CRIMINAL LAW OUTLINE

I. Civil Law vs. Criminal Prosecutions
   A. Palmer (hand-out pg 4)—suspicious person ordinance case.
      i. Palmer argues that he doesn't have fair warning that his conduct would be unlawful because the statute is
         unconstitutionally vague. Court buys this argument, and holds that the ordinance is vague as applied to Palmer.
      ii. When we are talking about baseline fairness the law must be sufficiently clear so that a person of ordinary
          intelligence would have fair notice that his or her conduct is prohibited by the ordinance.
   B. Requirements of Crimes:
      i. Actus Reus--> Affirmative Act or Negative Act (Omission)
      ii. Mens Rea --> Intent

II. Imputability
   A. What Constitutes an Act?
      i. State v. Taft—
         a) RULE: Criminal liability may only be based upon voluntary acts.
         b) DUI case over definition of driving and whether any motion of car is sufficient
         c) Taft argues that there must be motion that is not accidental and that is an affirmative intended act of the
            “driver”. The trial judge only instructed the jury that if the vehicle was in motion then it is being driven.
         d) On appeal, the court reverses on this jury instruction and accepts Taft's reasoning. The court says motion is
            essential to the act of driving, but its not sufficient.
      ii. People v. Decina—
         a) RULE: Criminal liability may be based upon an otherwise involuntary act where the voluntariness
            element is provided by the actor’s prior knowledge that the condition causing this act presented a threat
            of harm under the circumstances.
         b) guy knew he was epileptic, he drove anyway, and was found guilty of criminal negligence in operation of a
            vehicle resulting in death. When he had an attack, passed out, and killed four pedestrians. Decina claims the
            indictment doesn't charge any crime. Majority holds that the indictment does charge a crime. Dissent is saying
            that if you making it lawful for someone with epilepsy to get a drivers license that every time he or she gets
            behind the wheel he or she is criminally negligent.
         c) The statute requires that :
            • Act has to be voluntary. Can't say that the seizure was voluntary. So the voluntary act has to be him
               actually getting in the car and starting to drive.
            • Must have intent of criminal negligence. For this he must have been aware of a high degree of risk that he
               would suffer an attack.
            • Circumstances: must result in the death of another person
         d) HYPO: What if it weren't epilepsy, but Decina had a sudden heart attack? Then you don't have the mens rea
            for criminal negligence. But what if as he's driving down the highway he starts to feel woozy leading up to the
            heart attack? Question for the jury as to whether he was aware that he was losing control.
      iii. State v. Kimbrell—
         a) RULE: A D charged with cocaine trafficking is entitled to an instruction that mere presence at a
            transaction is insufficient to sustain a conviction.
         b) Kimbrell watched the cocaine on the table while undercover cop and her ex-husband went outside. Convicted
            of trafficking cocaine.
         c) In order to be guilty of trafficking she had to have possession of 10+ grams of coke. Possession is defined as
            the power + intent to control the coke's disposition or use.
         d) Jury was not instructed that mere presence was not enough.
         e) Knowledge is strong evidence of intent to control, so it is probative on that issue. But how do you prove a
            mental state? Through circumstantial evidence.
      iv. Model Penal Code: Requirement of Voluntary Act; (omission as basis of Liability;) Possession as an Act.
         a) (1) A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or
            the omission to perform an act of which he is physically capable.
         b) (2) The following are not voluntary acts within the meaning of this Section
            • (a) a reflex or convulsion;
            • (b) a bodily movement during unconsciousness or sleep;
            • (c) conduct during hypnosis or resulting from hypnotic suggestion;
            • (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either
               conscious or habitual.
         c) (3) Liability for the commission of an offense may not be based on an omission unaccompanied by action
            unless:
            • (a) the omission is expressly made sufficient by the law defining the offense; or
• (b) a duty to perform the omitted act is otherwise imposed by law.

d) (4) Possession is an act, within the meaning of this Section, if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

v. This section says “includes” a voluntary act. So Decinia is still liable.

B. Attempt and Kindred Problems

i. In General

a) Moffett v. State

• RULE: To establish an attempt to commit a crime, it need only be shown that the D performed a direct act toward the commission of the crime, beyond mere preparation.
• Guy forces a woman to take sleeping pills. She doesn’t die, but she could have died. They also made her drink wine, which made the pills even more dangerous.
• They made her write a suicide note, so they intended to kill her.
• For attempt there needs to be an act showing intent to commit the crime and they need to fail in the commission of the crime.

ii. Perpetrating the Act

a) People v. Rizzo

• RULE: An attempt is committed when an act is performed which is so physically close the contemplated victim or scene of the crime that completion of the offense is very likely but for some timely interference.
• Guys planned to rob a payroll guy, but they could never find him, and then they were arrested. They have to be “tending toward the commission of the robbery.” They weren’t.
• These guys had not yet gotten to the point where they could even make an attempt to commit a robbery.
• Preparation alone is not enough. Another test is whether they were in dangerous proximity of committing the crime but for the intervention of the police, the crime would have occurred.
• Can’t show here that if the cops wouldn’t have arrested them that they would have committed the crime.
• Dangerous proximity may sound like an easy test, but it really isn’t.
• Other Common-law tests
  • Probable resistance test—have they gone so far that they won’t change their minds.
  • Equivocality approach—are the acts they have performed sufficiently unequivocal that we can say with some degree of certainty that they intended to commit the crime and didn’t have some other innocuous intent
  • Last proximate act—have done everything if the last proximate act pans out—woman poisons whiskey, has nothing left to do except wait for husband to come up and drink it. She has committed the last proximate act to kill.
• You can’t commit a robbery without confronting the victim, so you can’t intend to rob until you have found your intended victim.

b) Young v. State

• RULE: A person is guilty of attempting to commit a crime where the purposely acts in such a way as to constitute a substantial step in a course of conduct planned to culminate in the commission of the crime.
• Cops had been watching a guy who was casing a bunch of banks. He had surgical gloves, an eye patch, heavy coat, etc. He went to a bank to rob it, it was locked, so he freaked out and left, and then the cops arrested him.
• Court uses the Model Penal Code Test—substantial step toward the commission of the crime test.
  • Doesn’t say that the step has to be physically close
  • If we applied this to the facts in Rizzo. Substantial step needs to be strongly corroborative of purpose to commit the crime. If you had independent evidence of intent in Rizzo do you have a substantial step?
• Tests in Rizzo focuses on whether or not the D is dangerously close, which requires you to ask questions like how temporally close were they to the act being committed, how physically close were they? This focuses on “what’s left for the criminal wannabe to do?” Meanwhile the test in Young focuses on what has been done. This test doesn’t really take into account how many more steps may be needed for the crime, but looks at what they’ve done to see if its sufficient to convey what they intended to do. It must be substantial in the sense that it corroborates the criminal objective.
  • The model penal code test allows cops to intervene much earlier than the other tests.

iii. Impossibility

a) State v. Mitchell

• RULE: A criminal attempt may be committed even though, unknown to the accused, completion was impossible.
Guy tried to kill another guy by firing into the bedroom where he thought the intended victim was sleeping. Except the intended victim wasn’t there.

