

General Principles

- Common Law → Criminal Statutes → Legislation
- Legislators, today, rather than judges exercise primary responsibility for defining criminal conduct and for devising the rules of criminal responsibility.
 - Deals with crimes prior to their commission, punishment is imposed by other agencies.
 - Legislator's Role of General Direction – 4 Conditions:
 - Citizen must know the law exists and of its content in relevant respects.
 - Must know of the circumstances in which the abstract terms would apply.
 - Must be apply to comply with.
 - Must be willing to do so.
 - Do not have unlimited power – subject to state and federal law.
 - State has sovereign authority to promulgate and enforce its own criminal laws.
- Judiciary play a vital role in the ascertainment of guilt in individual cases by interpreting criminal statutes.
- Model Penal Code
 - Before
 - State Criminal Code → Collection of Statutes
 - Bad because...
 - Not all common law crimes and defenses were codified therefore GAPS...
 - Now
 - ALI → 1962 → Model Penal
- Criminal Law in a Procedural Context
 - Pre-Trial
 - Alleged Crime Reported to the Police
 - Need PC to Arrest → US Constitution
 - Arrest made
 - Preliminary Hearing (within 2 weeks after Arrest) OR
 - Judge determines if it was justified
 - File “Information” – Set out the formal charges against the accused and the basic facts relating to them.
 - Grand Jury

- Lay members of the community
 - Consider evidence presented to them by Prosecutor
 - Deliberate privately and determine whether adequate evidence exists to prosecute the accused.
 - Sufficient Evidence → Indictment (similar to “Information”)
 - Pre-Trials Motions → Could lead to a Dismissal
 - Guilty Plea → No Trials
 - Result of Plea Deal
- Trial by Jury
 - 6th Amendment → Right to Jury Trial
 - Sullivan v. Louisiana (1993)
 - If Max Punishment over 6 months → Jury Trial
 - In most places, jury=12 people
 - Reach of unanimous verdict to acquit or convict.
 - However, juries as small as 6 people are constitutionally permissible.
 - *Williams v. Florida (1978)*
 - Jury of 5 is not allowed.
 - Johnson v. Louisiana (1972)
 - Voir Dire (Selection of Jury)
 - Control for bias/partiality
 - Preemptory Challenges
 - Challenges not based on cause; to strike people from the jury whom they believe are biased but whose partiality was not adequately proven through the voir dire process.
 - 14th Amendment violated if you challenge based on race or gender
- Proof of Guilt at Trial
 - Winship (1970) → Have to have BRD
 - Due Process Clause of the US Constitution
 - BRD is inherently qualitative
 - Courts differ on instruction of BRD, because Constitution doesn’t hold that you have define it.

- **Malum In Se**

- Wrong or Evil In Itself
- Ex. Murder
- **Malum Prohibitum**
 - Used in law to refer to conduct that constitutes an unlawful act only by virtue of statute
 - Ex. Lambert not registering
- **Good Faith**
 - One that you have
 - Subjective
 - Abstract and comprehensive term that encompasses sincere belief or motive without any malice or the desire to defraud others.
- **Reasonable Belief**
 - Objective
 - One that others have too

Hart's Features of Criminal Law

- Series of directions or *commands* telling people what they must or must not do → BINDING
 - Most are must not's
 - Satisfied by inaction
 - Some are musts
 - Affirmative Requirements
 - (Ex. Filing Tax Return)
- The commands are subject to one or more **sanctions** for disobedience, which the community is prepared to enforce.
- Definition of Crime
 - Crime is anything, which is called a crime, and a criminal penalty is simply the penalty provided for doing anything, which has been given that name.
 - **Judgment of community condemnation**, which accompanies and justifies its imposition.
 - Binding and speaks on the community's half; expression of a community's hatred, fear or contempt.

- Punishment is also an important part and goes hand in hand with the moral condemnation of the community.
 - Threat of unpleasant physical consequences.

Theories of Punishment

- One fundamental question is why (and whether) the social institution of punishment is warranted...
- A second question concerns the necessary conditions for criminal liability and punishment in particular cases.
- A third relates to the form and severity of punishment that is appropriate for particular offenses and offenders.
- Punishment requires justification.
- Congruence between threat and actual performance does not constitute one good reason for punishing.
- If actual punishment never or very rarely followed threatened punishment, the threat would lose significance.

Assigning Punishment

- Who to Punish
 - *The Queen v. Dudley and Stephens (Queen's Bench Division – 1884) – ATE A BITCH!*
 - Lost at sea, ate the youngest member of the crew, indicted on murder
 - He would have died anyways, but eating him saved the others' lives
 - RULE → Should they be punished?
 - Utilitarian
 - **NO** because...it serves no good to society, satisfies Benton's 4 requirements
 - Retributivism
 - **YES** because...committed murder, should be punished, we have right as society to punish, we have to restore equilibrium in society, state is defeating them on behalf of the victim.
 - NOTE=Found guilty of felony murder because there was no greater necessity to kill the boy than any of the other 3 men.
- Mixed-Theory Approach to Sentencing

- **Punishment’s purpose is utilitarian, but that purpose must be pursued within retribution’s limits.**
- Ex. A person would only be punished
 - If he committed a crime
 - In proportion to the crime
 - And only if doing so would produce a world with less crime
- Alternatives to Imprisonment
 - Restorative Justice
 - Arose from social movement against prisons.
 - It assumes that those most affected by crime should have the opportunity to become actively involved in resolving the conflict.
 - Used to deal more often with property offenders rather than violent criminals.
- 8th Amendment
 - No excessive bail, fines or cruel or unusual punishment.
- Three-Strikes/Ewing/Scalia
 - In weighing the gravity of Ewing’s offense, must consider current felony & long history of felony recidivism.
 - Not merely punishing the “triggering” offense
 - Ewing’s sentence justified by State’s public-safety interest
 - Utilitarianism
 - They can’t be contributing member of society
 - Scalia Concurrence
 - Must look at retributive too

Retribution

- Punishment is justified because people deserve it.
 - Think morality, think should.
- Backward-looking – justification for the punishment found in the prior wrongdoing.
- CONTRAST – Utilitarianism – Forward-looking – punishment is justified on the basis of the supposed benefits that will accrue from its imposition.
- Proportionality – Let the punishment fit the crime.
- *Murphy and Hampton*
 - Forgiveness and Mercy
 - Retributive Idea 1 → Punishment as a Defeat.
 - Those who wrong others demean them.

- Punishment equalizes them.
 - *Lex Talionis* - Wrongdoing to suffer something like what his victim's suffered (want to even the score).

Utilitarianism

- Justification lies in the useful purposes that punishment serves.
 - Think public safety, think greater good.
- *Utilitarianisms believe that punishment is a mischief and we should only punish based on the ability to predict future dangerousness of offenders/reduction in crime and that must outweigh the hardships of the punishment.*
- Principle of Utility
 - Approves/disapproves of every action whatsoever, according to the tendency which it appears to have to augment/diminish the happiness of the party whose interest is in question.
- Bentham (Utilitarian)
 - Pleasure/Pain (Cost/Benefit Analysis)
 - Legislative has pleasure in mind as the ultimate goal of laws.
 - Punishment shouldn't be inflicted if...
 - Groundless
 - Inefficacious
 - Unprofitable or too expensive
 - Needless
- *Greenawalt's Characteristics of Punishment*
 - General Deterrence
 - One's punishment may deter others
 - Individual Deterrence
 - Offender knows that he will be punished if he repeats the act
 - Incapacitation
 - Ex. Prison or Death Penalty Permanently
 - Reform
 - Punishment can reform a criminal so that he no longer wishes to commit crimes.
- *Herbert Morris*
 - Persons and Punishment
 - 4 Propositions
 - Right to Punishment (RTP) – we have the right to be punished

- RTP derives from fundamental human right to be treated as a person
- Right is a natural, inalienable and absolute right
- Denial of the right implies the denial of all moral rights and duties.
- Justice restores equilibrium in society...
 - It is just to punish those who have violated the rules and have caused the unfair distribution of benefits and burdens (equilibrium)

Recidivism

- Utilitarianism
 - More dangerous/worst people
- Deontological
 - Did it before, will do it again...

What does law mean? (Statues, Case Law, Common Law)

- Common Law can mean...
 - Rules Before Statues
 - What Blackstone Said...
 - Tradition
 - As a System
 - Versus What CaseLaw Means

Criminal Law as Statutory

- Construction of a Statue
 - The process of interpreting/determining the meaning of a statue so a court may apply it accurately.
- Statutes without notice=ex post facto violations
- Judicial decisions without notice=due process violations

Statutes and their Interpretations

- “Material Elements” may include...
 - The nature of the forbidden conduct
 - The attendant circumstances
 - The result of the conduct

Principle of Legality in a Statute

- “No crime without law, no punishment without law”
- A person may not be convicted and punished unless her conduct was defined as criminal.
- First principle of American criminal law

Notice, Objectivity, Lenity

- Criminal Statutes should be understandable to reasonable law-abiding persons.
(*NOTICE*)
- Criminal statutes should be crafted so that they do not “delegate basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis.”
(*OBJECTIVITY*)
- Judicial Interpretation of ambiguous statutes should “be biased in favor of the accused.” (*LENITY*)
 - Rarely Invoked

Commonwealth v. Mochan (Superior Court of Pennsylvania 1955) – Unwanted Phone Sex.

- *Prosecution Wins*
 - P called D and harassed him, “blackened her character and reputation.”
 - Conduct not prohibited under statute, but was prohibited under common law.
 - Section 1-101
 - RULE→Common law crimes continue to be punishable under the law.
 - His acts injured public morality→Utilitarianism→Conviction justified
 - DISSENT→Should be to legislature, allowing common law to create crimes defeats the purpose of the legislature

Keeler v. Superior Court (Supreme Court of CA 1980) – Kicking Babies.

- Defendant Won.
 - Stomped on Victim’s stomach while pregnant. Baby delivered still-born, 75-95% baby would have survived if no stomping.
 - Charged with Murder – 187; is the fetus a human being? Human Being is a term of art.
 - RULE→The judiciary can’t add things to a statute if it is not already there, the legislature should.

- If they were to add, no proper notice under Due Process.
 - Fact Rule→ *The term “human being”, as contemplated by the penal code of California, does not include an unborn fetus.*
 - Fact that Keeler was calm relates to the "malice aforethought" part of 187.
- Dissent→Have to interpret statutes within the context of the present time. (i.e. We have the science to know now that a fetus could survive)
- NOTE=After this case, the legislature did add fetus to 187.

Vagueness of Statutes

- Unconstitutional because...
 - People should be able to figure out what is illegal. (Reasonable Person Standard)
 - You can't trap innocent people.
 - They don't provide fair warning. (NOTICE)
 - Gives too much power/discretion to police, judges and juries, etc...
 - Inhibits our freedoms (overdo not breaking the law).
- Ex. Florida Vagrancy Statue – Papachristou v. City of Jacksonville
 - Unconstitutional because overly broad – it potentially punished innocent conduct.
 - i.e. Night-Walking
 - Gives too much discretion to police.

City of Chicago v. Morales (Supreme Court of the United States 1999) – GANGGGGGGGGS!

- *Defendant Wins.*
 - Chicago City Council enacted Gang Congregation Ordinance – prohibits gang members from loitering with one another or with other persons in any public place. Any person who disobeys the order, regardless of whether he/she is a gang member, is guilty of violating the ordinance.
 - RULE→Due Process is violated if the statute is so vague and standard-less that it leaves the public unclear as to what it prohibits.
 - RULE→Due Process is violated if the statute do not establish minimal guidelines to govern law enforcement.
 - Fact Rule→ Unconstitutionally vague because it both fails to provide notice to the citizens and leaves too much discretion to the police.

- The ordinance in question defines the term “loiter” as “to remain in any one place with no apparent purpose”. “Apparent purpose” does not have a common meaning such that the ordinary person would know whether he or she had an apparent purpose.
- Requires no harmful purpose and applies to non-gang members as well as suspected gang members
- DISSENT→ The dissent construes the ordinance as penalizing a loiterer’s failure to obey a police officer’s order to move rather than penalizing the act of loitering.
 - Sees the ordinance as enabling police officers to carry out their authority to order groups of people who threaten the public peace to move.
 - Does afford notice consistent with the Due Process Clause because it is not too vague.

Muscarello v. United States (Supreme Court of the United States 1998) - Packing Heat

- *Prosecution Wins*
- D was convicted drug trafficker, received enhanced sentence of 5 years for carrying weapon during the process of the drug crime. Was not on his person, was in a locked glove compartment in his car.
 - *18 U.S.C. Section 924(c)(1)*
 - *When a person uses or carries a firearm during or in connection with a drug trafficking crime.*
 - RULE→ The phrase “carries a firearm” includes knowingly possessing and carrying firearms in a vehicle, including its locked glove compartment or trunk, which the person concerned accompanies.
 - RULE→ When interpreting a statute, look at Congress’ basic purpose for enacting that statute.
 - Purpose was to prevent the combination of drugs and guns
 - DISSENT→ Issue shouldn’t have been the word “carry” it should have been the phrase “carries a firearm.” Should have used lenity because the statute was vague and should have given D benefit of doubt.

HYPOTHESIS

Uses means active use of a firearm.

Selling a gun for drugs - **YES**

Getting a gun for drugs - **NO**

Actus Reus

- In general, a crime contains two components: an “*actus reus*” and the “*mens rea*.”
 - The “*actus reus*” is the physical or external part of the crime.
 - The “*mens rea*” is the mental or internal ingredient.
- The term “*actus reus*” has no universally accepted definition.
- Simple Criminal Model
 - *Act* → *Harm*
- *Actus* expressing the voluntary physical movement in the sense of conduct and *reus* expressing the fact that this conduct results in a certain proscribed harm.
- Result Crime (i.e. Murder) vs. Non-Result Crime (Defined in terms of Conduct, i.e. DUI)

Martin v. State (Alabama Court of Appeals – 1944) – Drunk Dragging

- *Defendant Won*
 - Appellant was convicted of being drunk on a public highway.
 - Code 1940, Title 14, Section 120
 - Officers of the law arrested him at his home and took him onto the highway, where he allegedly committed the proscribed acts.
 - **RULE** → The *actus reus* has to be voluntary.
 - Appear vs. Was Appeared

Notes on Martin

- Involuntary *actus reus* is a public health problem, not a corrections problems.
- What constitutes a voluntary act?
 - Responsibility
 - One is responsible only for those consequences that are caused by his actions, and not for those things in which his body, but not his acting self, is causally implicated.

State v. Utter (Court of Appeals of WA – 1971) – Automatism

- *Prosecution Wins*

- Dad killed his son when drunk and as a result of a conditioned response from being in the military. Had no memory of the crime. Charged with 2nd Degree Murder, Convicted of Manslaughter. He said he was a robot.
- RULE→ An “**act**” committed during unconsciousness is not voluntary, and therefore one cannot be held criminally culpable for said act. However, voluntarily induced unconsciousness, such as by drugs or alcohol, is not a complete defense.
 - Automatism would have worked, but they didn’t have the evidence to show.
 - Mens Rea does not encompass the entire mental process of one accused of a crime. There is a certain minimal mental element required in order to establish the actus reus itself. This is the element of volition.
- NOTE→Automatism established as legitimate defense.
 - *McClain v. State*

HYPO

- Carl shoots gun at target. Dorothy walks in front of him and is killed.
 - Act is firing the weapon→Voluntary
 - No Mens Rea because he didn’t intend to shoot her.

People v. Decina

- Killed 4 people while driving due to a seizure
- Charged with operating a vehicle in a reckless or culpably negligent manner causing the death of 4 persons
- RULE→Even without Mens Rea must have a voluntary act for a conviction.

Consciousness manifests itself in degrees that represent varying levels of awareness→Semi-Voluntary

Attendant Circumstances

- **The Act: What you do**
- **The Attendant Circumstances: What is True...**
 - Ex. Simple DUI
 - What do you have to do? Drive
 - What has to be true? Be intoxicated and that you are driving a car...

- Ex. Break and Enter
 - What do you have to do? Break and Enter
 - What has to be true? Break and Enter a dwelling house of another, at night, with intent to commit a felony.
- Ex. Homicide
 - What do you have to do? Kill
 - What has to be true? Unlawful, human being.

