

B A R E X A M • P L A Y B O O K



Outlines for Success on the UBE

SAMPLE



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You can't beat the person who never gives up.

B A B E R U T H

CIVIL PROCEDURE

CONSTITUTIONAL
LAW

CONTRACTS

CRIMINAL LAW

CRIMINAL
PROCEDURE

EVIDENCE

REAL PROPERTY

TORTS



• M B E •
P L A Y B O O K

• CRIMINAL LAW •

OVERVIEW

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- II. Elements of a Crime: Actus Reus + Mens Rea
- III. Criminal Responsibility
- IV. Inchoate Offenses
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I. CRIMINAL LAW BASICS

- A. Almost all crimes require proof of the following four core elements: **actus reus**, **mens rea**, **causation**, and **concurrence**.
- B. A state acquires jurisdiction over a crime if either the conduct or result happens there.

II. ELEMENTS OF A CRIME – ACTUS REUS + MENS REA

- A. **ACTUS REUS** – the defendant must have either performed a physical voluntary act or failed to act under circumstances imposing a legal duty to act. The defendant should have knowledge of the facts giving rise to the duty to act and it should be reasonably possible to perform that duty. Generally, there is no duty to rescue (no Good Samaritan law), but there is a legal duty to act if (use “**KISS AsS**” to remember it):
 - a) **K** – there is a contract
 - 1. A contractual obligation that two people voluntarily enter into.
 - b) **I** – the defendant imperils the victim
 - 1. If you put the victim in harm’s way, you have a duty to help them (e.g. hitting someone with a car and checking to see if they’re ok).
 - c) **S** – there is a special status relationship
 - 1. A duty imposed on you when you have a special status relationship with the victim (e.g. parent-child, husband-wife (but not girlfriend/boyfriend)).
 - d) **S** – there is a statutory obligation
 - 1. A duty to act that is mandated by law (e.g. requirement to file taxes).
 - e) **As** – the defendant assumed care and **S** – secluded
 - 1. A duty is imposed on those who voluntarily assume care of the victim and seclude them from getting help elsewhere (e.g. bringing someone home to help them and then abandoning them—they are now out of reach of someone else’s help).
- B. Examples of bodily movements that do **NOT** qualify for criminal liability:
 - a) Conduct that is not the product of your own volition.
 - b) A reflex or convulsion (i.e. seizure).
 - c) An act performed while you are unconscious or asleep.
- C. **MENS REA** – the defendant must have committed the offense with a culpable mental state. However, a defendant need not know that their conduct is illegal to be guilty of a crime. The mental element is required at the time a crime was committed.
- D. **MENS REA – COMMON LAW**
 - a) **Specific intent** – requires that the crime be committed with a specific intent or objective. Specific intent must always be proven and never inferred.
 - 1. Examples (use “**BAFFLE SCARF**” to remember them):
 - a. **B** – burglary

- b. **A** – attempt
 - c. **F** – forgery
 - d. **F** – false pretenses
 - e. **L** – larceny
 - f. **E** – embezzlement
 - g. **S** – solicitation
 - h. **C** – conspiracy
 - i. **A** – assault
 - j. **R** – robbery
 - k. **F** – first degree murder
- b) **Malice** – the intent necessary for malice crimes requires a reckless disregard of an obvious or high risk that the particular harmful result will occur. Defenses to specific intent crimes (e.g. voluntary intoxication) do NOT apply to malice crimes.
1. Examples:
 - a. Common law murder
 - b. Arson
- c) **General intent** – a “catch-all” category of intent that may be inferred from the act itself. It requires that the defendant intend to commit an act that is prohibited by law (whether the defendant intended the act’s result is irrelevant). Most crimes fall under this category.
1. Examples:
 - a. Battery
 - b. Rape
 - c. Manslaughter
 - d. Kidnapping
 - e. False imprisonment
- d) **Strict liability** – requires that the defendant voluntarily commit the act (irrespective of the defendant’s intent or awareness). It arises with administrative, regulatory, or morality crimes.
1. Examples:
 - a. Statutory rape
 - b. Selling liquor to minors
 - c. Bigamy (in some jurisdictions)

E. MENS REA – MODEL PENAL CODE (MPC)

- a) **Purposely** – a defendant acts “purposely” when his conscious objective is to engage in the conduct or to cause a certain result. **Subjective** standard.
- b) **Knowingly** (or willfully) – a defendant acts “knowingly” or “willfully” when the defendant is aware that his conduct is of a particular nature or knows that his conduct will necessarily or very likely cause a particular result. **Subjective** standard.
 1. Merely aware that in some % of cases the result could occur is not knowingly and is likely recklessly.

