

21.01D2 (replaces previous instruction of the same number)

MALICE AND MALICIOUSLY-DEFINED

The term “malice” means that the act constituting the offense was done recklessly under circumstances manifesting an extreme indifference to the value of human life, and that the act was done without legal justification or excuse.

The term “maliciously” means that the act constituting the offense was done [intentionally but without premeditation, was reasonably likely to result in death and was done without legal justification or excuse] or [recklessly under circumstances manifesting an extreme indifference to the value of human life and was done without legal justification or excuse].

Source:

Wilkerson v. State, 2014 WY 136, ¶ 27, 336 P.3d 1188, 1200 (Wyo. 2014).

Use Note (2014):

With regard to the definition of “malice,” in *Wilkerson* the Wyoming Supreme Court overturned its precedent concerning the definition of malice as used in W.S. § 6-2-104.

A legal justification defense deems conduct that is otherwise criminal to be socially acceptable and non-punishable under the specific circumstances of the case. Justification focuses on the nature of the conduct under the circumstances.

Examples include:

- Self-defense
- Defense of others
- Defense of property and habitation
- Use of lawful force
- Necessity

A legal excuse defense focuses on the defendant’s moral culpability or his ability to possess the requisite mens rea. An excuse defense recognizes that the defendant has caused some social harm but that he should not be blamed or punished for such harm.

Examples include:

- Duress
- Insanity
- Diminished capacity

- Intoxication (in very limited circumstances)
- Mistake of fact
- Mistake of law (in very limited circumstances)

Dressler, Understanding Criminal Law Outline §§ 7.01-7.02 (2004).