The court says it doesn’t matter—he still had the intent to kill the victim, so he goes down for attempt.

In this case Mitchell had the intent to kill and the capacity to kill, so he was guilty.

What we have is unequivocal conduct showing he set out to kill the victim, and but for a fortuitous fact (the victim not being in his room) the crime would have been completed.

This is factual impossibility because Mitchell is unaware of a fact that makes his success at the crime impossible, but it was legally possible for him to attempt the killing.

b) People v. Rojas

RULE: An attempt is not prevented by impossibility merely because, unknown to the accused, the completion of the crime has become impossible.

Guy was arrested with a truck of stolen legal equipment. He was going to sell it to Rojas, so the cops set up a sting. Rojas is then charged with receiving stolen property.

The court holds that he technically didn’t receive stolen property because in this case the property was no longer classified as stolen since police had already recovered it. But he can be found guilty of attempting to receive stolen property.

This is another case of factual impossibility with regard to the attempt (legal impossibility in the case of actually receiving stolen property)

Would have committed the crime but for the fortuitous event of the cops recovering the truck. The intent and acts were there.

c) Booth v. State

RULE: Legal impossibility prevents attempt where, even though the accused has committed all acts and achieved all consequences he intended, he still has not committed a crime.

Guy stole a coat and planned on selling it to Booth. Thief gets caught. Sets up sting. Booth is convicted of attempt to receive stolen goods.

Court says the exact opposite of Rojas court. The court says that if Booth had done everything he intended to do and had received the coat, then he wouldn’t have committed a crime. So if actually completing the act isn’t criminal, then not completing it can’t be criminal.

This is a case of legal impossibility.

d) United States v. Oviedo

RULE: In order for a D to be guilty of a criminal attempt, the objective acts performed must mark his conduct as criminal in nature, without any reliance on the accompanying mens rea.

Cop sets up a drug deal for heroine. Guy sells cop “heroine.” Gets arrested attempted distribution of a controlled substance. But its really isn’t heroine, its some uncontrolled substance. Two pounds of this substance are hidden in his TV.

Jury found that Oviedo believed it was heroine.

Court says that legal impossibility occurs when actions, even if fully carried out, would not constitute a crime.

Doesn’t think legal/factual definitions are very helpful. So they treat this as a case of legal impossibility, but they use a different rubric.

Objective facts are what are required to show that the acts are criminal. There needs to be an objective element that clearly marks the conduct as criminal. Can’t punish mere criminal intent (bad thoughts alone). The objective fact that is missing in this case is heroine. There were two objective facts (telling the cop that he was selling heroine and hiding the substance in the TV) but we are missing the most important objective fact—it wasn’t heroine.

They are focusing on the fact that would make the conduct criminal if the conduct were successful.

What if it had been heroine, but he honestly believed it wasn’t? Still couldn’t nail him on attempt because he doesn’t have the intent. So the objective fact isn’t dispositive.

e) Hypo: D shoots at V. Both require knowledge of subjective intent to determine whether or not liability for attempt exists. These are factually impossible. They are cases of physical impossibility. Many courts wouldn’t have a problem concluding that is what we are talking about and that sort of impossibility should not be a defense.

#1: V is out of range.—objective marker

#2: D’s gun isn’t loaded but he thinks it is

f) Hypo: D shoots at V

D → Empty bed—more like factual impossibility

D → V in bed but dies of heart attack—

D → tree stump (thinking it’s a person)—

D → stuffed deer when he thinks its real (off season)

D → Recovered Property
• D→ Heroine that’s not heroine
  • In all these cases but the first one the D is **mistaken about the legal status of something**. These are neither legal nor factual impossibility. These are **hybrid impossibility cases**. What the D intended to do was illegal, but it’s also impossible to commit the crime because of the legal status of the object of the crime. These cases can go either way if we are using common-law labels.

g) Absolute legal impossibility would be doing something you think is illegal but it isn’t.

h) **Types of Impossibility**
   - Factual
     - Shooting at an empty bed, thinking your intended victim is sleeping there.
   - Questionable Impossibility
     - Receiving property that has been stolen but is then recovered by the cops before it is received
       - Intent to receive
       - Knowing stolen
       - Selling Drugs

iv. **Solicitation**
   a) **State v. Bechman**
      • **RULE:** Solicitation occurs when the accused is shown to have counseled, incited, or solicited another to commit a felony.
      - Solicitation is the counsel to incite or illicit another to commit a crime
      - The mere act of telling someone “I want you to commit this crime for me” is enough.
      - The solicitor must have the intent to have the crime be committed.
      - Wishful thinking is short of consideration
      - Reaches much further back than the crime of attempt—solicitation is far more preparatory
      - Even if the person you ask to commit the crime says “no,” immediately, you are still screwed.
      - In most jurisdictions this is punished less than attempt under common-law.

v. **Abandonment**
   a) **Stewart v. State**
      • **RULE:** Abandonment of an attempted crime does not prevent conviction for attempt where intent has been formed and overt acts toward completion committed.
      - Guy started to rob gas station, pulled his gun, and demanded money from the attendant. Cops show up.
      - Guy puts down his pistol and leaves the station. Claims he changed his mind and abandoned his attempt.
      - Court says that the attempted robbery was completed when he waived around his pistol and demanded the money, regardless of any subsequent conduct.

   b) **State v. Workmen**
      - While driving home from drinking and dancing with their wives they decided to commit a robbery. Went to a gas station, pulled out masks, and a shot gun. They waited for awhile and then changed their minds. An attendant had seen and reported them.
      - This is a substantial step test jurisdiction.

vi. **Model Penal Code: Article 5: Inchoate Crimes;**
   a) **5.01 Criminal Attempt**—(1) Definition of Attempt
      • (a) purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be, or
      - Engage in conduct that would constitute the crime if the attendant circumstances were as the defendant believed them to be
      - Does exactly the opposite of **Oviedo**. Looks at intent to commit the crime rather than the attendant circumstances.
      - **Rojas** and **Booth** guilty for same reason. **Mitchell** is a little trickier, but still guilty because of definition of murder under model penal code.
      • (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
      - Poison hypothetical—wife believes that what she has done will cause the death without her doing anything else.
      - Time bomb in convention center falls under this category.
      - (c) Taking a Substantial Step—**Young**
   b) **5.02 Criminal Solicitation**
      • It’s an affirmative defense if the person persuades the solicited person not to commit the crime, or if you somehow prevent the crime.
      - Solicitation is enough even if it is not communicated.
      - The punishment here is out of line with the mainstream. It says that solicitation is of the same grade as conspiracy and attempt.
C. Negative Acts

