

Modes of Culpability
(The Mental Element of Crime)

I. Model Penal Code¹

	Purpose	Knowledge	Recklessness	Negligence
<i>Offense Elements²</i>				
<i>1. Conduct</i>				
attitude:	conscious object	awareness	[not defined]	[not defined]
probability:				
<i>2. Circumstance</i>				
attitude:	awareness, belief, hope	awareness	conscious disregard	(no awareness)*
probability:			substantial & unjustifiable risk**	substantial & unjustifiable risk***
<i>3. Result</i>				
attitude:	conscious object	awareness	conscious disregard	(no awareness)*
probability:		practical certainty	substantial & unjustifiable risk**	substantial & unjustifiable risk***

Common Law³

Offenses⁴

(1)⁵

Intent			Criminal Negligence
Specific	General		
		Reckless Carelessness	
		Reckless Negligence	

attitude:	malice aforethought	awareness (scienter)
	premeditation	
	malignant heart	
	malice	

(2)⁶

Intent		
Specific	General	

¹ Model Penal Code § 2.02(2).

² On the MPC's element-analysis, as contrasted with the common law's offense-analysis, of modes of culpability, see 1 Model Penal Code and Commentaries comm. § 2.02, at 231-33 (1985).

* The absence of awareness gives rise to criminal liability.

** "The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a *law-abiding person* would observe in the actor's situation." (emphasis added)

*** "The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a *reasonable person* would observe in the actor's situation." (emphasis added)

³ No attempt was made to capture the full complexity of the common law of "mens rea."

⁴ See supra note 2.

⁵ See La. Crim. Code (1942) §§ 10-12 (pre-MPC codification); see generally 1 Model Penal Code and Commentaries comm. § 2.02 (1985).

⁶ See *State v. Cameron*, 104 N.J. 42, 514 A.2d 1302 (1986) (interpreting MPC-based provision)

II. New York Penal Law⁷

	Intent(ion)	Knowledge	Recklessness	Criminal Negligence
<i>Offense Elements</i> ⁸				
1. <i>Conduct</i>				
attitude:	conscious object	awareness	[not defined]	[not defined]
probability:				
2. <i>Circumstance</i>				
attitude:	[not defined]	awareness	awareness & conscious disregard	(no awareness)*
probability:			substantial & unjustifiable risk****	substantial & unjustifiable risk*****
3. <i>Result</i>				
attitude:	conscious object	[not defined]	awareness & conscious disregard	(no awareness)*
probability:	irrelevant ⁹	[not defined]	substantial & unjustifiable risk****	substantial & unjustifiable risk*****

III. Civil Law (German System)¹⁰

	Dolus Absicht			Culpa	
	Absicht	Directus	Eventualis	w/ Awareness	w/o Awareness
<i>All Offense Elements</i> ¹¹					
attitude:	conscious object	awareness	acceptance of risk	belief in non-realization of risk	(no awareness)*
probability:	irrelevant	certainty	high	low	low

⁷ New York Penal Law § 15.05.

⁸ The New York Penal Law follows the Model Penal Code's element-analysis of modes of culpability. See supra note 2.

**** "The risk must be of such nature and degree that *disregard thereof* constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation." (emphasis added)

***** "The risk must be of such nature and degree that *the failure to perceive it* constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation." (emphasis added)

⁹ People v. Steinberg, 79 N.Y. 2d 673 (1992).

¹⁰ The modes of culpability are not defined in the German Penal Code. For an overview of the discussion in the literature and in the courts, see, e.g., Cramer-Schönke/Schröder, Strafgesetzbuch: Kommentar, comm. § 15 (25th ed. Munich 1997). Rather than reflect any or all of the various proposed definitions, the above scheme presents a compilation of components of various proposed definitions.

¹¹ The German system distinguishes between the mode of culpability with respect to different offense elements, but does not define modes differently for different elements.