Simple Criminal Law Model

- Act Causes Harm
 - *Act Intentionally/Recklessly Causes Harm* – have to have one or the other
 - Moving Adverbs changes the meaning/argument
 - **Intentional Act Causes Harm** → Could be accident (i.e. Carl shooting Dorothy) (Actus Reus)
 - **An Act Intentionally Causes Harm** → Separates what people do inadvertently with what people do on purpose (Mens Rea)
 - **An Act Causes Intentional Harm** → Involves crazy, random acts that would still cause death (i.e. cutting a necrophilic)

Omission & Duty

People v. Beardsley (Supreme Court of Michigan – 1907) – Mistress & Morphine

- *Defendant Wins*
 - D and Burns were having an affair and drinking at a hotel, she took morphine on her own accord and he tried to stop her, she got sloppy and he took her to the basement and left her in the care of his neighbor, she died. D was charged with manslaughter.
 - RULE→A person owes no legal obligation to another unless such person is within his custody or care as a dependent person.
 - RULE→In order to hold someone responsible for death by omission...
 - The duty neglected must be a legal duty, not a moral obligation (Jones Rule)
 - Must be a duty imposed by law or contract
 - Omission to perform the duty must be the immediate and direct cause of death

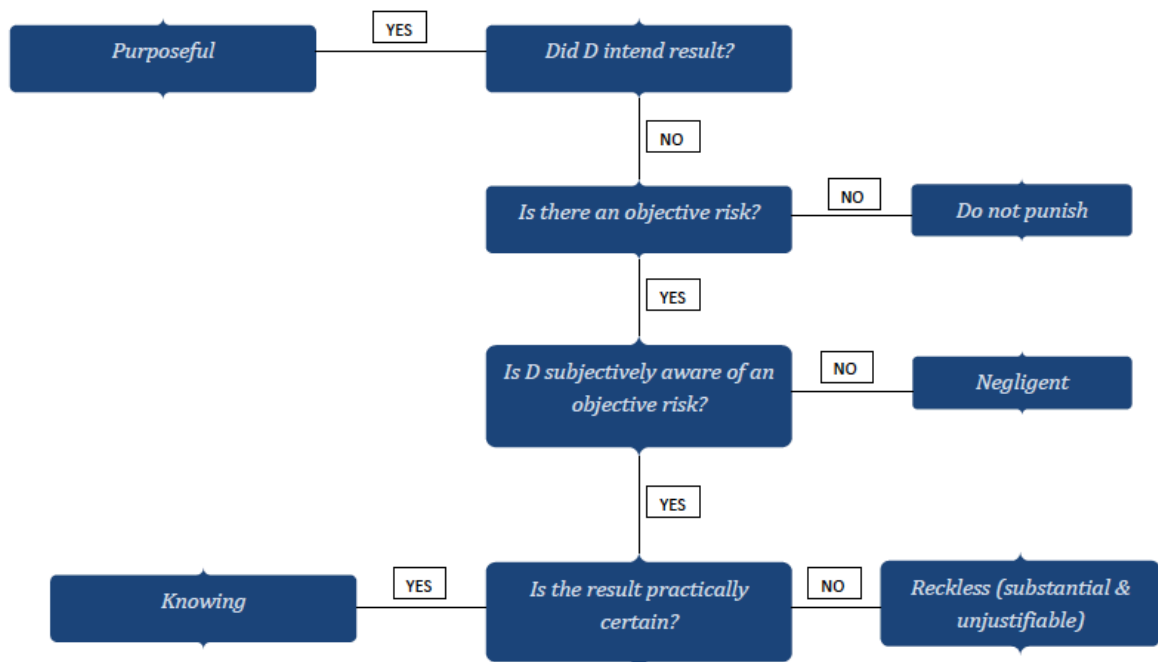
JONES RULE

1. Statutory Duty
2. Status Relationship (Husband/Wife)
3. Assumed Contractual Duty to Care
4. Voluntary assumed the care of another and secluded the helpless person so as to prevent others from rendering aid (What happened in Beardsley)

Why should we allow people to permit harm to come to others? (*i.e.* 7 year old in the Bathroom)

- “Non-Doings” (Omissions) are inherently more ambiguous than wrongdoings (Acts).
- Difficult line-drawing problems arise in omission cases.
- Well-meaning bystanders often make matters worse by intervening in ongoing events.
- Issue of Freedom

Mens Rea



- Model Penal Code – Culpability Requirements Section 2.02

- *Prosecutor must prove that the D committed each material element of the charged offense with the particular state of mind required in the definition of that crime.*
 - Purposely: Intends to bring about a result
 - Knowingly: Practically certain the result will occur
 - Recklessly: Consciously disregards a substantial or unjustifiable risk.
 - Negligently: Should be aware of a substantial or unjustifiable risk, but is not.
- *See Examples on Page 163*
- Offense Silent as to Culpability → No Mens Rea Mentioned in the Statute → in general apply the following: Purposely, Knowingly or Recklessly.
 - MPC Section 2.02(3)
- If there is no mens rea, and it's a common law crime, then adopt the mens rea of the common law crime.
- General vs. Specific Intent
 - General Intent
 - No particular mental state is set out in the definition of the crime, and therefore the prosecutor need only prove that the social harm of the offense was performed with a morally blameworthy state of mind.
 - 2 Examples of General Intent Crimes → **BATTERY & RAPE**
 - Rape at common law
 - If you're having sex with someone volitionally is enough of a mens rea → you know you're doing something sort of wrong (having sex outside of marriage was a crime)
 - ***GI crimes are very rare, they are the exception – not the rule.***
 - Specific Intent
 - Specific Mens Rea mentioned in Statute
 - Ex. "Purposefully"
 - A special mental element, which is required above and beyond any mental state required with respect to the actus reus of the crime.
 - 3 Types of Specific Intent
 - Intention of the Actor to commit some future act, separate from the actus reus of the offense.
 - Special motive or purpose for committing the actus reus (i.e. to humiliate).

- Proof of the actor's awareness of an attendant circumstances (i.e. selling porn to someone under 18).
- Regina v. Cunningham
 - Maliciously as a Term of Act (Leave to jury to decide)

United States v. Cordoba-Hincapie (U.S. D.C. of NY 1993) – 2 Competing Meanings of Mens Rea

- 2 Meanings
 - “Guilty Mind,” Vicious Will, Morality of Motive→BROAD
 - Mental state that the D should must have had with regard to the social harm elements set out in the definition of the offense→NARROW

No Mens Rea for Strict Liability Offenses

- These strict-liability crimes are also known as offenses against the public welfare and include: (1) minor violations of traffic laws, pure food laws, the anti-narcotics laws, sanitary, building and factory laws as well as the offense of (2) statutory rape.

Assigned Culpability according to Intent

People v. Conley (Illinois Appellate Court – 1989) – Wine Bottle/Mucosal Mouth Case

- *Prosecution Wins*
 - Conley went to hit Marty in the head with a wine bottle, Marty ducked, Conley hit Sean instead, Sean sustained multiple serious injuries and a permanent injury known as Mucosal Mouth and partial dumbness.
 - RULE→ Intent can be inferred by the circumstances surrounding the crime.
 - State had BOP to prove that Conley had at least knowledge that disability was “practically certain to be caused by his conduct.”
 - Section 12-4(a) of the Illinois Criminal Code of 1961
 - Note→Chose “knowingly” but could have picked “purposefully” in their analysis
 - Circumstances→Use of bottle, force of blow, absence of warning, etc.
 - Ordinary presumption is that one intends the natural and probable causes of his actions (Sandstrom v. Montana).

- NOTE→Should Conley be charged with both Aggravated Battery on Sean and Attempted Aggravated Battery on Marty?

Transferred Intent

- When a D intends to cause harm to one person but accidentally causes it to another, courts typically assert what has come to be known as the “transferred intent” doctrine.
- Punish the D for a crime of the same seriousness as the one he tried to commit against his intended victim.
- Ex. Conley intended to hit Marty, but hit Sean.
 - D’s guilt is exactly what it would have been had the blow fallen upon the intended victim instead of the bystander.

Wilful Blindness

Willful blindness is a term used in law to describe a situation where an individual seeks to avoid civil or criminal liability for a wrongful act by intentionally putting his or herself in a position where he or she will be unaware of facts that would render him or her liable.

- D must subjectively believe that there is a high probability that a fact exists.
- D must take deliberate actions to avoid learning of that fact.
- Way to assign knowledge when there is intentional mistake of fact.
- A deliberate effort to avoid guilty knowledge is all the guilty knowledge the law requires.
- Different definitions of the term wilful...
 - May merely mean that the actor intentionally committed the prohibited act.
 - Requires proof that the actor intentionally performed the prohibited act in bad faith, with a wrongful motive, or in violation of a known legal duty.

State v. Nations (Missouri Court of Appeals – 1984) – Strippin’ for a \$

- *Defendant Wins*
- Police found 16 year old stripping at D’s club, D said that she had checked the 16 year old’s ID but lied.
- RULE→The definition of “knowingly” changes depending on the governing statute.
 - Knowingly→Term of Art

	Jurisdiction	Existing Fact	Future/Non-Existent Fact	
○ Def	MPC	High Probability	Practically Certain	child was the venteen
○ uncl rec yea	Missouri	Actual Knowledge	Practically Certain	
○ Hig				
○				

Flores-Figueroa v. United States (SCOTUS – 2009) – Yo I got a fake ID doe

- *Flores Wins*
- Gives his employer fake information to get a job, first time he does it he gave him random numbers not belonging to another person and the second time he gave him information that actually belonged to other people and used his real name
- RULE→The prescribed culpability in a statute applies to *all the material elements of the statute*.
 - FACT RULE→ If an individual is to be convicted of aggravated crime under 18 U.S.C. Section 1028(a)(1), **the government must first prove his knowledge that he was using someone else’s identification for the predicate (found or base something on) crimes.**
 - “Knowingly transfers, possesses, or uses, without lawful authority, a mean of identification of another person.”
 - Knowingly applied to→transfers, possesses, uses, without lawful authority and ID belongs to another person.
 - Considered the intent of the statute→wanted to punish identity theft, not people who didn’t know they were using other people’s identities

Strict Liability

- Mens Rea Requirement now recognizes limited exceptions to the rule.
- Public-Welfare Offenses

- Criminal liability has been permitted to attached without regard to fault in instances in which the actor’s conduct involves...
 - *Minor violations of liquor laws, the pure food laws, the anti-narcotics laws, motor vehicle and traffic regulations, sanitary, building and factory laws and the like.*
- Two principles identifying the contours of the public-welfare offense doctrine.
 - If punishment of the wrongdoer far outweighs regulation of the social order as a purpose of the law in question, then mens rea is probably required.
 - If the penalty is light, involving a relatively small fine and not including imprisonment, then mens rea probably is not required.
- Strict Liability permitted in Crim Law permitted in a number of other instances such as **Statutory Rape**.
- Some offenses contain a mens rea requirement for *some elements of a crime* but not all (i.e. attendant circumstances).

Morissette v. United States

- *Morissette Wins*
- Drug Dealer took military bomb casings, convicted of Federal Statute.
- State made argument that the Morissette was strictly liable for the element of the statute that required knowledge that the items belonged to the US.
- Court rejected this notion—said that mens rea was required for that material element.

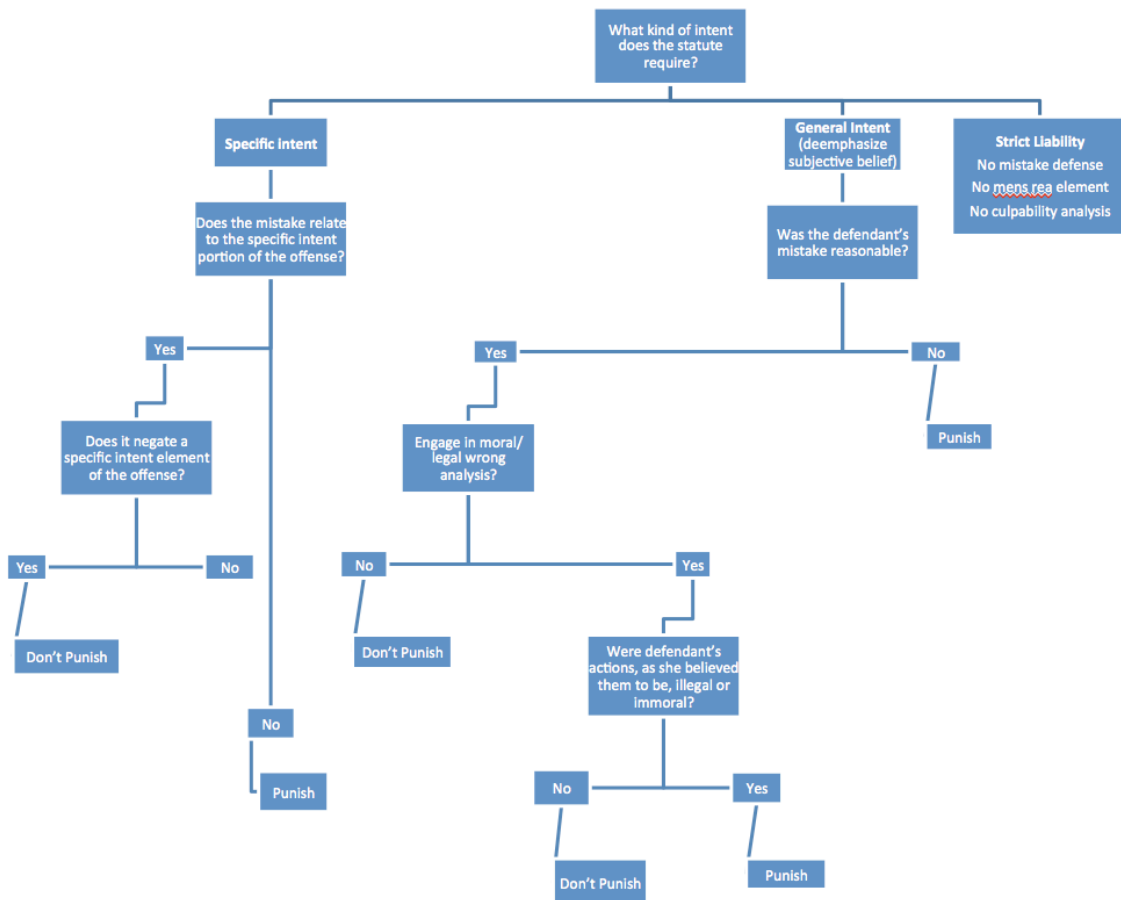
Criticisms of Strict Liability

- Doesn’t deter—because the actors are unaware
- Why condemn a person who is not morally culpable?

“Constitutional Innocence” Principle:

- Mens rea is not a constitutional requirement—Strict liability is not unconstitutional

Mistake



Mistake of Fact

Mistake of fact. Any mistaken belief other than a **mistake of law**. Examples include erroneous beliefs about the meaning of some term or about the identity of some person. In criminal law, a **mistake of fact** can usually operate as a defense so long as it is reasonable.

Moral wrong doctrine refers to a legal principle whereby one can make a reasonable mistake regarding an attendant circumstance and yet manifest a bad character or otherwise demonstrate worthiness of punishment. Even if a wrongdoer acts on a mistaken understanding of the facts, there is no exculpation for mistakes, if the facts had been as the defendant believed them to be, his conduct would still be immoral.

- Regina v. Prince

- Ex. Man forcibly taking 14 year old from parents in 1875, mistakenly and reasonably believed that she was 18, however he is still culpable because he was doing something **immoral** by taking her against her will.

Not an affirmative defense

Specific intent statute is the most available for mistake of fact issue

People v. Navarro (LA Superior Court – Appellate Department – 1979) – Dude Where is my Beam?

- *Navarro Wins*,
- D took four wooden beams from a construction site, because he thought they were abandoned, charged with grand theft, convicted of petty theft, key word here=steal
 - RULE→ If a person has a good faith belief that he has a right to certain property, he is not guilty, even if the belief is unreasonable.
 - STATUTE → *Cal Pen Code § 484(a)*
 - “Every person who shall feloniously steal, the personal property of another is guilty of theft.”
 - RULE→ One cannot intent to steal property which he believes to be his own.

Blurton – Walmart Robbery

- M convinces Blurton that he is a CIA Agent and tells him to rob Walmart as a part of a mission
- The statute is “robbery is the forcible taking of personal property of another with the **intent** to permanently deprive such person of the property.”
- Specific Intent→Blurton has good faith belief in M’s plan, makes mistakes→NOT GUILTY
- What separates M&B is mens rea→Same Actions, Different Results.

Mistake of Law

- Legal Wrong Doctrine
 - Same as Moral Wrong Doctrine above but substitute **illegal for immoral**.
 - If a D commits a crime he may be convicted of the more serious offense that his conduct establishes.

