**Crimes Against the Person**

Michael J. DeBlis Jr., Esq. | *Partner*

MJDeBlisJr@DeBlisLaw.com

Michael J. DeBlis III, Esq. | *Partner*

MJDeBlis@DeBlisLaw.com

1012 Broad Street, 2nd Fl

 Bloomfield, NJ 07003

Tel (973) 783-7000

Fax (973) 338-3955

www.DeBlisLaw.com

HIGH-STAKES TAX DEFENSE & COMPLEX CRIMINAL DEFENSE

* 1. Murder
		1. CL definition: The unlawful killing of a human being w/ malice aforethought
		2. Requirements
			1. Actus reus: (1) A voluntary act, (2) an involuntary act (e.g. an epileptic driving a car), or (3) an omission to act where there is a legal duty to act;
			2. Act must actually and proximately cause the death of another living person;
			3. Causation requirement: D’s conduct must be both the actual cause and a legal cause of the victim’s death; and
			4. Mens rea (comprises malice aforethought requirement)
		3. Voluntary intoxication will never reduce murder to manslaughter. It may reduce intent, so it will only reduce murder by a degree – from First degree murder to second degree murder
		4. There are four distinct categories of murder
			1. Intent to kill murder
				1. Specific intent crime
				2. Conduct where D consciously desires to kill another person or makes the resulting death inevitable (absent justification, excuse, or mitigation to voluntary manslaughter)
				3. Effect of voluntary intoxication: Voluntary intoxication can reduce intent to kill murder (specific intent) to second degree murder by negating premeditation and deliberation. But voluntary intoxication cannot be used to negate a general criminal intent to reduce murder to manslaughter
			2. Intent to cause serious bodily harm or injury murder
				1. General intent crime
				2. Elements

An unintentional killing

Proximately resulting from an act intended to cause great bodily injury

* + - * 1. Examples

N/ intending to kill, D hits a person over the head w/ a baseball bat. As a result, the person dies from head injuries

B thought of a great “get rich quick” scheme to defraud his insurance company. B told R that he was insured under a State Farm policy covering personal injuries. He suggested that R shoot him in the arm in a fake robbery attempt so that he could file a phony insurance claim to recover damages for his injury. R shot D in the arm. Thereupon, D called 911 to report the shooting and requested an ambulance immediately be sent to his home. Believing that B only suffered a minor wound, R drove home after the shooting. The bullet, however, severed an artery and B bled to death before the ambulance arrived. R intended to inflict serious bodily injury when he deliberately shot B in the arm

* + - 1. Depraved heart murder
				1. Elements

An unintentional killing,

Involving extremely negligent conduct which creates an unjustifiable and a high degree of risk of death or serious bodily injury to another, and

Which actually causes the death of another

* + - * 1. Implied malice is found in depraved heart murder despite the fact that it is an unintentional killing
				2. The extremely negligent conduct required for depraved heart murder is of a higher degree than gross or criminal negligence, which is required for involuntary manslaughter
				3. Examples

D throws a baseball off the top of a four-story apartment building onto a busy public street below. The baseball strikes a pedestrian, killing her

Hal was scarfing down a bowl of chili at “Stuckey’s” when he noticed a cockroach in his food. He demanded a new serving. When Sean refused, Hal stormed from the store in anger. Hal jumped into his truck and purposely drove it into one of the gas tanks which ruptured the gas line. The collision caused a terrible explosion and the convenience store became engulfed in flames. Sean could n/ escape the blaze and burned to death. By deliberately driving his truck over a gas tank, Hal’s conduct created an unreasonable risk of causing death or serious bodily injury. He will be guilty of “depraved heart” murder for Sean’s death

S, a freshman at U of M, was pledging to a fraternity. During the “hell week” initiation ritual, S went to the State Street overpass that extended across Highway 95. S then pulled out a bowling ball from his bag and lobbed it from the overpass onto the highway below. S had hoped that the ball would fall harmlessly to the pavement. However, the ball crashed through the front windshield of a car driven by M. The ball struck M causing him to lose control of his vehicle and crashing into the divider. M was killed. S is guilty of depraved heart murder. Although he may n/ have acted w/ express malice, his conduct involved implied malice

Late for work and sitting in traffic, Ralph decided to drive his car along the sidewalk to avoid the traffic jam. While speeding down the sidewalk, pedestrians scurried to avoid his car. He struck Amy, killing her

* + - 1. Felony murder
				1. Elements

An unintentional killing

Sam and Joe are holding up convenience store when the convenience store owner shoots at Joe, misses, and hits a customer in the store killing him. S and J are both responsible

Proximately caused during the commission or attempted commission of a serious or inherently dangerous felony

Death must be foreseeable

* + - * 1. Inherently dangerous felonies (BARRK)

Burglary,

Arson,

Rape,

Robbery,

Kidnapping

* + - * 1. Timing: The resulting death must occur during the commission, or perpetration, of the felony

Post-felony killings: If a killing occurs while D is fleeing from the scene of the felony, he may still be guilty of felony murder. However, if he has reached a place of temporary safety, the felony is deemed to have terminated, and D can no longer be found guilty of felony murder

Example: Shopkeeper is robbed. He has a delayed stress reaction and has a heart attack three days later and dies. The injury is too attenuated from the robbery to be felony-murder

* + - * 1. Every co-conspirator is charged with felony-murder
				2. D is not liable for the death of a co-felon as a result of resistance by a V or police

