 14 are held to an adult standard of care.

D. INTOXICATION

Substances, such as alcohol, narcotics, and prescribed medication may cause intoxication.
1. Involuntary Intoxication

Involuntary intoxication describes when a person consumes a substance that causes intoxication under duress, under a doctor's care without knowledge that the substance causes intoxication or is simply unaware that the substance causes intoxication.

2. Voluntary Intoxication

Voluntary intoxication describes when a person not under duress intentionally consumes a substance that is known to cause intoxication.

a. Voluntary intoxication is not a defense to strict liability crimes or crimes that require recklessness, negligence or malice.

b. Voluntary intoxication is a defense to specific intent crimes but is not a valid defense if a defendant becomes intoxicated solely to establish a defense for the criminal act.33
E. INSANITY

A defendant may not be held liable for criminal conduct if she is deemed legally insane. Further, a defendant's not guilty plea at an arraignment does not waive the defendant's privilege to subsequently evoke the insanity defense. Four tests used to determine an individual's insanity are the Irresistible Impulse Test, the Durham Test, the McNaghten Rules, and the Model Penal Code Test.

1. Irresistible Impulse Test

The Irresistible Impulse Test holds that a person is not liable for her conduct if her actions are the result of the person's inability to control her conduct because of a mental disease.  

34 Rollin M. Perkins & Ronald N. Boyce, Criminal Law 975 (3d ed. 1982).

a. Trigger Phrase

The phrase, "inability to control her conduct" triggers the Irresistible Impulse Test.
2. Durham Test

The Durham Test holds that a party is not liable for conduct that is the result of a mental defect.

a. Trigger Phrase

The phrase, "result of mental defect" triggers the Durham Test.

3. McNaghten Rules

The McNaghten Rules hold that a person is not liable for conduct when a mental defect prevents the person from knowing whether her conduct was right or wrong or the nature and quality of her conduct. Most jurisdictions follow the McNaghten Rules.\(^{35}\)

a. Trigger Phrase

The phrase, "knowing right from wrong" in a fact pattern triggers the McNaghten Rules.

4. Model Penal Code Test

The Model Penal Code Test holds that a person is not culpable for conduct that is the result of a mental defect that causes the person to lack a substantial capacity to either appreciate the criminality of her actions or conform her conduct to the law. Essentially, the Model Penal Code Test combines the Irresistible Impulse Test and the McNaghten Test.

a. Trigger Phrase

The phrase, "lack of a substantial capacity" triggers the Model Penal Code Test.

5. Incompetency to Stand Trial

A person may not be sentenced or tried if she is unable to assist her lawyer or understand the nature of the proceedings due to a mental defect.

6. Diminished Capacity

Diminished capacity is a defense to a required mental state for a crime. Thus, a defendant that has a mental defect that negates a requisite mental state for a particular criminal act may have a valid defense to the crime.
F. ENTRAPMENT

Entrapment describes when law enforcement officials entice a person to commit a crime that the person was not predisposed to commit.  

G. MISTAKE OF LAW

A mistake of law generally is not a defense to a crime but may negate the requisite state of mind required for a particular crime.

I. Applicability

A mistake of law is a valid defense when:

(a) A defendant reasonably relies upon a statute that is subsequently overruled.

(b) If the statute is not reasonably accessible.

(c) If the defendant relies in good faith on an inaccurate proclamation of law from an authoritative source.
H. MISTAKE OF FACT

A mistake of fact may negate the requisite state of mind required to be liable for a criminal act.

1. Strict Liability Crimes

Mistake of fact is not a valid defense for strict liability crimes.

2. Reasonableness of the Mistake

Any mistake of fact is a valid defense for a specific intent crime but a mistake of fact must be reasonable to be a valid defense for a general intent crime.

I. SELF-DEFENSE

A person may use reasonably necessary force to protect herself from imminent harm.

1. Deadly Force

A person may use deadly force when she is confronted with deadly force or serious bodily injury, is without fault, and the attacking party is using wrongful force.
2. When a Aggressor Regains Her Right to Self-Defense

An aggressor that withdraws from a physical confrontation in good faith may regain her right to self-defense if the confrontation suddenly escalates in intensity or if the aggressor communicates her wish to terminate the confrontation.

3. Defense of Others

A party may defend others if the party reasonably believes that the other party had the right to self-defense.

4. Defense of Property

a. Deadly Force

Deadly force may not be used to defend property.

b. Non-Deadly Force

However, reasonable non-deadly force may be used to defend one's property from trespass, larceny or vandalism.
XII. CRIMINAL PROCEDURE

The prosecution must prove the elements of a crime beyond a reasonable doubt and the defendant is presumed innocent until proven guilty. The 4th, 5th, 6th, and 8th Amendments are the major aspects of criminal procedure tested on the MBE.