- Ex. Misdemeanor to sell porn to a person 18 and up. Felony to sell porn to a minor. If D sells to someone he reasonable believes is 18, legal wrong doctrine proves he can be convicted of a felony if they are in fact under 18.
- Reason for using the Legal Wrong Doctrine -->
 - Utilitarian
 - Criticism --> Causing more harm than good by punishing
 - Deterrence
 - Criticism --> Doesn't really deter, if they think it is a misdemeanor, then they are still guilty of a felony.
 - Retributive
 - They knew they were doing something wrong so they should be punished
 - Criticism --> over-punishing them...
- Doesn't count to just make a mistake, it has to be a RELEVANT mistake...
- Cultural Defense
 - HYPO
 - Iraqi parents marrying off their young daughters in America
 - RESULT
 - Caused the harm whether or not they intended to do so
 - Culture does have some bearing
 - Rules are for everyone
 - Assume risk once you go to another country

People v. Marrero (Court of Appeals of New York – 1987) – In Da Club, 50¢

- *People Win*
- D was Federal Corrections Officer from CT, arrested in NY club carrying an unlicensed gun
 - New York Penal Law § 265.02
- Statute says peace officers are exempt from criminal liability from the firearm possession statute that he is being charged with
 - New York Penal Law § 265.20(a)(1)
- Court determined that as a Federal CO he was not included in this category of peace officers
- RULE→ By New York State Statute § 15-20, a mistake of law defense can only be founded upon an official statement of the law contained in the statute or other

enactment, or an interpretation of the statute or law by a public servant, agency or body legally charged or empowered with the responsibility of enforcing/administering the statute.

- In this case the underlying statute never in fact authorized the D's conduct; the D only thought the statutory exemptions permitted his conduct when, in fact, the primary statute clearly forbade his conduct.
- DISSENT→Majority's interpretation allowed a man who has committed an act, which is criminal only because it violates a statute to be punished even though Appellant, in complete good faith, committed the act under a reasonable interpretation of the statute.
 - Because it is Malum Prohibitum Crime (vs. Malum In Se) his mistake is justified.
 - Should have fallen under the Official Statement Clause (§15-20) because the statute was confusing.
 - Only a D that is not mistaken about the law when he acts can use the mistake of law defense – not the intention.

Lambert v. CA – Constitutional Exception to the Ignorance of the Law is no Defense Rule

- SC held that L's due process rights were violated.
- She had no **actual knowledge** of the requirement that she must register and where no showing is made of the **probability of such knowledge**.
- Not vicious will, intent is often sufficient.
- Requirement of Notice
- HYPO:
 - Whitney signing the National Anthem, can't embellish, not a status crime or a crime of omission
 - Pharmacist failed to compile records about Viagra buyers, unaware about the law that had just been passed, different because the pharmaceutical industry is so highly regulated and thus you are expected to keep up with regulations...

Causation

No criminal liability unless it can be shown that the D's conduct was a cause-in-fact of the prohibited result.

“Can I blame someone else for what happened?”

“Who caused death in x minutes?”

2 Tests:

- *“But for” Test*
 - Determining whether the D’s conduct was a cause-in-fact of a prohibited consequence in result-type offenses such as vehicular homicide→SPECIFIC rule
 - If the said result would not have occurred “but for” the D’s conduct→GENERAL rule
 - Very easy to meet

- *“Substantial Factor” Test*
 - 2 D’s, acting independently and not in concert with one another, commit two separate acts, each of which alone is sufficient to bring about the prohibited rule – as when two D’s concurrently inflict mortal wounds upon a human being, each of which is sufficient to cause death.
 - HYPO
 - Page 218

Oxendine v. State (Delaware Supreme Court – 1987) – 2 Blows, 1 Death

- *Oxendine Wins*
- *11 Del.C. § 261*
- Facts:
 - D’s girlfriend Tyree pushed son into bathroom and caused tears in stomach/intestines.
 - Next morning, D beat son by punching him in the stomach.
 - Tyree took him to hospital, en route he stopped breathing and died shortly after arriving at the hospital.
- **RULE**→ Contribution to or aggravation of death without acceleration of death is insufficient to establish the causation of death required for a conviction of manslaughter.
 - D inflicted non-lethal blow, Tyree inflicted lethal blow.
 - Do not equate aggravation with acceleration.

- **RULE**→ To be liable for the death of another, one's conduct must cause death. Causation is defined as the “*antecedent but for which the result in question would not have occurred.*”
 - No manslaughter, because there was insufficient evidence to establish that his conduct accelerated Jeffrey's death.

Proximate Cause (“Legal Cause”)

- The but-for test is too imprecise a standard for determining casual accountability for harm because it fails to exclude remote candidates for legal responsibility. Very hard to meet.
- Proximate or Legal Causation
 - Serves the purpose of determining who or what events among those that satisfy the but-for standard should be held accountable for the resulting harm.
 - Cannot be proximate cause of harm unless actual cause
 - Can be actual cause without be proximate cause
- Issues of PC arise when an intervening force exists, when some but-for causal agent comes into play after the D's voluntary act or omission and before the social harm occurs. Intervening cause will be...
 - Act of God (event that cannot be traced back to any human intermediary)
 - Act of Independent 3rd Party
 - Aggravates/Accelerates harm caused by D, or causes it to occur in an unexpected manner
 - Act of Omission of the victim that assists in bringing about the outcome
- **An intervening cause that “breaks the causal chain” is sometimes described as a superseding cause or novus actus interveniens (“new intervening act”).**

People v. Rideout (Michigan Court of Appeals – 2006) – Apparent Safety

- *Rideout Wins*
- *OWI/OWVI Statute*
- Facts:
 - Rideout (D) was intoxicated while driving and collided his SUV with Reichelt's car, which came to a stop on the middle of the road as a result. Neither Reichelt nor his passenger Keiser was seriously injured.
 - They left their car and got to the road median, checked on Rideout and then, recognizing the danger that other cars could hit the unlit car, went back to the

stopped car to see if they could turn on its flashers. While there beside the car, an oncoming vehicle hit Keiser, killing him.

- **RULE**→ A defendant may not be held guilty of a crime in which his conduct is the cause-in-fact of injury to the victim but is not the proximate cause, since a superseding cause intervened to cause the victim's injury, a cause which may even be the victim's own choice to risk his safety.
 - Foreseeability (Objective Standard of Reasonableness)
 - Ex. Taken to hospital after stabbing – receives negligent care – foreseeable and D is still guilty – foreseeable does not break causal chain
 - If gross negligible – not foreseeable – casual chain would be broken – D not guilty

Dressler's Factors

- Apparent Safety Factor
 - *A court no longer follows a defendant's active force once it has reached and stopped at a place of apparent safety.*
- Voluntary Human Intervention
 - *Makes place for the abdication of criminal liability if there is free, voluntary and consciously informed human intervention.*
- Intervening cause superseding determines PC by breaking or not breaking casual chain.
- Superseding intervening cause does not need to be the only cause.
- No universal test for determining if an intervening cause is also a superseding cause.
- Linchpin in the superseding cause analysis is whether or not the cause was foreseeable.
- HYPO – Woman freezing to death...
 - Not same, because he could have reached safety and she didn't...
 - No causation at all

Rideout Notes:

- Coincidental vs. Responsive Intervening Causes
 - An intervening act is a **coincidence** when the D's act merely put the victim at a certain place at a certain time, and because the victim was so located it was possible for him to be acted upon by the intervening cause.

- Intervening is said to be a **response** to prior actions of the D when it involves a reaction to the conditions created by the D.
 - Coincidence=breaks chain
 - Response=only breaks chain in abnormal circumstances
- **HYPO**
 - Lori Drew – Facebook Mom who drove Megan Meier to kill herself
 - *Voluntary Human Intervention*
 - She chose to kill herself - independent human agency, breaks the chain
- Contributory negligence is not a defense, but can be a factor in determining whether the D's negligence caused a victim's death.
- **De Minimis Causes:** Minor But-For Causes are not prosecuted.
- Omissions
 - Omission can never function as a superseding intervening cause.
 - No matter how unforeseeable an omission may be, this “negative act” will not cut off liability of an earlier “positive act.”
- **Intended Consequences Doctrine**
 - If an intentional wrongdoer gets what she wanted she gets the result she wanted in the general manner she wanted it, she should not escape criminal responsibility even if an unforeseeable event intervened.
 - Regina V. Michael – little kid with the poison
 - Mom wanted to poison son, poison got left out and another kid gave it to him, Mom still guilty under ICD, got what she wanted in the manner she wanted
 - Regina V Blaue
 - Jehovah's Witness stabbed by B, needed blood transfusion to survive, refused it, B is not proximate cause because she made the decision voluntarily and freely

MPC

Subsections (2) and (3) are based on the theory of the but-for causation is the only strictly causal requirement that should be imposed generally, and the remaining issue is the proper scope of liability in light of the actor's culpability.

- **Subsection (2): Culpability Required is Purposely/ Knowingly** →

- If the actual result is not within the purpose or contemplation of the action, the culpability requirement

is not satisfied, except in the circumstances set out in Subsections (2)(a) and (2)(b).

- (2)(a) → Actual result differs from the result contemplated only in that **a different person or property was injured or affected**, or injury or harm would have been more serious or extensive than that, which actually occurred.
- (2)(b) → Actual result involves same kind of injury or harm as contemplated but **in which the precise injury inflicted was different** or occurred in a different way.
- **Subsection (3): Culpability Required is Recklessness or Negligence**
 - Actual result is not within the risk of which the actor was aware of/should have been aware of

→How to apply MPC Approach

1. *What was the actual result?*
2. *What was the actual result within the purpose of the actor?*
 - i. *Was there conduct of proximate cause?*
3. *If not, did the actual result involve the same kind of injury or harm as that designed?*
4. *If it did, was the actual result too remote or accidental in its occurrence to have a just bearing on the actor's liability?*

Page 231 HYPOS

4A. Doctor not washing hands - foreseeable (reasonably)

Different for gross negligence

4B. R puts X in shock and thus the shock makes X stab V.

Wasn't voluntary - free deliberate and informed movements.

Foreseeable? Yes possibly. Look at environment (prison).

4C. Picking up baby as shield.

Who fires the gun? X

Who picked up the kid? D

Intervening human action

Never found X

Velazquez v. State (Florida Court of Appeal – 1990) Fast and the Furious!

- *Velazquez*
- *Vehicular Manslaughter (Reckless, Risk Creation Mens Rea)*
- Facts:
 - Both engaged in drag racing, but after crossing the finish line, Alvarez continued at a high speed back to starting line with D trailing him, Alvarez crashed into guardrail and died.
- RULE→ Even where a defendant's conduct is a cause-in-fact of a prohibited result, courts throughout the country have for good reason declined to impose criminal liability: (1) where the prohibited result of the defendant's conduct is beyond the scope of any fair assessment of the danger created by the defendant's conduct, or (2) where it would otherwise be unjust, based on fairness and policy considerations, to hold the defendant criminally responsible for the prohibited result.
 - He caused his own death by voluntarily choosing to engage in high speeds after crossing the finish line.
 - Velazquez is a but for cause but not a proximate cause.

State v. Rose (Supreme Court of Rhode Island – 1973) Dirty Station Wagon

- *Rose Wins*
- *G.L.1956 § 31-26-1 & Manslaughter & Leaving the scene of an accident, death resulting (gets off on Manslaughter)*
- Facts:
 - Victim was hit by D's car when crossing the street
 - Unclear if still alive
 - D was not negligent when he hit him
 - Stopped momentarily and then began driving, dragging the victim with the car.
 - Found body later wedged under the car.
- RULE→ Where one of two actions of the Defendant-one negligent, one not negligent-causes death and a reasonable finding could be made that the non-negligent act caused the death, the Defendant cannot be guilty of manslaughter.
 - Medical testimony could not say when he died, therefore could not prove negligence after impact.

Homicide

Common Law Murder - "Unlawful killing of another human being with "malice aforethought."

- Malice Aforethought 4 Constituent States of Mind
 - **Intent to Kill**
 - Death of another would result from one's actions, even if the actor had no particular desire to achieve such a consequence.
 - **Intent to Cause Grievous Bodily Harm**
 - Knowledge that conduct would cause SBI was generally assimilated to intent and deemed sufficient for murder if death of another actually resulted.
 - **Depraved-Heart Murder**
 - Abandoned and Malignant Heart
 - Implied or presumed intent to kill or injure, extreme recklessness regarding homicidal risk.
 - **Intent to Commit a Felony**
 - Felony-Murder Rule
 - SL for homicide committed during the commission of a felony.

Murder into Degrees → Pennsylvania legislation of 1794

Purpose → to confine death penalty to particularly heinous murder crimes

§188 - defines malice

Express = deliberate intention

Implied = no provocation or abandoned/malignant heart

- **Phillips Test** (Reinstated by *Watson*)
 - Malice is implied when the killing is proximately caused by an act,
 - the *natural consequences of which are dangerous to life* (objective),
 - which act is *deliberately performed* by a person
 - who *knows that his conduct endangers the life of another* and
 - who acts with *conscious disregard for life*

§189 - certain methods of killing are the equivalent of premeditation - like poison.

Note the particular felonies qualifying for felony murder.

Good faith=subjective; reasonable=objective

Mistake doctrine can be modified by statute.

Common-Law Background

Murder vs. Manslaughter

- Murder – malice aforethought
- Manslaughter → residual category for all other criminal homicides, with no malice aforethought
 - Voluntary (upon a sudden quarrel or heat of passion)
 - Involuntary (in the commission of an unlawful act, not amount to a felony, or in the commission in an unlawful manner, or without due caution and circumspection of a lawful act which might produce death)

Murder Sections of Statutes Pages 238-47

-Malice can be expressed or implied

-Manslaughter

-Voluntary

-Involuntary

-Vehicular

-Gross Negligence

§194 Murder and manslaughter; time of death; computation

3 years and a day after the stroke received or the cause of death administered.

CL – 1 year a day...(Called the Causation Rule)

State v. Guthrie (Supreme Court of Appeals of West Virginia – 1995) Nose Obsession

- *Guthrie wins.*
- *Statute=First Degree Murder (§187, §189)*
- Facts:
 - Victim was pissing off D, hitting him with towel, D became enraged, took off his gloves, pulled a knife from his pocket and stabbed victim.
 - D suffered from multiple psychiatric problems.

- Before this case – Provocation=Intentional Killing
- RULE→ There must be some period between the formation of the intent to kill and the actual killing, which indicates the killing is by prior design.
 - Prior Consideration
 - Duration of that time period cannot be arbitrarily fixed, depends on the person and circumstances.
 - Supports conviction of 1st degree murder if met
 - 5 Elements BRD
 - Unlawfully, Willfully, Maliciously Deliberately, and Premeditatedly
 - To allow the State to prove premeditation and deliberation by demonstrating that the intention to kill was in existence only at time of the killing completely eliminated the distinction between the two degrees of murder.
- Note on Guthrie
 - *Morrin (1971)*
 - Premeditation=thinking about beforehand (QUANTITATIVE)
 - Deliberation=undisturbed by hot blood (QUALITATIVE)
 - P + D undisturbed by hot blood
 - You can p without d, but not d without p

State v. Hatfield (2002):

- Any interval of time between the forming of the intent to kill and the execution of that intent **which is of sufficient duration for the accused to be fully conscious of what he intended—is sufficient to support 1st degree murder**
 - Adopted in *Guthrie*

Doctrine of Lesser Included Offenses

- D has the right a jury instruction upon request that he may be found guilty of an offense “**included**” within the offense charged, as long as the factfinder could reasonably conclude from the evidence introduced at trial that the defendant is guilty of the lesser, but not the greater offense.
 - Ex. 1st/2nd Degree Murder
 - Not limited to criminal homicide prosecutions

Midget v. State (Supreme Court of Arkansas – 1987) Abuse

- *Midgett Wins*
- *Statute=Ark.Stat.Ann. § 41-1503(1)(c) (Repl. 1977)*
- Facts:
 - D repeatedly beat his 8yo son, testimony from daughter, son died from many different injuries consistent with trauma consistent with being punched by a fist.
- RULE→ Premeditation and deliberation are required elements of first-degree murder.
 - D had intent to continue abuse, but not intent to kill.
 - *Even if he did have intent to kill it was developed when he was drunk and angry and disciplining the child thus it wasn't adequate.*
- Some states punish child abusers more seriously (i.e. go beyond 2nd degree murder)
 - CA
 - Murder by torture – FDM without regard to the intent to kill for child abuse that turns deadly.
- Dissent
 - The majority has usurped the power of the jury to find that the Defendant intended to kill his son. Further, starving the boy, choking him and beating him constantly provided sufficient evidence of intent to kill.
- After this case → Arkansas legislature changed criminal code to permit a verdict of FD capital murder when “under circumstances manifesting extreme indifference to the value of human life,” a person “knowingly causes the death of a person 14 years of age or younger.” Ark. Code Ann. 5-10-101 (a)(9).
- Related to Conley – nature and probable consequences of your actions. (Possible Exam Question See Slides)

State v. Forrest (Supreme Court of North Carolina – 1987) Mercy Kill

- *State Wins.*
- *Statute=First Degree Murder (§187, §189)*
- Facts:
 - Victim was terminally ill, D (his son) went to visit him in the hospital, didn't want victim to suffer so he shot him 4 times in the head.
- RULE→ **Among the circumstances to be considered to determine whether the Defendant acted with premeditation and deliberation required for first-degree murder are:**
- **(1) lack of provocation by the victim;**

- **(2) conduct and statements of the Defendant before and after the killing;**
- **(3) threats and declarations of the Defendant before and during the killing;**
- **(4) ill-will between the parties;**
- **(5) the dealing of lethal blows after the victim was rendered helpless;**
- **(6) evidence of the killing being done in a brutal manner.**

Premeditation-Deliberation Formula

- Critics of the P-D formula usually reason that the distinction does not reliably distinguish between the more and less culpable killers – or even between the more and less dangerous ones.