i. **Biddle v. Commonwealth**—
   a) **RULE:** A murder has been committed if death is the direct consequence of the malicious omission of the performance of a duty. **IF** the omission is negligent and not willful, it is manslaughter.
   b) Mother didn't feed baby, so was it murder or manslaughter. Liability is premised on omission by failing to provide the basic necessities to care for the child including feeding the child and keeping it hydrated.
   c) Duty to someone who his helpless (3 mo old infant) that is based on status relationship (parent/minor child)
   d) Question is whether she was malicious and intentionally didn't feed the child to kill it, or was it just neglect?
   e) Legal duties based on states relationships include:
      - Parent/child—notice that extended family isn't included.
      - married couples
      - master/servant

ii. **Commonwealth v. Teixera**—
   a) **RULE:** A conviction for neglect in child support requires proof that a D was able to pay.
   b) Guy neglecting to support an illegitimate child. If he is financially unable to support the child, then he can't be found guilty of willfully failing to support the child.
   c) Duty to support child rises out of statute. Duty is to provide reasonable support and maintenance. There are three elements of the statute:
      - D must be the parent of the minor child.
      - D must have knowledge of the existence of a legitimate claim of parentage
      - D must neglect or willfully refuse to provide support (at issue in this case)
   d) If we are going to hold someone liable for an act by omission, that person must have the capacity to do the omitted act.

iii. HYPO: Let’s suppose we have a good Samaritan statute that says that you have a duty to rescue a drowning swimmer. You are having a picnic, and you see/hear someone drowning in the lake. Can the person at the picnic swim? Should the person at the picnic know she/he has a duty to save the swimmer. What if there is no statute? If no statute then no duty.

iv. **Jones v. United States**—
   a) **RULE:** A person cannot be held criminally liable for a failure to act unless it is shown that the person owed a legal duty which was breached by his omission.
   b) 2 kids taken into caretaker's home. $72 per month was supposed to be paid for care of first child. The mother may have stopped paying the $72. That first child dies. If there was a contract, that contract could have created an independent legal duty for Jones to care for the child. In order to find that Jones was criminally liable the jury has to find that there was a legal duty. But the judge didn't instruct the jury to do so. Mother may have lawfully delegated her duty to care for the children to Ms. Jones
   c) Omissions are not punishable unless a legal duty exists
   d) Sources of Legal Duty:
      - Status Relationship
      - Statute
      - Contract (express or implied)
      - Voluntary Assumption of Care (part of this is that you have isolated or secluded the person in need so that no one else is likely to come forward to provide assistance)

v. **Davis v. Commonwealth**—woman takes her mother's food stamps, and then doesn't feed her mother or provide heat
   a) **RULE:** To support a conviction of involuntary manslaughter, an accused’s conduct must be criminally negligent—of such reckless, wanton, or flagrant nature as to indicate a callous disregard for human life in the probable consequences of the act.
   b) Court says that a contractual duty is implied from the circumstances of the case. Davis was the sole care provider and was taking care of the mother full time. Davis told others she was the sole caretaker for her mother. She was taking the mother's food stamps as her agent. She was getting the benefit of those food stamps because of her care provider status. She also received the mother's social security benefits which took care of the household expenses. She had free lodging.
   c) Could also argue for voluntary assumption of care.
   d) There may be special statutes in some states that impose a duty to care for an infirm parent, but at the common-law there is no status relationship

vi. **Van Buskirk v. State**—
   a) **RULE:** One who negligently places another in a position of peril where it is reasonably foreseeable that the victim would be injured by subsequent acts of others is criminally culpable if such injuries occur.
   b) Boyfriend and girlfriend got into a fight, girlfriend hit boyfriend with car, she left him, and he got hit by another car and was killed. By her action, she put him in a position of peril, and in doing so, she created a legal duty to him
c) If you are a rescuer it might look more like voluntary assumption of care because you have precluded others from rescuing.
d) Even if Van Buskirk were not negligent in hitting him, she would still be guilty of manslaughter, because the negligence comes from leaving the vulnerable guy in the roadway.
e) Whether or not other people were negligent is irrelevant to Van Buskirk’s negligence.
f) Just have to do something. If she were scared of him, she wasn’t required to throw him back in the car—she could have called 911 on a cell phone or flagged down another car.
g) If we’re talking about culpable negligence then we are talking about a risk that she should have been aware of. You need both foreseeability and causation.

D. Conspiracy
i. United State v. Payan
   a) RULE: Wharton’s Rule does not preclude conviction for both the substantive offense and conspiracy to commit that same offense unless it is impossible to commit the substantive offense without concerted action.
   b) Guy was smuggling stolen tractors across Mexican border with another guy.
   c) Warton’s rule: prohibits conviction of both the substantive offense and conspiracy for that offense if the substantive offence cannot be committed by only one person (like dueling or adultery)
   d) Why punish conspiracy in the first place? Well, there is the group danger rationale—if 2 or more people are involved then it may be more likely that the crime will happen and the chance of success of the crime increases while the chance of abandonment decreases. Also increases the chance that the criminal activity will broaden.
   e) In cases like adultery or dueling having 2+ people involved doesn’t change the nature of the crime or make it any more harmful for society.
   f) You look at the elements of the target crime in the abstract, not the actual facts in the case, to determine whether or not Warton’s rule applies.
   g) What about the whole business with the aiding and abetting statute? You can’t aide and abet w/out two people. But when we are talking about Warton’s rule we have to be talking about the target offense. The target offense is transporting stolen goods, not aiding and abetting.

ii. Gebardi v. United States
   a) RULE: Conspiracy liability cannot be imposed upon one whose acquiescence in the crime involved is protected by affirmative legislative policy.
   b) Mann Act Case (women across state lines for sex)
   c) It’s impossible to charge with conspiracy because the woman doesn’t commit a crime under the Mann Act.
   d) This isn’t a classic Warton’s Rule crime because the woman’s consent isn’t necessary.
   e) Since she can’t participate in the conspiracy, then the man can’t either. The woman is a member of the legislatively protected class. The statute only imposes a penalty on the person who transports. That must mean that congress intended to give the woman being transported immunity. If she has immunity under the statute then she can’t be guilty of conspiring to transport herself. Analogy to statutory rape.
   f) Hypo: Prostitution Ring. Madam arranges for the man and a prostitute to cross state lines. Madam and Man could be convicted of conspiracy, but the hooker still couldn’t be. What if prostitute initiated contact and went and brought the train ticket. Then maybe she could be charged if she does more than just consent to be transported.

iii. Conspiracy Elements:
   a) Agreement
   b) 2 or more
   c) Criminal objective
   d) Intent
      • To conspire
      • To commit target offense
   e) Overt Act

iv. People v. Swain
   a) RULE: Conspiracy is a specific intent crime requiring an intent to agree or conspire, and a further intent to commit the target crime.
   b) Kid gets killed in drive-by, there is conflicting evidence over what the intent of the people in the car was, and whether Swain was in the car. Swain convicted of conspiracy to murder.
   c) Difficulty is that murder charge can be based on direct or IMPLIED malice.
   d) There is a requirement of dual intent. (1) you must have intent to conspire (have to intend to agree) and (2) you must have the intent to commit the target offense
   e) Problem with jury instruction was that the jury could have had a conspiracy for implied malice murder. Judge should have told them they could only be guilty of conspiracy if found second degree murder based on unpremeditated murder with express malice option under 2nd degree murder, and not under the implied malice
or felony murder options.