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CRIMINAL LAW, pages 3-20

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AGENCY AND
PARTNERSHIPS

CONFLICT OF LAWS

BUSINESS ENTITIES

FAMILY LAW

WILLS

SECURED
TRANSACTIONS

TRUSTS



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• AGENCY AND PARTNERSHIPS •

OVERVIEW

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I. AGENCY AND PARTNERSHIPS BASICS

- A. Agency is a **fiduciary** relationship between an **agent** and a **principal** where the agent acts on the principal's behalf and is subject to the principal's control.
- B. Partnership law is based on the law of contract and agency.

II. AGENCY: CREATION

- A. An agency relationship is created when there is:
 - a) **Consent** – **both** parties voluntarily consent (express or implied) to enter into an agency relationship;
 - b) **Capacity** – a principal must have contractual capacity but an agent need not (but an agent must have at least minimal mental capacity). Thus, a minor can be an agent but not a principal; *and*
 - c) **Control** – the agent is subject to the principal's control (e.g. supervision is sufficient).
- B. Consideration is NOT necessary to establish an agency relationship.
- C. Generally, no writing is required to establish an agency relationship, but many states require a writing when the contract that the agent is to enter into with a third party is within the Statute of Frauds (i.e. land transactions).
- D. The agency relationship may be created by an act of the parties or by operation of law.
 - a) **By act of the parties** – parties may create an agency by agreement between the principal and agent (i.e. actual authority), holding out by the principal (i.e. apparent authority), or ratification.
 - b) **By operation of law** – an agency may be created through estoppel or by statute.

III. AGENCY: CONTRACTUAL LIABILITY (AUTHORITY)

- A. An agent may bind a principal to a contract if the agent is acting within his actual authority, apparent authority, or inherent agency power. Once the agent validly binds a principal to a contract, the principal is liable under the terms of the contract. First, look if the agent had **actual authority**. If he did not, then look to see whether **apparent authority** was present.
- B. **ACTUAL AUTHORITY**
 - a) Actual authority looks at the relationship **between the principal and the agent**.
 - b) An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent to act.
 - c) Actual authority can be **express** or **implied**.
 1. Express: when the principal directs the agent to engage in the precise task in question; *or*

2. Implied: when the agent believes, based on a reasonable interpretation of the principal's words or conduct, that the principal wishes the agent to act on the principal's behalf.
 - a. **Incidental authority** – the agent's authority to conduct a transaction includes the authority to engage in actions that are incidental to it, usually accompany it, or are reasonably necessary to accomplish it;
 - i. Example: P tells A, "Sell my painting." A has the authority to take actions that are reasonably necessary to sell the painting such as placing advertisements in the newspaper, listing the painting for sale on websites, etc.
 - b. Industry **customs** known to the agent; *and*
 - c. **Emergency** measures.

C. APPARENT AUTHORITY

- a) Apparent authority looks at the relationship **between the principal and the third party**.
- b) An agent acts with apparent authority when:
 1. The principal holds the agent out, directly or indirectly, as having authority to act on the principal's behalf; *and*
 2. The principal's conduct, when reasonably interpreted, causes a third party to rely on the agent's appearance of authority when dealing with the agent.
- c) Apparent authority does not exist if the third party has knowledge that the agent does not have actual authority.

D. INHERENT AUTHORITY (INHERENT AGENCY POWER)

- a) The inherent agency power allows courts to hold a principal liable for damages to third parties even when the principal's agent acted WITHOUT actual or apparent authority.
- b) Courts apply the inherent agency power when:
 1. An agency relationship exists; *and*
 2. The totality of the circumstances weighs against forcing the third party to absorb all of the damages.

IV. AGENCY: CONTRACTUAL LIABILITY (RATIFICATION AND LIABILITIES)

A. RATIFICATION

- a) An agency relationship is created by ratification when an "agent" purports to act on behalf of a "principal" without any authority at all, but the "principal" subsequently validates the act and becomes bound.
- b) Ratification gives the transaction retroactive effect unless the "principal" lacked contractual capacity at the time the "agent" entered into the unauthorized transaction, or unless retroactivity would interfere with the intervening third-party rights. Upon

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AGENCY AND PARTNERSHIPS, pages 3-14

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good

LUCK!



The future rewards those who press on. I don't have time to feel sorry for myself. I don't have time to complain. I'm going to press on.

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