Professor Michael Mannheimer

Reason for the difference between FDM and SDM – **general deterrence.**

P-D formula seeks to identify those killers most likely to escape or significantly delay detection, apprehension, and punishment, requiring that the punishment severity be maximized to offset the diminished certainty and swiftness of punishment for such culprits.

Manslaughter

Definition of Manslaughter from MPC (§210.3)

- Recklessly
- Would otherwise be murder but committed under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse.
- Reasonableness of explanation or excuse determined by person in actor's situation under the circumstances.
- Felony of the 2nd Degree.

Heat of Passion

Girouard v. State (Maryland Court of Appeals – 1991) Dysfunctional Relationship

- *State Wins*
- *Statute=SDM, Manslaughter*
- Facts:

- Victim taunting/provoking D (her husband), “what are you going to do?” what he did was stabbed her 19 times, attempted suicide, didn’t work, called people, people found him despondent wandering around the apartment complex, regretted it immediately.
 - RULE→ Words alone that is, unaccompanied by conduct indicating a present intention and ability to cause bodily harm-cannot constitute adequate provocation to reduce murder to manslaughter.
 - RULE→ for provocation to be adequate it must be calculated to inflame the passion of a reasonable man and tend to cause him to act for the moment from passion rather than reason.
-
- *Traditional Circumstances of Adequate Provocation*
 - Extreme assault or battery upon the D
 - Mutual Combat
 - D’s Illegal Arrest
 - Injury or Serious Abuse of a Close Relative of the D’s
 - Sudden Discovery of a Spouse’s Adultery
-
- **The crime of murder may be reduced to manslaughter if the Defendant acted in response to provocation.**
-
- The “Rule of Provocation” requires:
 - (1) adequate provocation;
 - **Must be calculated to inflame the passion of reasonable and tend to cause him to act for the moment from passion rather than reason**
 - (2) the killing was in the heat of passion;
 - (3) the heat of passion must have been sudden, i.e. the defendant did not have time to cool off; and
 - (4) there was a causal connection among the provocation, passion and fatal act.
-
- Words=adequate provocation
 - *Accompanied by conduct indicating a present intent and ability to cause the D bodily harm*
 - *Joyce did not have the size or strength to cause Steve to fear for his bodily safety.*

- Provocation was not enough to cause a reasonable man to stab his provoker 19 times.
 - Social necessity dictates the holding.
- Common Law Provocation → words alone do not constitute adequate provocation.
 - Informational words are more provocative.
 - Modern trend – provocation should be decided by the jury.
 - Sometimes a legislature steps in...
 - Evidence of adultery no longer constitutes adequate provocation in MD
 - Cooling off time now also a question for the jury.

HYPOTHESIS

- Aaron's daughter was killed by Ben, Aaron wanted to kill Ben, Ruth (innocent bystander) tried to stop him and got killed instead.
 - *Justification Doctrine - only justified to kill Ben*
 - *Excuse Doctrine - would argue that he had an excuse to kill Ruth*

Reasonable Provocation

Ex. Toy Gun

Not harmful, but reasonable mistake.

Morrin → *Deliberation, Premeditation + Deliberation, interval long enough to afford time for a "second look"*

Guthrie → *Deliberation, sufficient to be fully conscious of what he intended*

Forrest → *Facts considered in determining Premed & Deliberation*

Girouard → *Adequate provocation*

Considerations for Provocation:

- *Who is reasonable man?*
 - *Culture?*
 - *Sex?*

Who should define the doctrine of provocation?

EXAMPLE OF A POLICY EXAM QUESTION (See 9/12 Notes for Answers)

MacArthur Violence Study

- Provocation is a male-centered and male-dominated defense.
- Violence is prompted by male possessive-ness and sexual jealousy.
- Defense simply reinforces what it should eradicate – men’s violence against women and their violence in general.
- Professor Victoria Nourse favors retention of the defense, but in far fewer circumstances than it presently is available.
- Society must share the D’s rage.

Justification (*what you did was right, society wants more of this behavior*)

vs.

Excuse (*what you did was wrong, but you are not morally blameworthy*)

→ *Problem: juries never tell us what they are thinking so the J/E distinction might not matter in practice.*

People v. Casassa (New York Court of Appeals – 1980) Naked in the Bed

- *People Win*
- *EED, 125.25 Penal Law (EED → reasonable explanation or excuse; therefore not free from liability but lesser charge)*
- Facts:
 - D and V were casually dated, V told D she wasn’t falling in love with h, D became a stalker, broke into her house multiple times, last time he offered her a gift an when she refused he stabbed her, dragged her into the bathroom and submerged her in the bathtub to make sure she was dead
 - Evidence of EED?
 - Section 125.25 of the Penal Law, which provides that “it is an affirmative defense to the crime of murder in the second degree where the defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse”, allows but does not require the fact finder the opportunity to find mitigation only upon a finding of extreme emotional disturbance.
 - EED comes from series of events and not just one single precipitating cause.

- RULE→ The reasonableness of extreme emotional disturbance must be determined from the point of view of a reasonable person in the defendant's situation under the circumstances as the defendant believed them to be.
 - First, the particular defendant must have acted under the influence of extreme emotional disturbance. (SUBJECTIVE)
 - Second, there must have been a reasonable explanation or excuse for such emotional disturbance. Reasonableness should be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. (OBJECTIVE) → Made subjective by giving to jury.
 - Thus **HYBRID** measurement of EED.
 - Legislative intended this to be a question for the factfinder.
 - *Factfinder=Judge*

Note: Whether a D succeeds in EED judgment depends on whether or not it is reasonable.

- Ex. Killing someone who stole your parking place after 2 hours of lying in wait.
 - Will get an EED instruction because he is bugging out, but will lose because it is unreasonable.

Implied Malice

What kind of manslaughters are intentional?

- Ones where there are provocation.
- Murder→ Malice may be express or *implied*.
- Implied when:
 - **No considerable provocation appears, or**
 - **When the circumstances attending the killing show an abandoned and malignant heart**
- Requires a D's awareness of the risk of death to another
- **Phillips Test:** "Malice is implied when the killing is proximately caused by 'an act,
 - the natural consequences of which are dangerous to life,

- which act was deliberately performed by a person who
- knows that his conduct endangers the life of another and
- who acts with conscious disregard for human life”

- **MPC:**
 - Uses phrase **substantial and justifiable**
 - Differentiates between doctor performing risky surgery & Russian roulette
 - Uses **recklessness** instead of **depraved heart**
 - **Manslaughter**→ Ordinary recklessness
 - **Murder**→ Extreme indifference to the value of human life
 - Recklessness sufficient for manslaughter but for murder, most of the time recklessness is not extreme enough.
 - Trier of fact decides if recklessness is extreme enough for murder.

- **Intent to Cause Grievous Bodily Injury:**
 - **Common Law**→
 - If one is acting with the intent to cause grievous (or “serious”) bodily injury, and accidentally kills another—this is malice aforethought
 - **MPC**→
 - No special significance for an intent to cause grievous bodily harm
 - Falls under extreme recklessness, or if not should be prosecuted for aggravated assault or negligent homicide, not murder

State v Williams (Ct of Appeals of WA—1971) → Gangrene tooth

- *State Wins*
- *Manslaughter, RCW 9.48.150*
- **Facts:**
 - Husband & wife with low education had sick child
 - Knew child was sick—but not *how* sick
 - Loved baby, wanted to help, but scared it would get taken away
 - Child died of infection in mouth→ Gangrene→ Malnutrition → Pneumonia→ Death

- Critical period of 5 days in which they could have been aware of illnesses, but still could have saved the baby
- **Rule**→ Negligence contains a **subjective component**—have to consider what the reasonable person would have foreseen given their knowledge at the time
 - Normally considered an objective form of fault
 - Under the penal code of WA, ordinary negligence is sufficient for a manslaughter conviction.
 - **Not Reasonable Factors:**
 - Heredity
 - Intelligence
 - Temperament
 - **Reasonable Factors:**
 - Heart attack
 - Blindness, etc.

Holmes - p.303n6 - Negligence contains a subjective component

- Part of what the RPP would do depends on her *knowledge* at the time
 - Ex. I didn't know the snake was poisonous - reasonable to leave the cage unlocked?

Unintentional Killings

Unlawful Conduct→ The Felony Murder Rule

The Basics

- In general: Permits severe punishment for the most heinous of offenses in some cases that can appropriately be described as accidents
 - Classic Form→ **A Felony + A Killing = A Murder**
- Rule operated to impose liability for murder based on the culpability required for the underlying felony without separate proof of any culpability with regard to the death

- Makes homicide strict liability
- **History**→ Used to work better when felonies were all *malum in se*—now more complicated because there is a wide range of felonies, many of which are not inherently dangerous to life & carry max penalties much less than those for murder
 - Purpose is vague
 - All felonies used to be punishable by death; had little impact
- Most states have attempted to limit the rule's potential harshness either by limiting the scope of its operation or by providing affirmative defenses
 - Most common limitation → **Inherently Dangerous Felony**
 - **In CA, enumerated.**
 - *People v Burroughs*: Felony of practicing medicine without a license under conditions creating a risk of bodily harm, serious physical or mental illness, or death is *not inherently dangerous*
- **Difference between depraved heart murder & felony murder:**
 - *People v Sanchez*→
 - **Implied/Depraved Heart:** when D kills a person while committing an inherently dangerous act, the trier of fact *may infer the D killed with malice aforethought*
 - **Felony-murder:** If the inherently dangerous act is a felony, the D is *deemed to have killed with malice aforethought* as a matter of law .

Consider an in flagrante hypo, in a state where that constitutes adequate provocation. If this is so, what result: murder or manslaughter?

FELONY MURDER

Policy Question:

- **Against Felony-Murder:**
 - Cant deter an accident
 - No constructive notice—no felons know about it
 - Very few felony-murders actual occur

- Better to strike at the intended actions—not the greater harm *possibly* flowing from his act
- **For Felony-Murder**
 - **Deterrence:**
 - (1) Deters the negligent/accidental killings
 - (2) Deters the felony itself
 - Cant claim “accident” as an excuse—because they are still punished the same either way
 - **Transferred Intent:**
 - Relieves the state of the burden of proving premeditation or malice
 - Intent to commit the felony is transferred to the act of killing
 - **Retribution and General Culpability**
 - Justifies conviction for murder simply on the basis that the D committed a felony & a killing occurred
 - **Evil Mind Theory:** Notion that the felon has exhibited an evil mind justifying severe punishment
 - One who does had acts can’t complain about being punished for their consequences—no matter how unexpected
 - **Reflects societal judgment** that a robbery that causes the death of a person is qualitatively more serious than an identical robbery that does not
 - **Condemnation**
 - Reaffirms sanctity of human life
 - Guide to the conduct of upright persons
 - Expression of solidarity with the victims
 - Allows D a means by which he can repay his debt to society
 - **Clear and Unambiguous Definition**
 - Clarity is advantageous
 - Easier for juries
 - Promotes efficient administration of justice
 - **Minimizes the Utility of Perjury**
 - Not helpful to lie and say it was accidental

People v Fuller (CA Ct of Appeal—1978) → Stealing tires off van

- *People Win.*
- *Cal Penal Code § 189: Felony-Murder Rule*
- **Facts:**
 - Cops caught D's stealing tires from a van
 - No one in the van, located in empty lot
 - Had been aware of not creating a danger to human life
 - High speed chase ensued—resulted in D's car running a red light and striking another car in the intersection
- **Rule→** Any crime that falls within the §189 felony murder rule is sufficient to invoke the felony-murder rule
- **Made observations about the irrationality of applying the rule, despite being forced to by precedent:**
 - Car burglary is not dangerous to human life—weren't armed, no expectation of using violence, no one in the vans, etc.
 - Harsh results for nonviolent crimes destroys the symmetry of the law by equating an accidental killing resulting from a petty theft with a premeditated murder

NOTE: Did he commit burglary?

- NO - CA only says "locked"
- MPC says occupied building or structure, therefore not guilty of burglary under MPC because it was a car and not an occupied building or structure, so don't even get to presumption analysis or argument
- Would have to be an inhabitable van
- Look at mens rea flowchart

People v. Stamp

Convicted of first-degree felony murder when one of the victims died of a fright-induced lethal heart attack twenty minutes after the office was robbed and the victims were told to lie on the ground when the D's fled.

People v. Sophophone

- *Sophophone Wins*
- *Felony Murder §189, KSA 21-3401*

- **Facts:**
 - D & 3 others broke into house
 - Police came—Sophophone immediately cuffed & put in car
 - Meanwhile, another officer chased one of the others, officer ended up killing him in a shootout
- **RULE**→ Consider Intervening Causes/Break-in Circumstances in determining whether the killing occurs in the commission of the underlying felony, and is therefore falls under the felony-murder rule
 - **Factors:** Time, Distance, Causal relationship
 - **Agency Approach:**
 - Acts of the primary party are imputed to an accomplice on the basis of the agency doctrine
 - Can't impute the acts of a third party on the basis of agency
 - *Commonwealth v Redline*: The mere coincidence of homicide and felony is not enough to satisfy the felony-murder doctrine
 - **Proximate Causation Approach:**
 - Felon may be held responsible under the felony-murder rule for a killing committed by a non-felon if the felon set in motion the acts which resulted in the victim's death
 - If the act by one felon is the proximate cause of the homicidal conduct by the non-felon or the police officer, murder liability is permitted

Dissent:

- We are bound to the language in a statute—regardless of the result
- Majority is discussing a limitation to the statute not included in the statute itself

Notes:

- *Res Gestae* doctrine: Felony murder rule applies not only during the commission of the felony—but after it is technically completed if the killing occurs during the escape from the scene of the crime
 - Must show a causal relationship—proximate cause
 - Some statutes are explicit about this issue
 - *People v. Matos* (1994) – Police officer on rooftop chasing robber and fell down airshaft.

- *People v. Gillis* (2006) – Perpetrator of a home invasion fleeing from a police vehicle collides with another car, killing its occupants – even though it was 10 minutes and 10 miles away from the scene of the felony.

Third Party Killing Felony Murder - Hypo 1

- A (victim) --> C (robbed), is B responsible?
- Felony Murder
- On same teams

But if D (cop) --> A (victim)

- Lawful Killing
- On different teams

Proximate Cause

- A (shooter) --> C (victim)
- Felony Murder

What about B?

- Felony Murder also...
- D (cop) --> A (shooter)

B guilty of felony murder?

- YES

- Is there another way to hold a felon responsible for the killing of a co-felon by a third party?
 - *Taylor v Superior Ct*—used recklessness theory to conclude that one robber’s conduct was so malicious that his behavior caused the death of a third party (not felony-murder)

Unlawful Conduct → Misdemeanor Manslaughter Rule

- Unintended homicide that occurs during the commission of an unlawful act not amounting to a felony constitutes common law **involuntary manslaughter**
 - (Felony-Murder → 1st degree murder; Misdemeanor-Murder → Invol manslaughter)
- In effect, the D’s intentional commission of a misdemeanor supplies the culpability required to impose homicide liability.