v. People v. Lauria
a) Case where guy runs telephone service and he knows some of his clients are hookers
b) 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, or
   • (2) through an inference that he intends to participate based on:
     • (a) his special interest in the activity, or
     • (b) The aggravated nature of the crime itself.
c) What you can look at in determining whether there is a special interest in the activity
   • Volume of business being grossly disproportionate to any legitimate demand—if a huge chunk of his business was prostitutes
   • Price being inflated or discounted for the criminals—stake in the venture
   • If there is no legitimate use for the goods or services—selling marked cards to casinos
d) How to resolve Supreme Court Precedent:
   • Falcone was the sale of yeast, cans and sugar to distillers who were engaged in moonshine trade.—no conspiracy—inferrance of intent to help is not inescapable
   • Direct Sales was a case where wholesaler sold narcotics in huge quantity to a doctor who sold them to druggies. —(Chain Theory of ) Conspiracy—inferrance of intent to help is inescapable
   • Unrestricted items of commerce vs. restricted items of commerce.
   • The duty to take positive action to dissociate oneself from activities helpful to violations of criminal law is far stronger and more compelling for felonies than it is for misdemeanors or petty offenses. This means that the target crime was much more severe (a felony) in Direct Sales than it was in Falcone (misdemeanor).

vi. Pinkerton v. United States
a) RULE: An overt act of one partner may be the act of all so long as the partnership in crime continues.
b) Brothers convicted of violating the tax code. One was in prison at the time of the supposed conspiracy.
c) Court says that if you join a conspiracy you are a member of that conspiracy until the conspiracy is terminated by achieving its objectives or until you take an affirmative act to withdraw from the conspiracy.
d) Co-conspirators are vicariously liable for one another’s actions, but they won’t be held liable for other crimes that are so far out of range that they weren’t in the contemplation of the parties at the time of the formation of the conspiracy.
e) If the substantive offense is something done in the furtherance of the conspiracy it is within the scope of the unlawful project or if it is a reasonably foreseeable ramification of the plan, then you are liable for the act of your co-conspirator.

vii. People v. Sconce
a) Sconce hired Garcia to kill someone. Garcia contacted Dutton to do the job. Dutton went to jail for parole violation. Sconce called off the hit, but this was after Garcia and Dutton had staked out the home of the victim-to-be.
b) CA court says that withdrawal is not a defense to conspiracy after the crime of conspiracy has occurred, which happens when the first overt act is taken.
c) This doesn’t mean that withdrawal doesn’t do anything. Sure, you are still liable for conspiracy, BUT you won’t be liable for any subsequent criminal acts of the other members of the conspiracy.

viii. United States v. Feola
a) RULE: Knowledge that the intended victim of an assault is a federal officer is not a requisite for the crime of conspiracy to commit an assault upon a federal officer engaged in performing his official duties.
b) Group planned to rip off guy with sugar (claiming it was heroine) or assault him if it didn’t work. Guy turned out to be a federal agent.

ix. Marquiz v. People
a) RULE: The rule of consistency does not apply where the alleged co-conspirators are not tried in the same proceeding.
b) There are three defendants who are charged with conspiracy to commit murder and of murder. The first two tried are found not guilty of conspiracy. Marquiz is then found guilty of conspiracy. They were tried separately.
c) Rule of Consistency says that if all but one of the defendants is found not guilty of conspiracy then he
shouldn’t be found guilty of conspiracy. This only applies when the defendants are tried together.

d) The D who is found guilty has protection in that he can appeal if his verdict is the one that is wrong. If the one’s who are found not guilty are the ones where the jury is wrong, there is nothing that can be done about it.

x. People v. Foster

a) D approached another man in a bar and asked him if he wanted to make some money. Hatched a scheme to rob an old guy. Bar guy said he wanted time to think about it. Later D came back and told bar guy more. D asked bar guy if he was ready to do it, and bar guy went to the cops and narced out D, having never intended to commit the robbery.

b) Gov’t argues that the IL statute only requires a unilateral agreement for conspiracy, rather than a bilateral agreement. “any person who agrees with another person….” Is the language. This is very similar to the MPC. The MPC adopts a unilateral theory, but its very clear in its intent to do so in the commentary. The IL legislature isn’t. This would be a drastic change in the law, and since the legislature didn’t explicitly say they wanted to make the change, the court certainly isn’t.

c) Since solicitation is a crime in IL, and solicitation covers the cases that unilateral conspiracy would that bilateral conspiracy wouldn’t, then adopting a unilateral theory is pointless.

xi. MPC §5.03: Criminal Conspiracy

a) (1) Definition of Conspiracy. A person is guilty of conspiracy with another person or persons 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; or
   • (b) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

b) (2) Scope of Conspiratorial Relationship. If a person guilty of conspiracy, as defined by Subsection (1) of this Section, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such crime.

c) (3) Conspiracy with Multiple Criminal Objectives. If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship. Subsection 4 is omitted.

d) (5) Overt Act. No person may be convicted of conspiracy to commit a crime, other than a felony of the first or second degree, unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

e) (6) Renunciation of Criminal Purpose. It is an affirmative defense that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

f) (7) Duration of Conspiracy. For purposes of Section 1.06(4):
   • (a) conspiracy is a continuing course of conduct that terminates when the crime or crimes that are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired; and
   • (b) such abandonment is presumed if neither the defendant nor anyone with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation; and
   • (c) if an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation therein.

E. Aiding and Abetting

i. People v. Beeman

a) RULE: An aider and abettor must have rendered aid with an intent or purpose of committing or encouraging the commission of the target offense.

ii. State v. Foster

a) Foster’s girlfriend was rapped. Foster and Friend go and find rapist and beat him up. Foster goes to get girlfriend to identify the rapist and leaves Friend w/rapist. Friend kills rapist.

b) Can Foster be held liable under aiding and abetting for criminally negligent homicide? Yes. You can be held responsible for the foreseeable consequences of your actions.

c) Intent to aid requires
   • Intent to commit the target offense or
   • Mental state of the target offense

iii. State v. Linscott

a) Linscott and another guy were going to rob a drug dealer. During the robbery, the other guy shot the drug dealer.

b) In some jurisdictions you can be held liable under aiding and abetting if the target offense was a
foreseeable consequence of the crime you intended to aid and abet in.

c) As a result of participating in the robbery in which he intended to aid it was a foreseeable consequence that someone would get killed.