Smith and Joe are holding up convenience store when the convenience store manager shoots Joe. Smith is not responsible for Joe’s death

* + - * 1. Defenses: Any defense to the underlying felony negates the felony murder
				2. Example: N/ intending to kill, D rapes V in a remote area of the desert. D then drives off leaving V alone in the sweltering heat. The next day, V dies from exposure as she’s unable to reach the nearest town 8 miles away
		1. Statutory definitions – Murder by degrees
			1. First degree murder: Includes (1) intent to kill murder committed w/ premeditation and deliberation and (2) felony murder
			2. Second degree murder: All other murder
	1. Voluntary manslaughter (“Heat of passion” killing)
		1. Elements
			1. An intentional killing
			2. Committed under extenuating circumstances which mitigate the killing
				1. Adequate provocation: The principal extenuating circumstance is that D – when he killed the victim – was in a state of passion engendered in him by adequate provocation
		2. Adequate provocation
			1. No malice aforethought
			2. Measured objectively: The provocation required for voluntary manslaughter must be that which will arouse a heat of passion in a reasonable person – would a RP have lost self-control? In other words, this is a provoked killing
				1. But note: The MPC takes into account individual peculiarities of D *but* not D’s voluntary intoxication which unreasonably provokes him to lose his self-control. As a professional tennis player, J’s Achilles tendon injury was significant, both emotionally and financially, b/c it could threaten his entire career. Therefore, J will be judged as a professional tennis player w/ an Achilles tendon injury who is n/ intoxicated
			3. Time period: Time period between the heat-of-passion and the fatal act must n/ be long enough for a RP to have cooled off
			4. Examples of adequate provocation
				1. Courts commonly find that D was adequately provoked where he killed after he was the victim of a serious battery: C, D and T were playing cards. D became upset at losing a poker hand to C. As C was collecting his winnings, D yelled at him, “You slimeball, if I see you cheating again, I’m gonna kick your ass.” C stood up, pointed a finger at D and said, “Listen, don’t blame me b/c you’re a lousy card player.” D then grabbed C by the shirt and punched him in the face several times. C pulled out a gun, aimed it at D and screamed, “That’s the last time you’ll ever do that to me. You’re history…” T jumped in front of D and said, “Don’t shoot.” C couldn’t stop and fired his gun. The bullet struck T, killing him. Here, D punched C in the face several times immediately before the shooting. This battery would constitute reasonable provocation, causing C to lose his normal self-control
				2. Courts commonly find that D was adequately provoked where he killed after finding his spouse engaged in sexual conduct w/ another person
	2. Involuntary manslaughter
		1. Unintentional killing resulting w/o malice aforethought caused either by:
			1. “Criminal negligence” involuntary manslaughter, or
				1. D’s conduct must create a high degree of risk of death or serious injury beyond the tort standard of ordinary negligence
			2. “Unlawful act” involuntary manslaughter
				1. A.K.A. misdemeanor manslaughter
				2. Unintentional killing occurring during the commission or attempted commission of a misdemeanor which is malum in se (wrong in itself) or a felony which is n/ of the inherently dangerous type required for felony murder
				3. Any time an individual dies as a result of inflicting an assault or battery on the person, that is misdemeanor manslaughter
				4. Example: N/ intending to kill, D, at a party, pushes a nine-year-old child into a swimming pool and the child drowns
	3. Assault and battery
		1. Criminal battery
			1. General intent crime (it’s a completed assault)
			2. Unlawful application of force to the person of another, resulting from D’s:
				1. Negligent,
				2. Reckless,
				3. Careless, or
				4. Intentional contact
			3. Mens rea may encompass:
				1. Negligence,
				2. Recklessness,
				3. Carelessness, or
				4. Intention
			4. Transferred intent doctrine applies
			5. Defenses: Where one intentionally touches another in:
				1. Self-defense,
				2. Defense of others,
				3. To prevent the commission of a crime, or
				4. Where D has the victim’s consent
		2. Assault
			1. Attempt to commit a battery assault (i.e., assault as an attempted battery): Requires an intent to commit a battery (i.e. an intent to injure). An intent merely to frighten, though accompanied by some fear-producing act, will n/ suffice. Example: Jake takes a swing at Mike and Mike ducks. Jake misses. This is a specific intent crime.
			2. Intentional creation of imminent fear of harm assault (assault as a threat): D must act w/ threatening conduct intended to cause reasonable apprehension of imminent harm in the victim. Mere words are insufficient, unless accompanied by an overt act to accomplish the threat. This is a general intent crime. Example: Jake threatens Mike with bodily harm
	4. Kidnapping
		1. An unlawful
		2. Restraint of a person’s liberty
		3. By force or show of force, and
		4. The victim is taken to another location
	5. Rape
		1. Unlawful sexual intercourse by a male person w/ a female person w/o her consent
		2. General intent crime
		3. Elements
			1. Nonconsensual intercourse (slightest penetration constitutes rape)
			2. W/ a woman
			3. Against her will
		4. Prosecution need only establish that the act was committed. Once the prosecution establishes that the act was committed, the D’s bad state of mind is inferred. Prosecution does n/ have to prove that D had a guilty SOM
		5. Statutory rape: An act of intercourse constitutes rape despite a minor’s consent. D’s mistake of fact as to the age of the victim is no defense to statutory rape