- *Comber v US*—invol manslaughter attaches even where the D does not act with the degree of culpability ordinarily required for invol manslaughter predicated on **criminally negligent behavior**
- Convictions have been upheld for deaths arising from non-criminal, but morally wrong conduct
 - Ex. Suicide gone wrong
- Courts limit doctrine to deaths resulting from *malum in se* misdemeanor conduct, or the commission of a dangerous misdemeanor
- Led by MPC—many states have abolished the rule
- Critique
 - Could be convicted of the UAD even though their conduct does not create a perceptible risk of death.
 - Violates the important principle that a person’s criminal liability for an act should be proportioned to his/her moral culpability for an act.
- Because it is so harsh, many Courts limit it to deaths resulting from either *malum in se* misdemeanor conduct or the commission of a dangerous misdemeanor.
 - Dangerous misdemeanor—if the manner of its commission entails a reasonably foreseeable risk of appreciable physical injury.

Rape

Rape is the “carnal knowledge of a woman forcibly and against her will.”

What makes the subject different is the subjective experience of the victim.

Rape shield laws -right to confront your perpetrator and cross-examine

CA Code p. 390

- Rape
 - Victim incapable of consent --> mens rea: knowing or reasonably should have known
 - Force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person of another.
 - Can threaten third parties...
 - Intoxicated/Drugged

- Didn't know or didn't give them the drug - not a defense
 - Have to be so drunk that they are prevented from resisting
- Unconscious/Asleep
 - Actual Knowledge
- Duress
 - Hybrid of subjective/objective
 - Have to consider the totality of the circumstances
- Consent
 - Positive cooperation in contention
 - Nature of the act or transaction involved
- Harm
 - Outrage to the person and feelings of the victim of the rape...
 - Act causes harm [to the victim, sense of outrage]
 - Where you put the mens rea determines what crimes get punished and what crimes don't.

Statistics

- Per capita rates highest among resident ages 16 to 19
- Low income, urban
- 91% of victims were female, 99% offenders were male.
- 2/3 of rape and sexual assaults occur during the hours of 6PM to 6AM
- 60% occur in their own home or the home of a friend, relative or neighbor.
- ¾ involved someone that the victim knew...(family member, intimate partner or acquaintance)
- Sexual assault on college campuses
 - National College Women Sexual Victimization Study
 - 27.7 rapes per 1,000 female students (per calendar year)
 - 4.9% of college women are victimized yearly on campus.

Social Context

Susan Estrich – Rape

- History of Rape – history of both racism and sexism.
 - Black men who raped white women.
 - Ex. Scotttsboro Boys (Black youths in white town)
 - Accused of rape, innocent.
 - Sentenced heavily, even one sentenced to life.
 - In 1976, pardoned by governor.

- Rape as crime of violence or to safeguard sexual autonomy (right of a person to choose with whom she/he will be sexually intimate).
 - Rape as a something on the feminist's agenda.

Resistance

- Past history of requiring victim to resist the rape. If no evidence of resistance, then couldn't convict of rape...
- Think changed it because hard to know how each person will react to being raped and therefore cannot set an objective, reasonable standard...

Blaming the Victim

- We want to believe that the world is just and that innocent people like ourselves will not be victimized. Therefore we rationalize that victims are partially responsible for their own fate.

Martial Immunity

- Majority of states still retain some form of the common law regime – they criminalize a narrower range of offenses if committed within marriage, subject the martial rape they do recognize to less serious sanctions, and/or create special procedural hurdles for martial rape prosecutions.

Differences in Expressions

- Women commonly use nonverbal methods to give consent to sexual intercourse.
- Subject to misinterpretation more...
- Overlap in cues used to convey friendliness and seduction.
- Males tend to interpret friendly behavior by females as motivated by sexual interest.

State v. Alston (SC of NC – 1984) Unhealthy Relationship

- *Alston Wins*
- *Second Degree Rape – G.S. 14-27.3*
- **Facts:**
 - Consensual sexual relationship and history of violence, broke up and she moved into Mother's house, D showed up at victim's school and was aggressive towards her.
 - They walked away from the school together and he made threats about fixing her face.

- Finally, the D took Ms. Brown to a house of a friend of his. After a while, the D asked Ms. Brown if she was “ready.” Ms. Brown replied that she wasn’t going to have sex with him.
- The D began kissing Brown and undressing her. He told her to lie down on a bed. She complied, and the D pushed her legs apart and had sexual intercourse with her. Ms. Brown did not try to push him away.
- The D and Ms. Brown had sexual intercourse on one more occasion after the alleged rape, which appears to have begun as nonconsensual, but ended up being consensual.

RULE→ Generalized fear of the Defendant is not enough to render consent to sexual intercourse alleged void, but rather, the Defendant must use force or threats to overcome the will of the victim to resist the sexual intercourse.

- Consent by the victim is a complete defense, but consent, which is induced by fear of violence, is void and is no legal consent.
- Consent to sexual intercourse freely given can be withdrawn at any time prior to penetration.
- Force does not require actual physical force. Threats of serious bodily injury are sufficient. Further, the absence of an explicit threat is not determinative.
- The totality of the circumstances must give rise to a reasonable inference that the unspoken purpose of the threat was to force the victim to submit to unwanted sexual intercourse.

Commonwealth v. Berkowitz (Superior Court of PA – 1992) DORM ROOM

- *Berkowitz wins*
- *18 Pa.C.S.A. § 3121*
- **Facts:**
 - D and Victim were college sophomores, Victim went to meet her boyfriend at his dorm after having a drink, while waiting went to see her friend in his dorm, knocked on his door, entered the room and found D on bed with pillow over his face.
 - D asked Victim to hang out for awhile and he began to make certain sexual advances towards her (i.e. kissing and lifting up her shirt).
 - The victim then said no. The victim never physically resisted the Defendant, but she did repeatedly verbally protest.
 - Appellant locked the door.
 - Pushed her onto bed, she couldn’t resist because he was on top of her.

- The Defendant and the victim then engaged in sexual intercourse.
- Prior contact between Appellant and victim – speaker phone conversation about school seminar “Does no sometimes mean yes” and the circumference of human penises. Appellant suggested victim come over and find out what his penis looked like. She declined.

RULE→ The “forcible compulsion” required to sustain a conviction for rape in Pennsylvania must be more than verbal resistance, i.e. threat or actual force.

- Totality of the Circumstances Test
 - In this case...same age, environment not coercive, D not in dominant position, no duress or coercion, no threats, lock didn’t inhibit her from leaving, etc...

State of New Jersey in the Interest of M.T.S. (Supreme Court of NJ – 1992)
ACQUINTANCE RAPE

- *State Wins*
- *Second Degree Sexual Assault – Charged as an Adult – N.J.S.A. 2C: 14-2c(1).*
- **Facts:**
 - Defendant, a seventeen-year-old boy, was engaged in consensual kissing and heavy petting with the alleged victim and during the encounter penetrated the girl without her consent.
 - Living in same house, Boy had told the victim that he was going to “make a surprise visit up to her bedroom” – thought it was a joke because they always teased each other.
 - Awoke in the middle of the night, boy standing fully clothed in bedroom doorway, said he was “going to tease her a little bit,” she went to the bathroom and then back to bed and fell asleep, woke up and boy was on top of her and penetrating her.
 - There was no evidence that Defendant used any extra force or threats in order to penetrate the alleged victim.

RULE→ *Any act of sexual penetration engaged in without the affirmative and freely given permission of the victim to the specific act of penetration constitutes sexual assault.*

- Definition of force not clear, must look at legislative intent
- **Physical force in excess of that inherent in the act of sexual penetration is not required for such penetration to be unlawful.**

- Permission can be found in words or action that, when viewed in the light of the circumstances, would demonstrate consent to a reasonable person. The victim does not have to demonstrate expressed non-consent or resistance.

Inchoate Offenses

Spectrum of Inchoate Offenses

Solicitation → Conspiracy → Attempt → Substantive Crime

- **Soliciting** another to commit an offense does not constitute an attempt
 - Not necessary that the person solicited agrees to act upon the solicitation
- **Conspiracy** is next → When the person solicited agrees to participate in a concerted action—conspiracy is formed. When an overt act is committed by any persons involved—Conspiracy is complete.
 - MERGE—no more soliciting charge
 - Any overt act is enough, no matter how preliminary or preparatory in nature—as long as it is a manifestation that the agreement is getting carried out
- **Attempt** is next → Occurs on the very threshold of completion of the substantive crime
 - Requires an overt act done with the specific intent to commit the offense
 - The overt act must go beyond preparatory steps, and is a direct movement toward the commission of the offense
 - NO MERGE—can charge with attempt + conspiracy
- **Substantive offense** → Final step.
 - MERGE—no more attempt charge.
 - Can also charge with conspiracy

Attempt

- Deal with conduct that is designed to culminate in the commission of a substantive offense, but has failed in the discrete case to do so or has not yet achieved its culmination because there is something that the actor or another can do
- Major Functions
 - (1) A firm legal basis is needed for the intervention of the agencies of law enforcement to prevent its consummation

- (2) Conduct designed to cause or culminate in the commission of a crime obviously yields an indication that the actor is disposed towards such activity, not alone on this occasion but on others
- (3) When the actor's failure to commit the substantive offense is due to a fortuity, as when the bullet misses in attempted murder or when the expected response to solicitation is withheld, his exculpation on the ground would involve inequality of treatment that would shock the common sense of justice
- NOTE → Deterrence is NOT a major function

Rule of Merger

- You can't be convicted of both a completed crime and an attempt to commit it
- Can't be convicted of solicitation AND conspiracy

Police Discretion in Enforcement

- **McQuirter v. State**
 - Man was following a woman for a long time
 - No actual crime committed
 - An officer may not constitutionally detain someone against his will unless she has reason to suspect that crime is afoot
 - Terry v. Ohio

Two Varieties of Criminal Attempts

- Incomplete
 - Actor does some of the acts that she set out to do, but then desists or is prevented from continuing by an extraneous factor,
 - Intervention of a police officer
- Complete
 - Actor does every act planned, but is unsuccessful in producing the intended result
 - She shoots and misses the intended victim

Criticisms of Attempt Crimes

- Paul Robinson
 - No actual harm
 - Harm is required if deterrence is the proper function of the law
 - If non harmful conduct is punished, it weakens the stigma and deterrent effect of criminal conviction for harmful conduct

Role of Luck in Criminal Attempt

- Two people fire at a person, one misses, the other succeeds
- Person who missed is not punished as harshly
- Shouldn't an attempt be viewed as a less serious offense than target crime
- "The reward for failing, no matter how hard you try to succeed or how close you come, is a lesser punishment"

2 Intents

- Actor's conduct must be intentional
 - Act of firing the loaded gun at George was intentionally performed
- Must have the specific intent of committing the completed offense
 - Killing George

MPC v. Common Law

- MPC → How far along were you?
- Common law → How close to the end did you get?
- MPC is BAD
 - Includes "culpability otherwise required," which could include unintentional killings
 - You can't plan an unintentional killing/act

Reckless Endangerment

- Allows you to charge the person who committed an "unintentional attempt" with something
- Gentry → you could charge him with reckless endangerment because he poured gasoline on his GF

People v. Gentry (IL Appellate Court, 1st District; 1987) → Gentry Wins; Attempt Murder

- Facts
 - Gentry and GF were arguing in apt they shared
 - Gentry spilled gasoline on GF, it ignited when she was near the stove
 - Jury instruction for attempt included non intentional killings
- **Common Law Rule →**

- Have to have specific intent to commit the completed offense, not including the alternative states of mind that are required for said offense
- You can't have an attempted unintentional murder
- Note→ Conley Analysis
 - Natural and probable causes of her being doused in gasoline could result in her death

MPC §5.01

- Definition of Attempt
 - 1. A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:
 - (a) purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or (complete)
 - (b) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or (complete)
 - (c) purposely does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime. (incomplete)
 - 2. Substantial Step (incomplete)

Bruce v. State (MD Court of Appeals; 1989) Bruce Wins; Felony murder//MD Attempt Code

- Facts
 - D enters shoe store to rob it; threatens to kill store manager; shoots him in the stomach during scuffle
- **Rule**→ No felony murder attempt because you have to have specific intent to complete the offense, and you can't intend to unintentionally murder someone
- **NOTE**→ All states agree with *Bruce* except for Florida
- Difference between having specific intent and intending (being purposeful about) an outcome.

- Ex→Statutory rape; strict liability

Demarcation Line Between Preparation and Attempt

Policy Topics; Multiple Views

- The more serious the crime attempted, the farther back in the series of acts leading up to the crime should the law reach in holding one guilty of attempt
- How close it is to official intervention, are they cackling and rubbing their hands together
- Dangerous Proximity Test
 - Principle is believed to be similar to that on which all other lines are drawn by the law
 - Considerations
 - Nearness of the danger
 - Greatness of the harm
 - Degree of apprehension felt

United States v. Mandujano (5th Circuit Court of Appeals 1974)

- Preparation/Attempt Distinction
 - People v. Buffum
 - Preparation alone isn't enough
 - There must be some appreciable fragment of the crime committed
 - Such progress that it will be consummated unless interrupted by circumstances independent of the will of the attempter
 - Cackling/Rubbing hands together aka CREEPY

United States v. Oviedo

- The facts speak for themselves
- The objective acts performed, without any reliance on the accompanying mens rea, mark the D's conduct as criminal in nature

Stokes v. State

- Slight acts in furtherance of a crime will constitute a attempt

People v. Luna

- Where the intent to commit the crime is shown, any act done towards the commission of that crime is sufficient

Unequivocal Test: **People v. Miller** (SC of CA—1935) → Hop ranch

- **Facts:**
 - Victim was working at hop ranch, D entered field with gun
 - D walked 100 yds toward them, appeared to be loading the rifle
 - Did not lift the rifle to take aim
 - Victim saw him & fled, owner of ranch took the gun from him with no resistance
- **RULE→ Unequivocal test: To judge whether the D has outwardly embodied or publicly manifested his intent in actions that, in their context, would thus signify to the reasonable observer a culpable choice**
 - Require a direct act—to ensure that their intent is unequivocal
 - **Res Ipsa Loquitur—the actions speak for themselves**
 - If there can only be one interpretation, then its an attempt

State v. Reeves (SC of Tennessee—1996) → 12 y/o brats

- **Facts:**
 - Reeves & Coffman, 12 y/o girls, talked on phone and decided to kill their teacher, Janice Geiger
 - Agreed Coffman would bring rat poison, so they could put it in her drink
 - Also agreed to steal her car and drive to the Smoky Mountains
 - Reeves called a high school student to tell him the plan, and asked him to drive her car but he refused
 - Coffman brought rat poison to school, told another student on the bus about it who reported her
- **RULE→** When an actor possesses materials to be used in the commission of a crime, at or near the scene of the crime, and where the possession of those materials can serve no lawful purpose of the actor under the circumstances, the jury can find that the actor has taken a “substantial step” toward the commission of the crime if such action is strongly corroborative of the actor’s overall criminal purpose
 - Basically adopted (e) and (f) examples from the MPC

- Rejected the *Dupuy* approach—which required a sharp distinction between preparation & overt act –would have had to wait until they put the poison in the coffee
- Dissent/Concurrence: Their entire course of conduct was not strongly corroborative of intent to murder—they were 12 year olds not terrorists.

Substantial Step Analysis

- Substantial step → What has the actor *already* done
 - The fact that further steps must be taken before the crime happens does not preclude a finding that the steps already taken are substantial
 - Doesn't matter if they might have deserted
 - *People v. Lehnert*:
 - Substantial step remains a matter of degree, no mechanical rule or test than could the attempt-preparation requirement BUT it provides the fact-finder with a more specific and predictable basis for determining liability
- Proximity tests → What *remains* to be done

Collier v. State Problem

- **Facts:**
 - C told his friend he was going to kill his wife. He told the friend to take custody of his dogs & cats, prayed, took a bunch of killing tools & drove to the hospital where she worked.
 - He parked in the last row of the lot across the street.
 - The friend reported him, and the police found him in the car, with the lights off, passed out.
- **MPC: Substantial Step**
 - Yes—this is a substantial step

Impossibility

****ADD CHART FROM SLIDES****

- **Factual: Not a defense at common law**

- Exists when the D's intended end constitutes a crime, but she fails to consummate it because of a factual circumstance unknown to her or beyond her control
- Ex. D pulls trigger aimed at someone, but doesn't know the gun is not loaded
- **Legal: Not a defense at common law**
 - when the actions which the D performs, even if fully carried out as he desires, would not constitute a crime If impossibility defense is not in the statute—we can't put it there
 - Hybrid/Pure analysis not necessary
- MPC takes away the impossibility defense: includes (1)(a): conduct would constitute a crime **if the attendant circumstances were as he believes them to be.**
 - So even if he was mistaken about a fact, if the attendant circumstances as he believed them constituted a crime he is guilty. No impossibility.