d) Questions you have to ask to determine liability under this standard?
   • Did the primary commit the primary crime?
   • Did the defendant have the intent to aid in the primary crime (in this case the robbery)
   • Did the primary commit the secondary crime? (the murder)
   • Is the secondary offense a foreseeable consequence? (This is an objective standard—should the defendant have foresaw the secondary crime, not did he foresee it)(This is more in the abstract—is it foreseeable that in the commission of the robbery a murder will happen—not a fact specific inquiry)

iv. Bowell v. State
   a) Bowell is convicted of aiding and abetting in a sexual assault. He knew that the rapist was going to have sex with the woman and he acted to facilitate that sex.

   b) The rub is that that in a crime like rape, there are attendant circumstances that are necessary for the crime—lack of consent. In order for Bowell to be aiding and abetting, Bowell needs to know that there is no consent to the sex.

v. State v. Vaillancourt
   a) Vaillancourt went with his buddy to break into a house, and his buddy kicked in a window. The neighbor called the cops, who arrested Vaillancourt and his buddy.
   b) The indictment charged Vaillancourt with burglary by accompanying (his friend) to the location of said crime and watching (as his friend attempted to commit the crime of burglary.
   c) Knowledge and mere presence at the scene of a crime could not support a conviction for accomplice liability because they did not constitute sufficient affirmative acts to satisfy the actus reus requirement of the accomplice liability statute.

F. Accessory After the Fact
   i. State v. Williams
      a) RULE: One cannot be an accessory after the fact to a felony, unless the aid is given after the commission of the felony is complete.

   ii. State v. Truesdell
      a) RULE: The crime of accessory after the fact is a separate crime, therefore conviction of the principal is not a condition precedent to the conviction of an accessory after the fact.

   iii. Model Penal Code §2.06
      a) Somebody is legally responsible for the conduct of another if he is an accomplice
      b) Needs to have the purpose to facilitate the committing of a crime. Can do this by aiding and abetting, getting someone to do it for him, or if he has the legal duty to prevent the crime and doesn’t do it.
      c) If you wholly deprive your efforts of effectiveness, or inform the police, or otherwise prevent the crime then you have a defense of withdrawal.

   iv. Model Penal Code §242.3
      a) Accessory after the Fact (Hindering apprehension or prosecution)—if your harbor, conceal, transport, or provide weapons to a criminal, tamper with witnesses, volunteer false info, or destroy evidence that is an independent crime.
      b) Must the person know the particular crime the felon has committed? There is a split of authority amongst jurisdictions. Under the MPC the last clause in this section says all you need to know is that the felon shot the victim—you don’t need to know the victim died.

G. Causation
   i. People v. Stamp
      a) RULE: Where criminal causation is established by the creation of fright, fear, or terror in a homicide victim, the felon “takes his victim as he finds him.”
      b) Guy has heart attack while he’s being robbed. The court says that the shock of the robbery caused the death, even though he probably would have died anyway from being a fatty. Robbers were found guilty of felony murder because their felonious actions led to the heart attack and death.

   ii. State v. Sauter
      a) RULE: One who inflicts a wound with the intent to endanger life will not escape responsibility even if the victim would have lived but for negligent medical care he received.
      b) D was drunk, got into an argument with the victim, stabbed the victim, the doctor trying to fix the victim fucked up. D says medical malpractice was the cause, not his stabbing.
      c) Court doesn’t by that argument and says the only way the chain of causation could have been broken is if the intervening event is the sole cause of the death.
      d) This is a case where one guy stabbed another. The stab victim went to the hospital, and the doctor committed medical malpractice. The stabber said that this intervening act should break the chain of causation.
e) Medical malpractice was not sufficient to break the chain of causation.

f) The break in the chain needs to be the sole cause of death. However, the stabbing needs to be a substantial factor in the death. So if the hospital burned down, the stabber is off the hook.

g) So what if the guy that got stabbed gets a communicable disease at the hospital.

iii. Letner v. State

a) RULE: Criminal causation will not be broken because an actor’s conduct was not the immediate cause of death, if it was connected with the intervening cause, or if the intervening cause was the natural result of it.

b) People were crossing a river in a canoe. Half way through a guy on a bluff (Letner) started shooting at them. That caused the guy steering the canoe to jump out, and he and one of the two people who remained in the canoe drowned. The guy jumping out caused the canoe to capsize.

c) The court says that although the shooting was not the immediate cause of death, the deaths were foreseeable. Even though the act of Walter jumping out of the boat was the immediate cause of the deaths, his doing so was a foreseeable consequence of the shooting.

iv. State v. Petersen

a) Drag racing case

b) First court to actually talk about causation in fact and causation in law.

• Factual causation if D’s conduct was a substantial factor bringing about the result.

• Legal causation asks whether the result was in area or range or zone of risk that the breach of duty created.

c) Questions for legal causation:

• Was the victim in the class of individuals who are in danger from this kind of conduct? (in this case its pedestrians, motorists, those in any buildings hit by the cars)

• Was the collision that the other car was involved in the kind of result that the prohibition was designed to prevent? Of course it was.

d) What about slowing down? The other driver’s not stopping was still part of the risk.

e) Petersen argues that they were both willing participants, so neither should be responsible for the other’s death. The court doesn’t buy this. Even if the dead guy was also at fault, that doesn’t negate Petersen’s role in the death or his culpability. The legislature hasn’t created any specific exception for co-participants in reckless behavior.

g) There is such an exception in the felony murder rule. But there isn’t one for manslaughter, so the court won’t make that policy judgment on its own.

g) Dissent says the assumption of the risk trumps the responsibility of the surviving driver.

v. Model Penal Code § 2.03. Causal Relationship Between Conduct and Result; Divergence Between Result Designed or Contemplated and Actual Result or Between Probable and Actual Result.

a) (1) Conduct is the cause of a result when:

• (a) it is an antecedent but for which the result in question would not have occurred; and

• (b) the relationship between the conduct and result satisfies any additional causal requirements imposed by the Code or by the law defining the offense.

b) (2) When purposely or knowingly causing a particular result is an element of an offense, the element is not established if the actual result is not within the purpose or the contemplation of the actor unless:

• (a) the actual result differs from that designed or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm designed or contemplated would have been more serious or more extensive than that caused; or

• (b) the actual result involves the same kind of injury or harm as that designed or contemplated and is not too remote or accidental in its occurrence to have a [just] bearing on the actor's liability or on the gravity of his offense.

c) (3) When recklessly or negligently causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of negligence, of which he should be aware unless:

• (a) the actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

• (b) the actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a [just] bearing on the actor's liability or on the gravity of his offense.

d) (4) When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the actor's conduct.