A. FOURTH AMENDMENT

The 4th Amendment to the United States Constitution protects people from unreasonable searches and seizures.\(^{39}\)

1. Intelligent and Voluntary Consent

Consent to a search must be intelligent and voluntary.

a. Surrounding Circumstances

The surrounding circumstances of a party's consent determines if the consent is voluntary.

\(^{39}\) U.S. Const. amend. IV.
2. Reasonable Expectation of Privacy

A search must infringe upon a person’s reasonable expectation of privacy to trigger the 4th Amendment.

a. Held Out to the Public and Standing

A person may only have a reasonable expectation of privacy in items that are not held out to the public and if the person has standing to assert a 4th Amendment claim.

(1) Items Held Out to the Public

(a) Voice exemplars.

(b) Luggage at an airport.

(c) Thrown away property.

(d) Banking records.

(e) Handwriting specimens.
(2) Standing

(a) A defendant has standing when she has a possessory interest in the area searched.

(b) A defendant has standing when she has joint control and access to the area searched.

b. Curtilage

Curtilage is the land adjoining enclosed real property.

(1) A property owner has a reasonable expectation of privacy in her curtilage.

(2) Open fields that are not within the curtilage of real property are not covered by the 4th Amendment.

(3) If the authorities are not lawfully at the location where the items are observed then the open fields doctrine does not apply.
(a) Illustration

An airplane that flies over the fenced in area of a person's home and observes the growth of marijuana in the fenced in area has not performed a search because the 4th Amendment does not apply to open fields that are not within the curtilage of the person's real property.

3. Probable Cause

Probable cause must be shown before a warrant is issued and describes when there is a reasonable basis that a party is committing or has committed a criminal act.

4. Exclusionary Rule

The exclusionary rule holds that evidence obtained in violation of the 4th Amendment is inadmissible in a criminal proceeding.

a. Suppression Hearings

During a suppression hearing, a defendant must prove by a preponderance of the evidence that allegedly illegally obtained evidence should be suppressed.
b. Restrictions

The exclusionary rule does not apply to civil proceedings or grand juries. Further, the rule is inapplicable to a good faith reliance on a defective warrant or existing statute.

(1) Good Faith

(a) A police officer cannot rely on a defective warrant in good faith if the officer lied to obtain the warrant.

(b) A police officer cannot rely on a defective warrant in good faith if it was unreasonable to rely upon the warrant.

(c) A police officer cannot rely on a defective warrant in good faith if the warrant was facially defective.

c. Fruit of the Poisonous Tree

Under the fruit of the poisonous tree doctrine, all evidence that is indirectly or directly obtained from an illegal search, arrest or seizure is inadmissible.
(1) Exclusionary Rule Exceptions

(a) The exclusionary rule does not apply to grand jury proceedings.

(b) The exclusionary rule does not apply if an intervening voluntary act by the defendant removes the taint of illegally obtained evidence.

(c) The exclusionary rule does not apply if the evidence is acquired independently from the illegality.

(d) The exclusionary rule does not apply if the evidence would have been discovered despite the illegality.

5. Warrants

A warrant is a writ that authorizes a search, seizure or arrest. For example, a warrant is always required to arrest a person at their home.

a. Specificity

The warrant must specifically describe the area to be searched and the items to be seized.
b. Impartial Magistrate

An uninvolved and impartial magistrate must issue the warrant.

c. Affidavit or Oral Testimony

The warrant must be supported by an affidavit or oral testimony.

d. Exceptions to the Warrant Requirement

(1) Warrants are not required for misdemeanors committed in the presence of a police officer.

(2) Further, a warrant is not generally required to make an arrest in a public place.

(3) Also, a warrant is not required under exigent circumstances, such as if the police officer is in hot pursuit of a suspect or if there is a reasonable belief that the suspect will destroy evidence before the police officer can obtain a valid search warrant.

(4) Moreover, a warrant is not required to make an arrest when a police officer has a reasonable basis to believe that a felony has been committed.
e. Challenging the Validity of a Warrant

The validity of a warrant may be challenged if:

(1) There is a showing that the warrant was based on a reckless disregard for the validity of the contents therein;

(2) There is a showing that the warrant contains erroneous statements; and

(3) There is a showing that probable cause could not be found because of the erroneous statements.