People v. Thousand (SC of Michigan—2001) → Dateline Rapist

- **Facts:**
 - D was caught in a sting by a law enforcement agent posing as a 14 year old girl in a chat room online
 - Told her he was going to perform sexual acts on her, sent her lewd photographs
 - D invited the “girl” over—she said yes
- **RULE→** The non-existence of a minor victim does not give rise to a viable defense to the attempt charge in this case. (No impossibility defense)
- **Rule→ Impossibility Doctrine**
 - “when, because of D's mistake of law or fact, his actions could not possibly have resulted in the commission of the substantive crime underlying an attempt charge”

Abandonment

Commonwealth v. McCloskey (SC of PA—1975) Prison break

- **Facts:**

- Prison guards heard alarm that someone was escaping, found no one missing, saw that a barbed wire had been cut, found a laundry bag near the attempted escape, the bag's # belonged to appellant
- Appellant approached the guard and said that he was gonna make a break but changed his mind, got scared
- **Rule→ Voluntarily abandoning a crime before completion exonerates a defendant from criminal responsibility.**
 - D stopped while still in the yard.
 - Majority argued that there wasn't even an attempt—this was mere preparation
- Policy arguments *for* abandonment defense:
 - Allow criminals to change their minds before committing an offense and actually avoid punishment
 - Can avoid some crimes
 - Negates the conclusion that the accused is still dangerous
 - Motive to desist

Solicitation

- **Solicitation= the asking, enticing, inducing, or counseling of another to commit a crime**
 - Attempt to conspire
 - May be more dangerous than an attempt
 - Solicitor may be more dangerous than a conspirator—a conspirator may merely passively agree, while a solicitor plans & schemes
 - Solicitor=morally more culpable than a conspirator, because he is hiding behind the actor
 - **Renunciation is the only defense**
- **Merger:** Solicitation merges into the crime solicited if the latter offense is committed or attempted by the solicited party
 - Merges with conspiracy when the conspirator agrees.
- HYPOS p. 775

Conspiracy

- **Conspiracy definition**= a partnership in criminal purposes, a mutual agreement or understanding, express or implied, between 2 or more persons to commit a criminal act or to accomplish a legal act by unlawful means
 - Gist of the offense=the unlawful agreement
 - Complete upon formation of the agreement—no need for an overt act in furtherance of the conspiracy as a component
 - EXCEPT—MPC requires a substantial step
 - The intent is determined **at the point of agreement**

- **Twofold *specific intent* is required for conviction;**
 - (1) Intent to combine with others
 - (2) Intent to accomplish the illegal objective

- Separate & distinct from the substantive crime that is its object
 - A conviction of conspiracy does not merge with a conviction of the completed offense—**thus a D may be convicted and punished for both the conspiracy and the substantive**

- How it Works:
 - Like EED—there’s a threshold showing of a conspiracy (as a matter of law, is conspiracy possible) and then a jury decides
 - Threshold—was there a conspiracy?

- **Rationale for Conspiracy:**
 - *Collective action* toward an antisocial end involves a greater risk to society than an *individual action* toward the same end
 - Increased likelihood of success
 - Decreased probability that the individuals involved will depart from their path of criminality
 - More likely to commit crimes unrelated to the original purpose for which the group was formed
 - Danger of conspiracy is not confined to the substantive offense which is the immediate aim of the enterprise
 - Groups are likely to polarize toward extremes
 - Group membership changes personal identify → social identity
 - Allows earlier intervention without an intolerable danger to society

- Used to combat the extraordinary dangers allegedly presented by multi-member criminal undertakings
- **Utilitarian:**
 - More capacity to commit crime
 - Allows earlier intervention
 - People are less likely to back out & go down non-criminal path
 - Greater risk to society
 - Groups tend to the extreme
 - Scope→ Wider
- **Retributive:**
 - Talking to someone about it→ Opportunity to reflect→ Punish harsher
 - Corrupting other people
- **MPC §5.03: Criminal Conspiracy**
 - (1) A person is guilty of conspiracy with another person(s) to commit a crime if with the purpose of promoting or facilitating its commission he:
 - (a) Agrees with such other person or persons that they or one or more of them will engage in conduct that constitutes such crime or an attempt or solicitation to commit such crime
 - (b) Agrees to aid such other person(s) in the planning or commission of such crime or of an attempt or solicitation to commit such crime.
- **Corrupt motive doctrine:**
 - Parties know all of the relevant facts, but do not know that the agreed-upon goal is a crime?
 - A & B agree to drive 65 mph—don't know the speed limit is 55mph
 - Doctrine provides that, beyond the usual mens rea requirements, parties to a conspiracy are not guilty unless they had a corrupt or wrongful motive for their planned action.
- **Unilateral v. Bilateral Conspiracy**
 - Unilateral:

- Only one of the alleged conspirators need intend to agree to the commission of an offense
 - “A person commits conspiracy when, with intent that an offense be committed, *he agrees with another* to the commission of that offense”
 - MPC
 - Arguments in support of Unilateral:
 - A person who *believes* he is conspiring with another to commit a crime is a danger to public regardless of whether the other person in fact agrees
 - Chance of success is minimal, but it doesn’t matter

- **Bilateral:**
 - Requires the agreement of at least 2 participants
 - Traditional method—required at common law
 - “If any *two or more persons* conspire or agree together”
 - Arguments in support of Bilateral:
 - The reasons that conspiracy is illegal are:
 - (1) To punish the special dangers inherent in a group criminal activity (**In a unilateral agreement there is no increased danger or chance of success**)
 - (2) To permit preventive steps against those who show a disposition to commit crime (**The punishable conduct from a unilateral conspiracy would fall under solicitation or attempted conspiracy anyways—could still intervene**)

- **Forms of Conspiracies:**
 - Wheel= an individual (the hub) who transacts the illegal dealings with various other individuals (the spokes)
 - Most common issue—whether the separate transactions between the hub & the individual spokes can be merged
 - ***Kotteakos v. US:***

- Brown (hub) was helping others (spokes) obtain federal loans by assisting them in making false representations on their loan applications
 - None of his customers knew of his arrangements with the others
 - No rim connecting the spokes → no wheel conspiracy
 - Chain= several layers of personnel dealing with a single subject matter, as opposed to a specific person (ie. drug trafficking)
 - Have to show that each link knew or must have known of the other links in the chain, and if each D intended to join & aid the larger enterprise
 - **US v. Bruno:**
 - No communication between smugglers and the retailers—but the smugglers were aware that the middlemen sold to retailers, and the retailers knew that middlemen were buying the drugs from importers
 - **US v. McDermott:**
 - Triangulated love affair: CEO of investment bank having affair with porn star, gave her stock recommendations
 - Porn star also having affair with 3rd party, passed the recommendations onto him
 - *Some are both!

Pinkerton v. US (SCOTUS—1946) → Tax Fraud/Giudices

- **Facts:**
 - Two brothers charged with tax fraud
 - No evidence that Daniel participated directly in the commission of the substantive offenses on which his conviction has been sustained—only Walter committed the offenses in furtherance of the conspiracy
 - Daniel was in jail at the time
- **Rule** → So long as the partnership in crime continues, the partners act for each other in carrying it forward. An overt act of one partner may be the act of all without any new agreement specifically directed to that act EXCEPT:
 - When the act was not done in furtherance of the conspiracy

- If it did not fall within the scope of the unlawful project, or
- It was merely a part of the ramifications of the plan which could not be reasonably foreseen as a necessary or natural consequence of the unlawful agreement
- Note—**Pinkerton liability (conspirator liability)** is different from accomplice liability, which is less expansive
 - **Accomplice liability**=when the person *helps commit* the crime
 - Often go hand in hand, but in cases like this there is a line
- Dissent:
 - This is too broad a vicarious liability—shouldn't analogize to law of torts in criminal law
 - Daniel was in jail—didn't even know Walter was committing the crimes
- Notes:
 - *Pinkerton* rule allows minor parties in a large conspiracy to be criminally responsible for many completed offenses over which they had little or no control
 - *Anderson v. Superior Court:*
 - Abortionist (Stern) performed illegal abortions on pregnant women sent to him by referrals from Anderson & 16 other conspirators; received fees for their referrals
 - Stern, Anderson, 16 others charged with one count of conspiracy to perform abortions *and 26 separate counts of abortion*
 - **MPC rejects Pinkerton doctrine**
 - Believes that the law would lose all sense of just proportion if simply because of the conspiracy itself each conspirator were held accountable for thousands of additional offenses of which he was completely unaware and which he did not influence at all
 - Alternative argument→ This harshness is just an occupational hazard for those who might be tempted to engage in a criminal conspiracy

People v. Swain (SC of CA—1996) → Drive-by shooting

- **Facts:**

- Drive by shooting of 15 year old boy
- Chatman & another young man fired guns from the backseat
- Swain was in jail after, boasted to jail-mates about what good aim he had with a gun
- Said he shot that Samoan kid when they were in the van going about 30 mph up a hill
- Original plan was to steal the car of the thief (retaliating for a theft of their car by someone in the neighborhood)
- **Rule**→ Due to the nature of implied malice murder, it would be illogical to conclude one can be found guilty of conspiring to commit murder where the requisite element of malice is *implied*.
 - Conspiracy is a specific intent crime—cannot be based on a theory of implied malice, which requires no intent to kill
- **Rule**→ **All conspiracy to commit murder is necessarily conspiracy to commit murder in the first degree**

People v. Lauria (CA Ct. of Appeal 2nd District—1967) → Hooker Telephone Service

- **Facts:**
 - Telephone answering service was being used by prostitutes
 - He knew some of his customers were prostitutes, but didn't report them, just tolerated them.
- **Rule**→ To show agreement—the People need show no more than a tacit, mutual understanding between co-conspirators to accomplish an unlawful act
- **Rule 2**→ In cases where direct proof of complicity is lacking, intent to further the conspiracy must be derived from the sale itself & the surrounding circumstances in order to establish the supplier's express or tacit agreement to join the conspiracy
 - SOMETIMES—not always—we can infer criminal intent from knowledge of the unlawful use of the product he supplies
 - Characteristic Patterns:
 - When the supplier has acquired a stake in the venture
 - When no legitimate use for the goods or services exist
 - When the volume of business with a buyer is grossly disproportionate to any legitimate demand, or when sales for

illegal use amount to a high proportion of the seller's total business

- Some cases—knowledge alone is enough
- **Rule 3**→ Element of *knowledge* of the illegal use of the goods/services and the element of *intent* to further that use must be present in order to make a supplier a participant in conspiracy.
 - **A supplier who furnishes equipment which he *knows* will be used to commit a serious crime may be deemed from that knowledge alone to have intended to produce the result.**
- **MAIN RULE**→
 - **The intent of a supplier who knows of the criminal use to which his supplies are put to participate in the criminal activity connected with the use of his supplies may be established by:**
 - (1) Direct evidence that he intends to participate
 - (2) Through an inference that he intends to participate based on:
 - (a) His special interest in the activity
 - (b) The aggravated nature of the crime itself
 - Ex. Selling drugs v. selling sugar

Implied Conspiracy//Azim & Cook

- Threshold issue—when can a conspiracy be inferred?

Conspiracy is about agreement, accomplice liability is about helping.

Commonwealth v. Azim (Superior Court of PA—1983) → Drive-by

- **Facts:**
 - Appellant was arrested along with 2 others for simple assault, robbery, & conspiracy
 - Appellant drove car in which the other 2 were passengers
 - He stopped the car, other 2 got out, inflicted bodily injury on Jerry, took his wallet, and left the scene in his car
 - Azim said he was only a hired driver

- **Rule**→ **Criminal conspiracy can be proven through inferences from the relevant circumstances:**
 - Association with alleged conspirators
 - Knowledge of the commission of the crime
 - Presence at the scene of the crime
 - Participation in the object of the conspiracy
- **Rule**→ Once conspiracy is established and upheld, a member of the conspiracy is also guilty of the criminal acts of his co-conspirators.

**Different approach taken in *Cook & Lauria*—distinguish on the facts

- In *Cook*—not enough evidence to go to a jury; evidence negating a conspiracy; facts characterize a lack of agreement; innocent activity of getting cigarettes
- In *Azim*—enough evidence for RP to find a conspiracy

***Commonwealth v. Cook* (Appeal Ct. of Mass. – 1980) → Bitch doesn't want to bleed**

- *Shows difference between accomplice & conspiracy
- **Facts:**
 - Victim engaged in casual conversation at a common meeting area with the D and his brother while walking to a friend's house
 - Showed her their employment ID cards, drank beer, smoked weed
 - D's brother suggested they walk to get cigarettes, Victim agreed
 - On the way, slipped & fell, D's brother jumped on it and raped her
 - Heard D say "The bitch doesn't want to bleed, we'll make her bleed" and laugh
- **RULE**→ To warrant a conviction for conspiracy, the evidence must disclose something further than **participating** in the offense which is the object of the conspiracy—there must be an **unlawful agreement**, either express or implied—and participation with **knowledge of the agreement**
 - The punishment for conspiracy is imposed for *entering into the combination*
 - His confederation at the scene was insufficient to warrant the D's conviction of conspiracy—just because he aided & abetted the crime doesn't mean he is guilty of the conspiracy; there was

no evidence that he had knowledge or had planned the rape with his brother

- Facts showing no preconceived plan:
 - Chance encounter
 - Didn't conceal their ID
 - Victim present the entire conversation
 - It was the brother's idea to get cigarettes, and to take that route
 - Falling was incidental
- *Note→ Emphasized difference between accomplice & conspirator

Unilateral v. Bilateral

- People v. Foster (1983)
 - Unilateral→ **A person commits conspiracy when, with intent that an offense be committed, he agrees with another to the commission of that offense.**
 - Bilateral→ **A person commits conspiracy when, with intent that an offense be committed, he agrees with another to the commission of that offense.**
 - Requires the actual agreement of at least 2 participants...
 - **If any two or more persons conspire or agree together to do any illegal act, they shall be deemed guilty of conspiracy.**
- Miller v. State (1998)
 - A person who believes that he is conspiring with another to commit a crime is a danger to the public regardless of whether the other person in fact has agreed to commit the crime.
 - Guilty mind not diminished because police informant was involved...
- United States v. Valigura (1999)
 - Two reasons have been given for making conspiratorial agreements illegal.
 - Punish the special dangers inherent in group criminal activity.
 - Permit preventive steps against those who show a disposition to commit crime.

Shape of Conspiracies: Matter because of *Pinkerton* liability

- Wheel
 - Involves an individual (or small group), the hub, who transacts illegal dealings with various other individuals, the spokes.
 - Whether the separate transactions between the hub and individual spokes can be merged to form a single conspiracy → main evidentiary issue.
- Chain
 - Involves several layers of personnel dealing with a single subject matter, as opposed to a specific person, i.e. drug trafficking.
 - A single conspiracy can be proven if each link knew or must have known of the other links in the chain, and if each D intended to join and aid the larger enterprise.
- Chain/Spoke Combinations
 - Links at either end might be comprised of a number of persons who have no reason to know that others are performing a role similar to theirs.
 - Ex. Narcotics Trafficking
- CaseLaw
 - United States v. Bruno (1939)
 - Example of Chain Conspiracy
 - Evidence did not disclose any cooperation or communication between the smugglers and the retailers; however the smugglers were aware that the middlemen with whom they dealt sold to retailers, and the retailers knew that the middlemen were buying drugs from the importers...
 - Kotteakos v. United States (1946)
 - HUB WITH SPOKES
 - Brown=hub; eight spokes emanating outward
 - No rim connecting the spokes, there was no wheel conspiracy...
 - United States v. McDermott (2001)
 - Simultaneously woman was having an affair with 2 different men, she was passing along information given by one of the men to the other re: stock suggestions.
 - Government indicted all 3 for conspiracy to commit insider trading and for insider trading on the theory that McDermott's

recommendations to Gannon were based on non-public material information.