III. Responsibility: In General

A. Negligence and Recklessness

i. Gian-Cursio v. State—Criminal Negligence

a) RULE: Criminal negligence exists where a person who undertakes to cure another exhibits gross lack of
competency, or gross inattention, or criminal indifference to the patient’s safety regardless of whether such person acted in good faith.

b) Chiropractor used “natural” treatment methods for a guy with TB, and the patient died. If they would have used normal medical methods he would have lived. Chiropractor was found to have been criminally negligent, and thus was convicted of manslaughter.

c) Criminal negligence: There is an objective standard of failing to practice what he should have known. His subjective state of mind is irrelevant.

d) What about the fact that the patient came to Gian-Cursio and specifically asked for this new age healing crap? The court is saying that Gian-Cursio's biggest problem is that he held himself out as being capable and competent of treating TB. That act was grossly incompetent, no matter how sincere his belief was that he could help the patient. In fact, G-C's treatment hastened the patient's death. If you hold yourself out as being able to treat a medical condition, then you will be held to the standard that people qualified to treat the condition would be.

e) For homicide you would need the criminal negligence causing death. If it didn't cause death, then they'd have to find a different crime.

f) Consent: victim's consent to criminal conduct will not be a defense to a crime unless that consent negates an element of the crime (like rape or larceny)

ii. State v. Petersen—Recklessness

a) RULE: One who participates in reckless conduct cannot withdraw from criminal responsibility by performing a single prudent act immediately prior to the infliction of harm.

b) Petersen was in an acceleration "race", and the guy he was racing wound up dead. Petersen is charged with homicide.

c) What's the difference between recklessness and negligence? Recklessness requires awareness.

d) Petersen was charged with being criminally reckless. This means that he had

   • (1) consciously disregarded a
   • (2) substantial and
   • (3) Unjustifiable risk.

e) If he doesn't testify, you can get to the subjective “conscious” part of the definition through circumstantial evidence. Evidence that there were speed limit signs and schools and stuff, combined with evidence that they were driving over twice the speed limit.

f) Petersen claims, “but I stopped.” Too bad. You can't terminate your recklessness like turning off a light switch. His unilateral and un-communicated act of stopping could not terminate his recklessness.

g) His being the instigator isn't necessary—it’s enough that he participated in the reckless race.

iii. State v. Howard

a) RULE: In order to show negligent homicide, it must be shown the D was unaware of a substantial risk that the victim would be killed, of which he should have been aware.

b) Second Degree Murder—Intentionally or knowingly killed

c) Manslaughter—reckless

B. Intent: General, Specific, and Conditional

i. Thacker v. Commonwealth—

a) RULE: Criminal attempt requires that the act be done with the specific intent to commit the particular crime allegedly attempted.

b) Guy shoots at tent to shoot light out, nearly hits woman and her child, and is charged with attempted murder

c) Supreme Court reversed the trial court's guilty verdict, because the acts were generally malevolence, but they lacked the intent to kill the woman. Court says we don't need intent to shoot, what we need is intent to kill. This is specific intent. The intent in this case was to shoot out the light. What if he had killed her? Well, then his mental state would have been reckless. He would have consciously disregarded a substantial and unjustifiable risk.

C. Other Particular States of Mind

i. State v. Nastoff---

a) RULE: Criminal statutes which proscribe “malice” punish conduct that is performed with the intent to do the wrongful act, and not a different act whose consequences are ultimately wrongful.

b) guy knows he's using an illegal chain saw, but didn't intend to start fire. Even though the defendant intended to do a wrong, he didn't intend to do the wrong he was accused of (malicious destruction of property). Malice requires that he intend the bad act he is accused of.

ii. State v. Beale—

a) RULE: The knowledge required for the crime of concealing stolen property is the D’s personal and subjective knowledge that the property was stolen.

b) Antique shop owner who sells stolen property even though cop tells his wife not to, and is then charged with knowingly concealing stolen property.
c) Does knowingly require proof of subject knowledge (awareness of circumstances that would lead to belief that the goods were stolen) or do we use an objective standard (notice of facts or circumstances that would lead a reasonable person to believe that the goods were stolen)? The jurisdictions are split on this. The court in this case prefers the subjective standard. They differentiate between a civil prosecution and a criminal prosecution. Reasonable person can be used as evidence that he may have known, but it’s not dispositive.

d) Knowingly can be interpreted under two standards:
   - Subjective: actual knowledge or belief—this is what the court uses here
   - Objective: Reasonable person should have known

iii. United States v. Jewel—
   a) RULE: Where a D is aware of facts indicating a high probability of illegality but purposely fails to investigate because he desires to stay ignorant, he has knowledge of the illegality, and positive knowledge is not required.
   b) Guy didn't have positive knowledge that he had weed in his car, but his ignorance was deliberate. The court held that deliberate ignorance is sufficient mens rea. Ignorance is knowledge. Theory is that drug dealers will always go for plausible deniability, and that allowing them to do so will circumvent the purpose of the drug laws. So this court rejects the objective and subjective tests, and goes for a willful blindness/deliberate ignorance/conscious avoidance test.
   c) Deliberate ignorance can serve as a proxy for knowledge. In this case Jewel deliberately refrained from confirming what he thought was true (that there were drugs in the car)
   d) Dissent Prefers the Model Penal Code standard—a person has knowledge if there is a high probability of the existence, unless subjectively one does not believe the drugs are there.

iv. Fields v. United States—
   a) RULE: The meaning of the word “willful” depends upon the nature of the crime and the facts involved, but generally means only that a person charged with a duty knows what he is doing.
   b) Guy didn't comply with Congressional subpoena and was charged under a federal contempt statute
   c) The court argued that as long as this was something done knowingly and willfully, it doesn't matter if he was acting in good faith or if he were acting with malice. Willfulness can have a lot of meanings, and in this case, it doesn't take a lot beyond knowing what he was doing and doing it.
   d) In some areas willfulness will connote a bad purpose, like under the federal tax laws. In that case it is the intentional failure to fulfill a legal duty. This is because the tax codes are just so fucked up and incomprehensible.

v. King v. State—RULE: A murder conviction does not require the specific intent of killing any particular victim.

D. Strict Liability—Commonwealth v. Olshefski—
   i. RULE: Crimes which are merely mala prohibita (bad because the legislature says they are) do not have mens rea as a necessary element, and proof of them may be made on a strict liability basis.
   ii. Trucker had the ticket saying that his truck wasn't overweight, but then the cops weighed it and he was overweight.
   iii. There are two types of crime:
      a) Mala in se—crimes because they are bad. They require a mental element and a physical element (act and mens rea)
      b) Mala prohibita—only crimes because the legislature says so, so violating them doesn't require a mental state.