6. Stop and Frisk Searches

Stop and frisk searches without warrants do not violate the Constitution unless the searches are unreasonable.

a. Probable Cause

Probable cause is not required for a stop and frisk search.
(1) The authorities must be able to articulate a reasonable suspicion that a party is dangerous enough to justify a stop and frisk search.

7. Automobile Searches

a. If probable cause exists, a police officer has the right to immediately search an automobile without a search warrant at the location the car is stopped.

b. In the Evident of an Arrest

An automobile's glove department may be searched in the event of an arrest of the passenger of the stopped car or the driver of the automobile.

c. Inventory Searches

Inventory searches of impounded automobiles may be made without a warrant if the police act in good faith and adhere to routine policies during the search that do not grant the searching officer unfettered discretion.

8. Automobile Stops
Probable cause based on a reasonable suspicion of unlawful activity is required for a valid automobile stop.

a. Established Checkpoints

Automobile stops are valid if the stops are not random.

9. Harmless Error

A harmless error is an error that does not affect a trial's result.

a. Illegally Admitted Evidence

A conviction will not be overturned if the government proves that the admission of illegally obtained evidence was harmless.

B. FIFTH AMENDMENT

The 5th Amendment to the United States Constitution holds that a defendant may not be forced to engage in self-incrimination, be subject to double jeopardy or deprived of her life, liberty or property without due process of law. Moreover, the 5th Amendment only applies to testimonial evidence. Physical or real evidence, such as handwriting, voice or blood samples are not protected by the 5th Amendment.

40 U.S. Const. amend. V.
1. Self-Incrimination and Miranda

Prior to being interrogated, a suspect is entitled to various rights under the Miranda rule.

a. Miranda Rights

   (1) A suspect must be advised of her right to remain silent;

   (2) A suspect must be notified that anything she says may held against her in the court of law;

   (3) A suspect must be informed that she has a right to an attorney present during questioning; and

   (4) A suspect must be forewarned that she has a right to have an attorney appointed if the suspect cannot afford a lawyer.

b. Applicability

   The Miranda rule is applicable when a suspect is in custody.
(1) Custody

Custody is determined objectively based on the circumstances of the questioning by authority officials.

(2) Impromptu Remarks

Miranda does not apply to impromptu remarks that are not a response to custodial questioning.

(3) Grand Jury

A witness that is subpoenaed to testify before a grand jury is not obligated to be read her Miranda rights.

c. Prosecution's Comments

The prosecution may not comment upon a defendant's choice to invoke her Miranda privileges.

(1) The prosecution may comment on a defendant's silence if the defendant's counsel contends that the defendant did not have the opportunity to state her version of an issue.
d. Waiver of Miranda Rights

A suspect may waive her rights if the waiver is made intelligently, knowingly, and voluntarily.

(1) Specificity

A waiver of one's Miranda rights must be specific.

e. Confession

(1) Ensuing Confession

An inadmissible confession made prior to a suspect being informed of her Miranda rights does not invalidate a subsequent confession made after a suspect receives her Miranda rights.
(2) Impeachment

A confession that is obtained in violation of a suspect's Miranda rights is admissible to impeach the suspect if the suspect takes the stand.

f. Request for Counsel

All questions must stop if a suspect requests an attorney.

(1) Questioning may continue if the suspect voluntarily initiates the resumption of the interrogation.

(2) Questioning may continue if there is a meaningful lapse of time after a suspect chooses to remain silent or requests an attorney if the questions are about an unrelated crime.

2. Double Jeopardy

Under the 5th Amendment, a defendant may not be retried for the same offense once a determination has been made on the merits of a case.

a. Federal and State Court
A defendant may be prosecuted in both federal and state courts for the same criminal activity because of the separate sovereign doctrine.

b. Same Offense

Two criminal acts are not the same offense if each criminal act calls for the proof of an additional element.

A defendant may not be retried if:

a. A juvenile proceeding for the same offense has started prior to the commencement of the criminal trial.

b. The jury has been sworn in for a jury trial.

c. The first witness has been sworn in to testify for a non-jury trial.

d. If the defendant is convicted for a lesser included offense.

(1) Exceptions

(a) Original charges may be reinstated if a defendant violates a plea bargain agreement.
(b) A defendant may be retried if a trial ends with a hung jury.

3. Administrative Records

The 5th Amendment does not apply to records related to administrative purposes, such as income or tax records.

4. Privileges

A witness may be obligated to testify if she receives adequate immunity from prosecution for her self-incriminating statements.

C. SIXTH AMENDMENT

Under the 6th Amendment to the United States Constitution, a person is guaranteed a fair, public, and speedy trial. Further, a defendant is guaranteed an impartial trier of fact, the right to confront her accuser, and the right to legal representation.