Defenses to Conspiracy:

- **Withdrawal**: Complete Defense if completed before the overt act
 - Requires “an affirmative and bona fide rejection or repudiation of the conspiracy, communicated to the co-conspirators”
 - Almost impossible in large conspiracies—have to tell every single one
 - If done *after* the overt act—merely precludes liability for subsequent acts (Pinkerton defense going forward—but no defense to conspiracy)
- **Renunciation**: Complete defense—erases the conspiracy
 - Requires thwarting of the crime—going to law enforcement
 - Some states require that the crime is *actually* thwarted
 - Pinkerton defense going forward

People v. Sconce (CA Ct of Appeals 2nd Dist.—1991) → Murderer for Hire

- **Facts**:
 - D offered 10K to kill Estephan, Cindy’s ex
 - D told Garcia that he, Cindy, and a third party were plotting murder
 - Garcia agreed to find a murderer for hire
 - D tried to call it off (withdraw), but the hired killer had been arrested on a parole violation
- **Rule**→ To withdraw—have to have:
 - Affirmative & bona fide rejection/repudiation of the conspiracy
 - Communicated it to the co-conspirators
 - Withdrawal is a complete defense *only if accomplished before the commission of an overt act*
- **Impossibility: Not a defense to conspiracy**
 - The crime is the *planning*—not the commission of the crime
 - Only applies to the overt act or the substantive crime

Accomplice Liability

- **An accomplice is not guilty of the crime of aiding & abetting, but is guilty of the substantive offense committed by the perpetrator because of the accomplice's complicity in the crime**
- **Doctrine of Complicity:**
 - Defines the circumstances in which one accomplice becomes liable for the crime of the principal
 - *NOT* vicarious liability—requires action by secondary party that makes it appropriate to blame him for the other's actions—don't impart liability on a party solely because of a relationship between the 2
- **No general rule—subject to the statute**

Hoselton Questions

Accomplice questions:

- 1. Did he do anything? (Actus Reus)
 - Being lookout=doing something

Dual Intent:

- 2. Did he intend to aid them?
- 3. Does he want the crime to succeed?

Hicks v. United States

- If accomplice is present for the purpose of aiding and abetting, but refrains from so aiding and abetting→ he is still guilty
 - There needs to be evidence to show there was a previous conspiracy

Common Law Terminology:

- Divides guilty parties into *principals & accessories*:
 - **Principals:**
 - 1st degree: Perpetrator who commits the crime (himself or through agency) OR
 - 2nd degree: Abettor who is guilty by having aided, counseled, commanded in the commission
 - Can be tried before the 1st degree—or if they have been acquitted—and can be charged with a higher or lower crime
 - **Accessories:**

- Before the fact: Inciters who aided, counseled, commanded or encouraged the crime but who weren't present at the moment of perpetration
 - **Now viewed as the same as principals in 2nd degree**
- After the fact: Protectors who, with knowledge of the other's guilt, helps a felon in the attempt to hinder his arrest, trial, or punishment
 - Cant be tried before the principal without consent
 - No longer treated a a party to the crime committed by principal—now would be prosecuted for a separate & lower crime (misprision, hindering apprehension, etc)

***State v. Hoselton* (SC of Appeals of WV—1988) → Lookout**

- **Facts:**
 - D's friends wanted to trespass on barge, asked him to be the lookout
 - Friends were actually planning to steal from the barge
 - D had no idea they were going to steal from the barge—didn't receive any of the items stolen, didn't help them put the items in the car, immediately went home
 - Shows lack of intent to commit larceny
 - They frequently trespassed on the barge for fishing
 - Only evidence that he was a lookout was his statement in an interview: "I guess you could say that"
- **Rule→ Lookouts are aiders & abettors→ Principal in 2nd degree**
 - Have to associate themselves with the venture
 - Has to *share the criminal intent with the principal in 1st degree*
 - He was only a lookout for trespassing—not larceny
- **Rule→**
 - **Mens Rea of Accomplice= "dual intent"**
 - Intent to aid the primary party
 - Intent that such assistance result in the commission of the offense charged
 - **Actus Reus of Accomplice:**
 - Solicitation, active assistance, encouragement, or failure to prevent the crime (if a duty is owed)

MPC on Complicity: §2.06

- (1) A person may be guilty of an offense by his own conduct and/or by the conduct of another person for which he is legally accountable
- (2) Three ways in which indirect accountability may arise
 - (c) one way is to be an “accomplice of such other person in the commission of the offense”
- (3) Defines “accomplice”
 - (a): Required state of mind=purpose of promoting or facilitating the commission of the offense
 - (a) (i)-(iii): Actus reus

Riley v. State (Ct of Appeals of Alaska—2002) → Bonfire Shooting

- **Facts:**
 - 2 Ds opened fire on crowd—ballistic evidence didn’t reveal which one fired the wounding shots
 - Was inflicted by 1 of them—unknown which one
- **Rule**→ Regardless of whether he acted as a principal or accomplice—same culpable mental state that is required for the substantive crime
 - **Rejected Echols approach**—required a higher culpability that they acted *intentionally* with respect with the prohibited result (even if the crime has a lower mens rea req.)
 - To convict D would have to show that they intended to aid an unintentional result –logically impossible

Natural and Probable Consequences Doctrine

- Different from *Conley*
 - Natural and probable consequences only from your side, not just from committing an offense

****CITE WOODS NOT LINSCOTT****

State v. Linscott(Maine Supreme Court; 1987) → Rogue Partner Shooting

- **Facts:**
 - 2 people agreed to rob a person
 - Plan changed mid-crime
 - 1 person didn’t follow the plan, started shooting, instead of just robbing

- Victim died
- D had no knowledge that his accomplice had the intent to murder
- **Rule:**
 - Accomplice liability for secondary crimes (murder after robbery)
 - (a) that the actor intended to promote the *primary crime*, and
 - (b) the commission of the secondary crime was a “foreseeable consequence” of the actor’s participation in the primary crime
 - foreseeable → objective standard
 - Punish on conduct with lesser mens rea if reasonably foreseeable
 - Different from Riley (same mens rea)

People v. Woods Rule (ALWAYS CITE WOODS)

- 4 step process to determine NPC doctrine applies
 - (1) Must decide if the primary party committed the target offense
 - (2) If yes, must determine if the secondary party was an accomplice in the commission of the target offense
 - (3) If yes, must determine if the primary party committed *another* crime or crimes, beyond the target offense
 - **(4) If yes, were the latter crimes reasonably foreseeable consequences of the original criminal acts encouraged or facilitated by the aider and abettor**

Bailey//Noriega

Bailey v. United States

- Psychological aid or presence alone is enough if it designedly encourages the perpetrator
- Being there is enough to provide psychological aid

State v. Noriega

- Being there/presence is not enough
- Has to be coupled with another factor

Accomplice Liability and Actus Reus

Wilcox v. Jeffrey (King’s Beach Division; 1951) → Saxophone/No Visa

- **Facts:**

- Saxophone player came to England to do a show, did not have a visa to legally be there
- Wilcox went to the show, did not clap, but did not boo, he wrote about the show for publication in a magazine
- **Rule:**
 - Aiding and abetting can be found through the mere encouragement of criminal activity.
 - The encouragement does not have to be directly communicated to the person committing the criminal offense

Accomplice Liability and Causation

- Is causation required?
 - Most courts → NO
 - In order a D to be found guilty, it must appear that D's participation aided the perpetrator to kill the victim
 - Doesn't need to be a "but-for" cause
 - It is enough if the aid merely rendered it easier for the principal actor to accomplish the end intended by him and the aider and abettor, though in all human probability the end would have attained without it
 - MPC and Common Law Differ
 - MPC → includes "attempts to aid"
 - Common law → you have to intentionally aid in some way

Innocent Agency Doctrine

- X is D's innocent agent
- X is no more the principal in the first degree than is a gun or a pit bull purposely used by one person to kill another

People v. McCoy (CA Supreme Court; 2001) → Drive By Shooting

- **Facts:**
 - D and his accomplice were convicted of 1st degree murder
 - Accomplice did the shooting
 - D wanted his charge reversed also, because he did not do the shooting
- **Rule:**

- If the person's own mens rea is more culpable than another's that person's guilt may be greater even if the other might be deemed the actual perpetrator
- **Rule:**
 - Once it is proved that the principal has caused an actus reus, the liability of each of the secondary parties should be assessed according to his **OWN mens rea**

Defenses

- Robinson's Rubric
 - (a) Failure of Proof Defenses
 - Negating any element of a charge
 - Example: If you say mistake → you're negating the mental element (which is a required element)
 - State has to prove its case BRD
 - (b) Offense Modifications
 - Actor has satisfied all elements of the offense, but has not in fact caused the evil or harm sought to be prevented by the statute defining the offense
 - Example:
 - Mom paying ransom to the kidnapper of child
 - A&A to the crime, but that isn't what the kidnapping statute is trying to prevent
 - (c) Justification
 - Special justified circumstances that the harm is outweighed by the need to avoid an even greater harm
 - Choice of Evils
 - Negates the social harm of the offense
 - Example:
 - Forest fire raging towards tons of people
 - Actor burned a "firebreak" which is arson
 - But he did it to prevent those other people dying
 - (d) Excuses
 - The actor has harmed society but shouldn't be blamed or punished

- Negates the moral blameworthiness of the actor for causing the harm
- Example
 - Crazy lady hitting the mailman out of fear he is going to implant a radio receiver
- **Causation Theory:**
 - Caused by factors outside her control—shouldn't be blamed
 - Ex. Mental illness—causes actions; Drunk person—nah.
- **Character Theory:**
 - Punishment is proportional to their moral desert, measured by their wrongful conduct
 - Ex. If D robs bank to save her children from murder—doesn't speak to a bad character, shouldn't be punished
- **Free Choice/Personhood Theory**
 - Free choice exists, at the time of wrongful conduct, if the actor has the substantial capacity & fair opportunity to:
 - (1) understand the facts relating to her conduct
 - (2) appreciate that her conduct violates society's mores
 - (3) conform her conduct to the dictates of the law
 - A person lacking the substantial capacity in any of these regards essentially suffers from some serious internal disability, and, *therefore does not deserve to be punished because she lacks the basic attributes of personhood that qualify her as a moral agent*
- (e) Non-exculpatory Public Policy Defenses
 - Statute of Limitations
 - Not based on lack of culpability, only on public policy

Burden of Proof

Justifications → BOP on the Government

Excuse → BOP on the Defendant

- **Burden of Production:** Initial obligation to introduce evidence in support of the matter at issue
 - Prosecutor → Elements of a crime (*Winship*—must be proven BRD)

- + Sentencing Factors must also be proven BRD same as elements (*Apprendi*)
 - Depends how the statute structures the offense
- Defendant → Affirmative Defenses
 - Ex. *Martin v. Ohio*: didn't prove by preponderance of the evidence all three elements of self-defense
- **Burden of Persuasion:** Convincing the fact finder of the truth of the claim in question

Self Defense

- Must be a threat, actual or apparent of the use of deadly force against the defender. + 3 Elements:
 - (1) Threat must have been **unlawful** and **immediate**
 - (2) D must have believed that he was in **imminent peril of death** or serious bodily harm & that his response was **necessary** to save himself therefrom
 - Must have *actual & objectively reasonable* belief
 - No opportunity to retreat
 - (3) Cant support a claim of self-defense by a self-generated necessity to kill
- **Necessity Requirement:**
 - There must be present an attempt by the D to do all within his or her power consistent with his or her own personal safety to avoid the danger and need to take a life
 - *State v. Dill*:
 - D was in car, decedent asked for help starting car, D said he would for \$5—argued, decedent lunged at D with knife through window, D shot him in the head.
 - Court → Could have retreated, withdrawn—No necessity
- **Imminency Requirement:**
 - Use of deadly force is unjustifiable at common law unless the actor is responding to actual or apparent *imminent peril of death or serious bodily harm*
 - Desert/Rat Poison → NOT imminent.
- **Immediate Nature Requirement:**

- *Immediately necessary* to use force *NOW*. The harm could be coming later, but it is immediately necessary to use force now.
- Included in the MPC
 - Ex. Desert race/Rat Poison—have to kill you now or you will poison me tomorrow.
- **Must be proportional to the force exerted upon them originally**
 - Initial aggressor is accountable for his original unlawful use of force but not for his defense against a disproportionate return of force by his victim
 - Ex. If A punches B, B pulls gun, A can now kill B, but is still maybe guilty of assault.
- Third Person Protection
 - In general → Justified using force to protect a 3rd person
 - **Alter Ego Rule** → May use force when/to the extent that the 3rd party would be justified in using force to defend themselves
 - *Reasonable Belief Standard*
- Imperfect Self Defense
 - Must give notice of his wish to desist from the struggle & attempt in good faith to withdraw
 - Toy gun
 - Objectively no danger
 - Subjectively in any relatable way
 - Toy gun looks like a real gun, you weren't really in danger, but you thought you were, so it is imperfect self defense

US v. Peterson (DC Ct of Appeals—1973) → Swiper don't swipe my swipers

- **Facts:**
 - Homeowner Peterson saw deceased trying to steal his windshield wipers in his alley, after verbal exchange, went & got gun, when he came back deceased was about to leave, Peterson said "If you move I will shoot"
 - Deceased grabbed a lug wrench—kept coming at Peterson, shot him in the face
- **Retreat Rule** → Ordinarily forbade the use of deadly force by one to whom an avenue for safe retreat was open

- Opportunity to retreat= if the actor *knows* he can avoid the necessity of using such force with *complete safety* by retreating
- Enforces the requirement of absolute *necessity* to justify killing someone
- **Castle Doctrine:** No duty to retreat when you're in your own home.
 - Unavailable to the party who provokes or stimulates the conflict—castle doctrine only can be invoked by one who is without fault in bringing the conflict on
- **Time Frame:**
 - Start the clock over when one has reached a place of apparent safety (when he went & got the gun) & returns—separate event from the initial aggression
 - *Rideout*
 - *Guthrie* (taking your gloves off → Apparent safety)
 - Ex. *Laney*
 - Chased by mob, went into someone's yard, checked gun, and came back out to chase the mob
 - The yard → Place of apparent safety, Clock starts over, No self defense
 - Ex. *Rowe*
 - Left apartment to get gun, came back for street fight
 - Court: Left apparent safety to arm himself & return to the scene → Clock Restarts → No self defense

Stand Your Ground Laws: Grants provision for pre-trial hearing to assert immunity from trial

- 1. Person is presumed to have a reasonable fear of imminent peril of death or GBH to himself or another when using deadly defensive force if:
 - the person against whom it is used was in the process of unlawfully/forcefully entering their dwelling, residence, or occupied vehicle
- 2. Presumption doesn't apply if
 - Person using defensive force is engaged in an unlawful activity or is using the dwelling/residence/vehicle to further an unlawful activity

- 3. Person who is not engaged in an unlawful activity and who is attacked in any place they have a right to be and has no duty to retreat has the right to stand his or her ground and meet force with force—
 - including deadly force if they believe it is necessary to do so to prevent death or GBH to himself or another present—or to prevent the commission of a forcible felony

Defense of Habitation/Property

State v. Boyett (SC of New Mexico—2008) → (Lesbian?) Love Triangle

- **Facts:**
 - Wilder & Victim dated
 - Wilder started dating D
 - Wilder started cheating on D with Victim
 - Victim came to D & Wilder's house to return her car keys
 - Different accounts of what happened here...
 - D shot Victim, claiming he was in fear for his life
- **Defense of Habitation Rule**→ A person has a right to defend his or her resident not only when an intruder is already inside the home but also when an intruder is *outside the home* and attempting to enter to commit a violent felony
 - Added to the *State v. Bailey* rule—required a *violent* felony (not tax evasion lol)
 - No longer required the intruder cross the threshold into the home before using lethal force
 - Cant use habitation defense against *invited guests*—but you can use regular self defense
- Note→ *Cannot use lethal force to protect personal property.*

Battered Woman/Spouse Defense

Abused Spouse Syndrome: situations where one spouse has achieved almost complete control and submission of the other by both psychological and physical domination. Usually seen in females. Believe they are worthless and cannot get away; that there's no rescue from the other person (Learned Helplessness)

- 3 Phases:
 - Tension-building phase

- Violent phase
- Quiet or Loving phase
- Cycle has to repeat at least once to count, become more violent
- Sub-Group of PTSD
- Clear trend → permit syndrome evidence in cases of confrontational homicides—assuming that the D presents evidence of a history of abuse
- Handles imminence question differently

*Note—Compare with *Cassassa* (EED Case)

3 Categories:

- 1. Confrontational Homicides
 - Kills when he poses an immediate threat of death (75%)
- 2. Non-Confrontational Homicides
 - Kills when abuser is asleep or during a lull in violence
- 3. Hires 3rd Party to kill batterer
 - Small group

Justifications of BWS:

- Anticipatory Self-Defense: Prior aggressor threatens to commit future violence
- “Gross and enduring impairment of one’s psychological functioning that significantly limits the meaning & value of one’s physical existence”
- Used to prevent serious psychological injury

Opposing BWS:

- Abandoning imminency would expand lawful use of deadly force
- Cant supplant imminence with necessity
- No one should be a judge in his own case—don’t go vigilante
- Lacks empirical evidence

State v. Norman (Ct of Appeals of NC—1988)

- Facts:
 - Horrifying husband/wife relationship—abuse
 - Killed him while he was sleeping

- **Rule I**→ With the battered spouse syndrome there can be, under certain circumstances, killing of a passive victim that does not preclude the defense of self-defense.
- **Rule II (on appeal)**→ The right to kill in self defense requires that the D be faced with imminent death or GBH
 - Has to be necessary + real or reasonable belief

Subjectivization of the “Reasonable Belief” Standard

- View actions from the standpoint of a person whose mental and physical characteristics are like the accused’s
- Consider person’s characteristics in judging reasonableness of their belief
 - Physical & psychological properties
- **Unreasonable Belief: Imperfect Defense**
 - A D is guilty of manslaughter, not murder, if she kills the decedent while harboring a genuine, but unreasonable belief that the decedent constitutes an imminent threat to her life

People v. Goetz (NY Ct of Appeals—1986) → YOUTHS!