IV. Offenses Against the Person

A. Homicide
   i. Model Penal Code: §210.1 Criminal Homicide
      a) (1) A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being.
      b) (2) Criminal homicide is murder, manslaughter or negligent homicide.
   ii. Felony Murder
      a) Reckless required to satisfy the universal malice standard, or extreme recklessness that will elevate the crime from manslaughter to murder, we need to prove an extreme indifference for human life. This isn't toward an individual, it is toward life in general. It needs to be really shocking, outrageous, or especially heinous, to go from ordinary recklessness to this criminal recklessness that has no regard for human life.

   b) State v. Hokenson
      • RULE: Liability will be imposed under the felony-murder doctrine whenever the conduct causing the death was done in furtherance of the design to commit the felony.
      • Guy takes a bomb to a robbery. After the cops subdue him, it goes off, and kills one of the police officers.
      • To show that he's reckless, you have to show that he is aware of a substantial and unjustifiable risk. So he's obviously reckless.
      • Felony murder requires that it be in the course of a felony. In the course of a felony includes the time when he is fleeing, and not once he is home safe.
      • In so far as we are talking about the death, the prosecutor doesn't have to prove recklessness, b/c the felony
murder rule establishes a presumption that if you are committing one of the enumerated felonies that you were acting with the requisite recklessness. But the prosecutor WILL have to prove the mens rea for the felony in question, in this case, robbery.

- As long as you can say it was set in motion by the defendant's conduct, and its not too attenuated, then he is to blame because he created the risk.

c) **People v. Phillips**
- Chiropractor committed medical fraud--grand theft by telling cancer patient he could cure the cancer. Was convicted of felony murder. However, felony murder can only come from a felony inherently dangerous to life, and grand theft is not such a crime.
- If we look at the statute that defines grand theft there are lots of ways to commit grand theft, so grand theft in a vacuum is not inherently dangerous, and the court will not look at the specific circumstances of of the felony. He could have committed grand theft without being dangerous to life inherently.
- The function of the felony murder rule is that the state doesn't have to prove a mental state regarding the death, and it creates a presumption of malice. Its hard to say that someone who engages in looting a corporation acts with the kind of culpability that we would say is equivalent to extreme recklessness or universal malice.
- There is judicial hostility toward the felony murder rule. If every felony were included, then the rule would be so broad it would go beyond comprehension. So the courts will do whatever they can to narrow the rule's reach.

d) **People v. Patterson**
- RULE: Violation of a law prohibiting the selling of cocaine may lead to felony-murder liability if selling cocaine carries a high probability of resulting death.
- Cocaine case. They're doing coke together, one of them dies, the other gets charged with a bunch of drug charges. He was charged with murder, it was dismissed, then appealed, and on appeal the lower court erred. So have to determine whether furnishing coke is inherently dangerous. Court is saying you don't have to look at all the crimes covered under the statute. The court isn't saying we look at the D's conduct, it is saying we look at the elements of the crime that was committed and see if those elements add up to being inherently dangerous.
- In many instances the felony murder rule just isn't needed. In many cases if you force the prosecution to do their historical job of proving mens rea, then you'll still get your conviction.

e) **State v. Mayle**
- RULE: A person may be convicted of first-degree murder if a co-perpetrator of a felony commits a homicide.
- After robbery Mayle's accomplice attacked and killed a cop 3 miles away from the scene of the robbery. Mayle claims he was no longer committing a robbery, so he shouldn't be convicted of felony murder.
- The court says they were still in the act of escaping, and that in the process of escaping they stopped to commit another crime rather than going to a safe place. Until they've reached a place of at least temporary safety the felony is still in progress. Most statutes will say that a felony murder is any killing that occurs during the course of perpetrating or attempting to commit, or during flight or escape from the commission of the felony.
- As long as your statute makes it illegal to intentionally kill a person, then this is plain old murder—don't need the felony murder rule for the guy who actually shot the cop, anyways...but Mayle didn't do the killing. So one way to get Mayle for murder is through the vicarious liability of the felony murder rule. W/out felony murder we need another theory of vicarious liability like conspiracy (which would have to be a natural and foreseeable consequence, or an aiding and abetting theory that would require proof that Mayle wanted to help kill the cop).

f) **People v. Wilson**
- **Burglary:** breaking and entering into the household of another with an intent to commit a felony therein.
- Felony in this case was assault with a deadly weapon.
- “Merger”--refers to the concept that only felonies independent of the homicide can support a felony-murder instruction; felonies that are an integral part of the homicide are merged into the homicide.
- Using the burglary as the underlying felony to support the felony murder charge is problematic because assault is the felony underlying the burglary.
- If the purpose is to deter killing, most killings include, in fact, an assault on the victim, and if the D has already formed the intent to assault, and the assault is part and parcel of the homicide, then the deterrent function of the felony murder rule does not apply.
- If we allowed the aggravated assault to be part of the felony that supports the felony murder, then the felony murder rule will overtake the law of homicide.--Bootstrapping argument. Lesser included offenses would just disappear.
g) **People v. Hansen**
- **RULE:** The offense of discharging a firearm at an inhabited dwelling is an inherently dangerous felony, and does not merge with a resulting homicide for purposes of the felony murder rule.
- Just because assault is an element of the crime does not necessarily mean that the underlying felony will merge. When we are talking about just assault that ought to merge.
- Not all jurisdictions recognize merger, and those that do vary in what they will and will not “merge.”

iii. **Premeditation and Deliberation—First Degree Murder**
   a) **First Degree vs. Second Degree Murder**
   - Some states and the model penal code don't have degrees of murder. Also no degrees of murder at common law
   - Some jurisdictions include only premeditation and deliberation in first degree murder. Others also include some or all felony murders, and some include murders by certain means, like poisoning
   
b) **People v. Perez**
   - **RULE:** Premeditation depends on the extent of the reflection and can occur during a brief period of time.
   - Planning, motive, and manner of killing are the kinds of factors courts look at to determine whether we have premeditation and deliberation
   - Willful means intentional, premeditated means considered before hand, deliberated means formed or arrived at after careful thought
   - You have to infer from the facts of the case whether or not premeditation and deliberation exist.
   - As long as we can say there is a cold calculated deliberation, then we have premeditation

   c) **State v. Schrader**
   - Specific intent to kill is their definition of “willful, premeditated, and deliberate.”
   - That specific intent can be formed at the time of the killing or any time before hand—it can occur in the “twinkling of an eye.”
   - The standard of review is not whether the court was persuaded, but rather, whether the facts are such that a reasonable jury could have found beyond a reasonable doubt whether or not premeditation existed.
   - The intent to kill may be formed at the time of killing. This doesn't leave a whole lot of difference between regular intentional killing and premeditated killing. This doesn't give us a bright line, but the court argues that when we look at the wide variety of verdicts a jury can find we should leave it up to juries to sort this out since there is no bright line. The jury should be able to come to a reasonable judgment regarding the appropriate culpability.
   - This was followed by Guthry, where the court says that the legislature believed there to be an actual difference, and we can maintain a meaningful distinction. A proper instruction would say that any interval of time between the forming of the intent to kill and the killing is long enough for the killer to be fully conscious of what he intended, that is sufficient for premeditation.