41 U.S. Const. amend. VI.
1. Fair Trial

   a. Pretrial Publicity

       An excessive amount of prejudicial pretrial publicity may be grounds for a change of venue prior the commencement of the trial or a new trial if a conviction has occurred.

   b. Competency

       A defendant that has the capability of usefully consulting with her attorney and has an understanding of the proceedings is competent to stand trial. A defendant that is incompetent may not be tried for a crime until the defendant's competency has been restored.

   c. Appeals

       The United States Constitution does not grant a right to an appeal.

       (1) State Governments
State governments may enact statutes granting defendants a right to an appeal.

2. Public Trial

The public and the press may not be barred from a trial unless if there is a predominant purpose that supports the closure of the trial. The right to a public trial depends upon the stage of the criminal proceedings.

3. Speedy Trial

The right to a speedy trial becomes effective when a defendant is charged or arrested for a criminal act. The following items are considered when determining if a speedy trial has occurred:

(a) The reason and length of the delay of trial;

(b) Potential prejudice to the defendant caused by the delay of trial; and

(c) Whether the defendant asserted her right to a speedy trial.

(1) Indefinite Suspensions
Charges that are indefinitely suspended violate a defendant's right to a speedy trial because such an act allows the prosecution to reinstate the charges at any time.

(2) Pre-Arrest

The right to a speedy trial does not apply to discovery processes and investigations prior to a suspect's arrest.

4. Pretrial Proceedings

A suspect is not entitled to a lawyer during pretrial booking procedures, such as photo identifications, blood samples, etc. Further, a witness is not entitled to an attorney during a grand jury proceeding. However, a suspect is entitled to an attorney during a pretrial hearing to determine the existence of probable cause.

a. Misidentification

A pretrial identification that is excessively suggestive and creates a substantial probability of misidentifying the suspect may be excluded.

5. Right to Confrontation
Under the 6th Amendment to the United States Constitution, a defendant has a right to confront her accuser. However, the right to confront an accuser may be restricted if a defendant voluntarily leaves the courtroom where the trial is being held or if the defendant is disruptive and is removed to facilitate the continuation of the trial.

a. Statements Made in Prior Proceedings

Statements made during prior judicial proceedings are admissible if:

(1) The defendant had an opportunity to challenge the validity of the statements; and

(2) A good faith effort has been made to have the witness testify during the current trial.

b. Confession of a Co-Defendant

A co-defendant's confession may be admissible if:

(1) There is an opportunity to cross-examine the confessing co-defendant;

42 U.S. Const. amend. VI.
All parts of the co-defendant's confession that implicate the defendant can be removed from the confession; or

The co-defendant's confession is being admitted to rebut the defendant's assertion that her confession was coerced.

6. Trial by Jury - Impartiality

There is only a right to a trial by jury for serious offenses.

a. Serious Offense

A serious offense is an offense that allows more than six months of imprisonment if the defendant if convicted.

(1) Jury of Six

There must be a jury of six to satisfy a defendant's right to a jury.

(a) Venire
A venire is the collection of people from which a jury is formed. A defendant has a right to have a venire that is reflective of a cross-section of the venire's community.

i. During voir dire, questions regarding a potential juror's racial prejudice are permissible when race is a key factor in the trial.

(b) Jury

A defendant does not have a right to have her jury be reflective of a cross-section of the jury's community.

i. A peremptory strike must be gender and race neutral.

ii. The defendant challenging a peremptory strike does not have to be of the same gender or race of the excluded person or group.

iii. A juror may be excluded when her opinions would substantially impair the juror's performance of her duties.

b. Withholding Evidence
A conviction will be reversed automatically if based on knowingly erroneous evidence or if the prosecution withholds evidence that influenced the trial's result.

7. Pleas

A plea is an informed and voluntary waiver of a defendant's rights. A suspect may withdraw her plea of guilty. Prior to a plea, a judge must advise the defendant:

a. Of her right to plead not guilty;

b. The crucial elements of the crime that the defendant is charged; and

c. The mandatory minimum penalty and the maximum penalty that the defendant may face if convicted of the crime.

D. EIGHT AMENDMENT
The 8th Amendment prohibits cruel and unusual punishment. A punishment is considered cruel and unusual if the punishment is grossly disproportionate to the seriousness of the criminal act.\footnote{U.S. Const. amend. VIII.}

I. Bail

If bail is required, the amount may not be excessive.

a. A right to bail for capital offenses does not exist.

b. State law generally provides a right to bail but federal law does not provide a right to bail.