- **Facts:**
 - Shot & wounded 4 youths on a subway after one or 2 of them approached him & asked for \$5
 - Shot once—then shot AGAIN later at the other teens
 - 2 separate mens reas?
 - Blamed a fear based on prior experiences from being mugged
- **Rule**→ A person may use deadly force in self defense if he reasonably believes that said force is necessary to protect himself or a 3rd person from what he *reasonably believes* to be the use or imminent use of unlawful physical force by such other person
 - Don’t require the belief to be correct—just must comport with an objective notion of reasonableness
 - Objective standard doesn’t have to ignore the background/characteristics of a particular actor—encompass any prior experiences D has had which could provide a reasonable basis for a belief

The “Reasonable Racist”: Even if his belief that blacks are “prone to violence” stems from pure prejudice he should be excused from considering the victims race before using force because similarly situated Americans would have done the same

Necessity

Common Law: 3 Essential Elements of the Necessity Defense:

- 1. The act charged must have been done to prevent a significant evil
- 2. There must have been no adequate alternative
- 3. The harm caused must not have been disproportionate to the harm avoided

Limitations:

- 1. Actor must *actually* believe his conduct is necessary to avoid evil
- 2. Must arise from the attempt by the actor to avoid an evil or harm that is **greater than** the evil/harm sought to be avoided by the law defining the offense charge (Equal or lesser harm—not enough)
- 3. Balancing of evils is a determination at trial—not the individual actor’s
- 4. Deliberate legislative choice as to the specific situation
- 5. If the crime involved can be committed recklessly or negligently—no necessity defense
 - If you are reckless in creating the bad situation you cant make the necessity argument for crimes for which recklessness or negligence would suffice
 - If only purposeful suffices→ Necessity defense ok.
 - Strict Liability offense→ No necessity also
 - Ex. Negligently fail to get your brakes fixed, swerve to avoid hitting 5 people, kill 1. No necessity defense for negligent homicide.

Nelson v. State (SC of Alaska—1979) → Truck stuck in the mud

- **Facts:**
 - Truck was stuck in mud, feared it would tip over.
 - Spent 230942384 hours trying to free it, stole 2 gigantic machines from a YARD(?) and got THOSE stuck...
 - PTFO in his truck all night, truck still not tipped over
- **Rule**→ The defense of necessity may be raised if the D’s action, although violative of the law, were necessary to prevent an even greater harm from occurring.

- Person's actions should be weighed against the harm reasonably foreseeable at the time, rather than the harm that actually occurs
- This case: Your truck tipping over is not a greater harm than stealing all that stuff idiot

Necessity & Murder

Dudley & Stephens

- Necessity is not a defense to murder
- **Rule → A person may not sacrifice another person's life to save his own.**
 - The temptation for the act which existed here was not what the law has ever called necessity

MPC

- No limitations on what particular evils should be justified or avoided—necessity is a general principle to be analyzed in a case-by-case basis
- Would be unfortunate to exclude homicide from scope of necessity—life of every individual must be taken in such a case to be of equal value

Utilitarian View:

- Particular act might reduce harm by killing one person to save 3...
- But not clear whether a legal system which institutionalizes the permissibility of such killings would prevent more harm than it causes
- Kantian Ethics:
 - Each person's life is as important as the live of other persons

Principle of preferring the lesser evil should have applicability only when the act invades interests of the victim that are of less importance to him than the interests the actor stands to lose from compliance

- Ex. Stealing food from your house to prevent myself from starving

Compare: *Necessity v. Duress:*

Necessity	Force of Nature	Actus Reus (Negates Mens Rea) Choice of	Free will to avoid harm
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		Evils	
Duress	Person/Human Forces	Mens Rea (Negates actus reus) Gun to my head	Compelled to do something

- Necessity—Exercise free will to achieve greater good
 - Choice between evils
- Duress—Free will is overcome by force
 - Generally requires imminent threat of GBH + Demand that the person perform the criminal act
 - If successfully asserted the coercive party is guilty of the crime

People v. Unger (SC of Illinois—1977) → Honor Farm lol

- **Facts:**
 - D was prisoner at honor farm, was raped, molested, threatened with death
 - Was 22, 155 lbs, bad fighter
 - Said he left to save his life—but planned to return once he found help
 - Didn't report the incident to any officials

Duress

Three Elements of Duress Defense: (Contento –Pachon)

- (1) Immediate threat of death or SBI
- (2) Well-grounded fear that the threat will be carried out
- (3) No reasonable opportunity to escape the threatened harm

Dressler's Rule:

- 1. Another person unlawfully threatened imminently to kill or grievously injure him or another person; and
- 2. He was not at fault in exposing himself to the threat

*Note → Some view this as an excuse defense

- Chooses to violate the law—shouldn't condemn a coerced actor
- Justification → Do the same thing I would have done every time
- Duress is an excuse because greater harm was caused, but society is a net win

Mens Rea:

- Might have the intent to carry out the crime—but no actus reus because your acts are not your own

Person of Reasonable Firmness Standard:

- Doesn't vary with the individual's fortitude—only takes into account their “situation” including *stark, tangible factors* that differentiate the actor from another
 - Size, age, strength, etc. → Yes.
 - Temperament → No.

US v. Contento-Pachon (9th Cir. Ct of Appeals—1984) → Drug Mule

- **Facts:**
 - D was forced under duress to swallow cocaine & transport it to the US
 - Threatened to kill his family, knew their names, his address, etc.
- **Rule: Applying The Elements**
 - Immediacy: “A veiled threat of possible future unspecified harm” not enough
 - Requires that there be some evidence that the injury was present, immediate, or impending
 - Escapability:
 - D must show he had *no reasonable opportunity to escape*

Insanity

- Affirmative Defense
 - Must be proven by the D
 - Persuade fact finder reasonable doubt
- Mental illness is a medical concept
- Insanity is a legal term
- Insanity isn't the only point of contact with mentally ill people
 - First responders, competency to stand trial, etc.
- NO COMMON LAW INSANITY (all legislative decisions)
 - Ex.: Don't quote M'Naghten without a M'Naghten statute

Competency to Stand Trial

- You can stand trial if you have a sufficient present ability to consult with your lawyer, with a reasonable degree of understanding in a rational, as well as, factual understanding of the proceedings
- If incompetent → committed to mental health facility until person regains competency
 - May exceed the max sentence of the offense charged

Asserting an Insanity Defense

- Enter a plea of not guilty by reason of insanity (NGRI)
- Submit to psych eval and notify prosecutor of specified time

Why Do We Excuse the Insane? → ALL NORMAL THEORIES OF CRIMINAL PUNISHMENT AREN'T SATISFIED

- Rehabilitation
- Deterrence (it doesn't deter them)
 - Can't understand the wrongfulness → can't understand the reason for the punishment → won't deter
- Retribution
 - What society is satisfied when it wreaks vengeance upon the incompetent
- Incapacitation
 - If they are really insane and really dangerous, we can punish them so they don't hurt anybody in society

Tests of Insanity

- **POLICY QUESTION**
 - Should there be a volitional or cognitive or both requirement?
 - Volitional Prong
 - Opposition
 - Confusing for jurors because its all medical jargon they don't understand
 - Asks the jury whether the D had capacity to control himself
- **M'Naghten Rule**

- “To establish a defense of the ground of insanity it must be clearly proved that, at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind,
- As not to know the nature and quality of the act he was doing (cognitive incapacity prong)
- **OR**
- If he did know it, that he did not know that what he was doing was wrong (moral incapacity wrong)
- Cognition element only; no volitional requirement
- Uses **KNOW**, not appreciate
 - Young Child example
- **Critiques**
 - All or nothing approach → requires total incapacity of cognition
 - Severely restricts expert testimony (it’s a gray area, but they have to put it in black and white terms)
 - Calls for a moral or ethical judgment
 - Doesn’t use proper medical terms
- **Irresistible Impulse/Control Test**
 - Cognitive + volitional
 - By an *insane impulse* irresistibly driven to commit it, the law must give to this condition its exculpatory effect
 - **Criticism**
 - Considered in terms of a completed destruction of the governing power of mind
 - Test produces the misleading notion that a crime compulsively committed must have been perpetrated in a sudden and explosive fit – sometimes a result of sustained psychic compulsion
- **Product Test (Durham)**
 - An accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect
 - Leaves the whole thing up to the experts
 - **Critique**
 - Usurps the jury’s role
 - Opens the door to “trial by label”
 - Medical experts attach labels to people

- Requires explanation
 - Ambiguous whether actions were the product of mental illness
- **Proponents**
 - Psychiatrists → try to understand the behavior
- **MPC Test → 4.01**
 - Relieves the defendant of responsibility under 2 circumstances
 - (1) when, as a result of mental disease or defect, the defendant lacked substantial capacity to **appreciate** the criminality (**wrongfulness**) of his conduct
 - (2) when, as a result of mental disease or defect, the defendant lacked **substantial capacity** to conform his conduct to the requirements of law
 - Acknowledges the volitional and cognitive impairments
 - Uses vocab that is understand by judges, lawyers, experts, and the jury
 - **Appreciation v. Know**
 - Broader
 - Example: The young child example
 - She might *know* that she is pulling the trigger and it causes a person to die, and that it is bad, but she doesn't *appreciate* the significance of what happens when someone dies
 - Not the “all or nothing” approach
 - Reflects that disorientation might not be total

State v. Wilson (CT Supreme Court; 1997) He's Destroying My Life, I had to do it

- Facts:
 - D believed victim and son were destroying his life
 - D went to confront victim at his house, shot him
 - D gave a sworn statement to police
 - Told police that victim and son were responsible for his schizophrenia
- Rule:
 - A D may establish that he lacked substantial capacity to appreciate the “wrongfulness” of his conduct if he can prove that, at the time of his criminal act, as a result of mental disease or defect, he substantially

misperceived reality and harbored a delusional belief that society, *under the circumstances as the D honestly but mistakenly understood them*, would not have morally condemned his actions

- Using a societal instead of a personal standard → HYBRID
- Question: whether the D as a result of mental disease or defect, truly believed that society, if it were aware of the circumstances, as he honestly believed them, would have condoned his actions
- Societal morality as under the circumstances

Deific Decrees

- In which a mentally disordered person believes that God has instructed or commanded them to do what they are now on trial for committing
- Depends on what the state says about insanity as to if this will work as a defense
- Works as a cognitive prong
- Volitional → Can't disobey God
- Moral → God is the source of morality
 - What God tells you to do is moral
- Moral applied/if they only knew → God hasn't rewritten the rules, but they don't apply here: if only you knew what I know, you'd understand why the rules don't apply

Intoxication

Voluntary

- MPC 2.08(1)
 - Intoxication is a defense if it "negatives an element of the offense"
 - Common law general intent/specific intent distinction doesn't apply
 - Getting super drunk → no affirmative social value to counterbalance the potential danger
- MPC 2.08(2)
 - special definition of recklessness
 - Your recklessness was the act of getting drunk, therefore, everything you do after is considered reckless

United States v. Veach (6th Circuit Ct. of Appeals, 2006) Traffic Stop Resisted Arrest

- Facts:
 - After accident in national park, D tried to resist arrest multiple times
 - Caused injury to park rangers
 - Threatened them repeatedly
- Rule:
 - Voluntary intoxication is only a defense to specific intent crimes, not general intent
 - It is only the mens rea of a specific intent crime that may be negated by a voluntary intoxication defense

Intoxication and Insanity

- Debate
 - Should a mental condition brought on by long term or excessive use of drugs/alcohol (“settled insanity”) be considered a mental disease or defect thus leading to an insanity defense

Involuntary Intoxication

- Successful claims are rare
- 4 categories
 - Coerced Intoxication
 - Induced by reason of duress or coercion
 - Acquittal is rare
 - Pathological Intoxication
 - Intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible
 - Intoxication by innocent mistake
 - Innocent mistake by the D about the character of the substance taken as when another person has tricked him into taking the liquor or drugs

Diminished Capacity Versus Affirmative Defense

	Diminished Capacity (negating an element)	Affirmative Defense
Burden of Proof?	Prosecution	Defense
Standard of proof	Reasonable doubt (because prosecution must prove beyond a reasonable doubt)	In Clark, clear and convincing evidence

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Diminished Capacity

- allows a criminal defendant to introduce evidence of mental abnormality at trial either to **negate a mental element of the crime** charged → exonerating the D of that charge, OR
- To **reduce the degree of crime** for which the D may be convicted, even if the D's conduct satisfied all the formal elements of a higher defense
- Mens Rea Variant
 - Negates mens rea (not an affirmative defense)
 - You can't be blamed for a crime that you didn't have a requisite element for
- Partial Responsibility Variant
 - Form of lesser legal insanity
 - Elements may be satisfied, but the D is less culpable as a result of mental abnormality

- Compared to Heat of Passion
 - DC → you aren't like other people
 - HOP → you are like other people
 - Both ways → can reduce punishment
 - But also → theories can intertwine
 - Ex: Guy though his wife was sleeping with her relatives so he killed one of them

Clark v. Arizona (SCOTUS 2006) ALIENSSSSSSSS

- Facts:
 - During traffic stop, D shot and killed cop
 - Claimed that his paranoid schizo at time of incident made him believe that the cop was an alien
 - Statute required knowledge that the person was a police officer
- Rule:
 - States determine what types of evidence are allowed to make diminished capacity determination
- Three Types of Evidence
 - Observation Evidence
 - What people saw
 - Critiques
 - Might not be credible without support from the other types of evidence
 - Mental Disease Evidence
 - Psychiatrists opinion on their mental disease (what it is)
 - Critiques
 - Diagnosis may mask debate within the profession about the disease
 - Proponents
 - Diagnosis of schizophrenia bears on what the D knew, and how he processes data
 - It can be reliable and shouldn't be excluded
 - Schizophrenia isn't that hard to understand
 - Jury can evaluate differing opinions
 - Capacity Evidence
 - Cognitive and moral judgment of defendant

- Opinion testimony as well
- Critiques
 - May accord greater certainty to capacity evidence than experts claim for it
 - Jurors might not understand that it is still a debate
 - Consists of judgment with many dangers:
 - No one knows D's state of mind
 - Law has different categories for capacity judgment than psychology
 - Potentially questionable

Rotten Social Background

- Debate on whether we should excuse certain defendants based on severe environmental deprivation
- Delgado → blame is inappropriate when a D's criminal behavior is caused by intrinsic factors beyond his or her control
- Goes both ways,
 - "affluenza" → Texas boy who killed 4 people drunk driving, judge said his upbringing (being super rich) was his defense
 - Poverty → no way out other than criminal behavior
- Murphy → punishment is morally unjustifiable by showing that there is little basis for the community and the reality of RSB
- Retribution → for deterrence to work, must threaten the individual with loss of a thing that he considers valuable
 - If nothing valuable then nothing to lose
- Kadish → explanations are not excuses if they merely explain how the D came to have the character of what someone did
- Duff → how can we expect somebody of RSB background to understand the law

Felony Murder and Accomplice Liability

Agency theory

If you have accomplice liability

Irresistible Impulse

Talking about actus reus

You didn't have a choice to move – your body did it

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