   d) **Midgett v. State**
   - Dad regularly beat his son, and one day, the dad beat his son to death. Because the dad was constantly abusing his child, his intent was to keep on beating the kid, not to kill him.
   - The defendant must not only intend to kill, but he must have deliberation and premeditation. Deliberation is having a cool mind capable of reflection and premeditation is the actual reflection. So the court reduced this to second degree murder. What's the theory behind this? The abuse creates a substantial and unjustifiable risk of killing the kid. There is extreme indifference for the boy's life—statutory. In common law terms this is implied malice.
   - Malice of forethought clearly includes specific intent to kill and extreme recklessness. But it also includes intent to cause serious bodily injury.

   e) **State v. Forrest**
   - Case where guy shoots his terminally ill father in the hospital four times and then he admitted the crime. He said he had killed his father and that he promised he wouldn't let him suffer.
   - Seven factors to determine premeditation and deliberation:
     - want of provocation on the part of the deceased
     - conduct and statements of D before and after killing
     - threats and declarations of the D before and during the killing
     - ill-will or previous difficulty between the parties
     - dealing of lethal blows after the victim is helpless
     - evidence killing was done in a brutal matter
     - nature and number of victims wounds

   f) **Model Penal Code: §210.2 Murder**
   - (1) Except as provided in Section 210.3(1)(b), criminal homicide constitutes murder when:
     - (a) it is committed purposely or knowingly; or
(b) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life. Such recklessness and indifference are presumed if the actor is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviate sexual intercourse by force or threat of force, arson, burglary, kidnapping or felonious escape.

(2) Murder is a felony of the first degree [but a person convicted of murder may be sentenced to death, as provided in Section 210.6].

iv. Voluntary Manslaughter

a) State v. Guebara

- RULE: Innate peculiarities of a defendant may not be considered in deciding whether a basis for a manslaughter instruction exists.
- Anti-social personality guy who had smoked weed shot his wife, and now argues that there should have been a voluntary manslaughter instruction. On appeal the court finds that the trial court did not err.
- There was no provocation. A provocation is adequate if it is calculated to deprive a reasonable man of self-control and to cause him to act out of passion rather than reason. The test is objective.
- Mere words or gestures do not constitute provocation. If two persons engage in combat, however, and one dies, then it can be provocation.

Elements at Common-Law:

1. Heat of Passion—
   - (this guy has been brooding about this for quite some time) (was he actually provoked is a subjective test)
   - Adultery, mutual combat, aggravated battery; illegal act could lead to heat of passion.
2. Provocation--Legally Adequate (Objective Test)
3. Intent to Kill

b) People v. Chevalier

- RULE: Verbal revelations of marital infidelity are not sufficient provocation to reduce a homicide from murder to voluntary manslaughter.
- Only discovery of adultery will suffice for heat of passion. Immediately before or immediately after you catch them in the act is the only acceptable provocation by adultery at common-law.

c) State v. Dumlao

- RULE: A homicide may be manslaughter if done while the perpetrator is under the influence of an extreme disturbance for which there is a subjectively reasonable explanation.
- Pathologically jealous guy with paranoid personality disorder and hypersensitivity kills his wife and his brother-in-law.
- Hawaii penal code is based on the MPC.
- At common-law the elements were:
  1. provocation that would rouse a reasonable person to the heat of passion
  2. actual provocation of the defendant
  3. a reasonable person would not have cooled off in the time between the provocation and the offense (objective)
  4. the defendant did not cool off (subjective).

d) Model Penal Code §210.3 Manslaughter

1. Criminal homicide constitutes manslaughter when:
   a. it is committed recklessly; or
   b. a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be.

2. Manslaughter is a felony of the second degree.

v. Criminal Negligence

a) State v. Hardie--Gross deviation from the standard of ordinary care is negligent homicide.

b) State v. Bier

- RULE: A person who kills in the good-faith but unreasonable belief that his actions were justified cannot be punished for any greater charge than negligent homicide.
- He knew the gun was cocked and loaded; he challenged his drunk wife to use it. Any reasonable person would know this is dangerous. The court says that if you add all these things together a reasonable person should have known there was a reasonably high degree of risk that was unjustified.
- Had the government adequately proved the mental state for involuntary manslaughter? Definition of negligence under the statute includes conscious disregard of the risk that is a gross deviation from the standard of care and disregarding a risk of which he should have been aware. So this definition includes
both conscious and inadvertent risk taking.

- As long as a death is foreseeable, that’s enough. You don’t need to foresee who dies or how exactly they die, just that a death by shooting is a real possibility.

vi. **Model Penal Code: § 210.4 Negligent Homicide**
   a) (1) Criminal homicide constitutes negligent homicide when it is committed negligently.
   b) (2) Negligent homicide is a felony of the third degree.

V. **Responsibility: Modifying Circumstances**

A. **Ignorance or Mistake**
   i. Ignorance of the Law is not an excuse, but there are some exceptions.
      a) Misunderstanding of collateral law that prevents one from having the requisite intent for the charged crime.
      b) Reliance on good faith advice of an attorney
   ii. **State v. Cude**
      a) **RULE:** A D cannot be found guilty of larceny if, at the time of the taking, he honestly believed that he had a right to the possession of the property.
      b) D took his car to a repair shop. He then returned and didn’t have the money to pay the repair bill, so the mechanic wouldn’t give him the car back. Later that night he returned with a duplicate key and took his car. He was charged with larceny. He claims he took the car to sell it to pay the bill. He claims he thought since he was the owner it wasn’t illegal to steal his own car. He wanted the jury to be instructed that he could not be found guilty if, at the time of the taking, he honestly believed that he had a right to the possession of the automobile. The court agrees with him.
      c) Larceny is a specific intent crime. He would need the specific intent to deprive someone else of their property to be guilty of larceny.
      d) What’s the difference between this ignorance and if he said that he didn’t know it was a crime to steal? He hasn’t misread the larceny statute he has misunderstood the law of property. Its not a mistake of the law in question, it’s a misunderstanding of the collateral law that prevents him from having the requisite intent for larceny.
      e) The defendant had a mistake of law, but his mistake related to a different law (possession rights), so he didn’t have the intent to wrongfully deprive the garage owner of his possession interest.
   iii. **People v. Marrero**
      a) **RULE:** Criminal responsibility exists, regardless of a mistake in the interpretation of the law, unless such mistake is based upon reliance on an official interpretation.
      b) Prison guard gets arrested for carrying a pistol in a nightclub. He misunderstands the definition of a peace officer in the statute that allows peace officers to conceal and carry w/out a permit.
      c) He claims he read the statute in good faith and talked to other people in the field, and the consensus was that he was entitled to carry the weapon w/out a permit.
      d) Under the **MPC for excuse to be used there has to be reasonable reliance on the law afterward determined to be erroneous.** If you have a mistake in the law itself (it says you can do this, but then later the courts or legislature figure out that is a mistake) then you cannot hold the accused responsible because of the government’s error that he relied on. But if you let him off just because he didn’t understand the statute you are making the exception too broad and encouraging people to be ignorant of the law rather than knowledgeable of the law.
      e) The court says that the statute clearly forbade Marrero’s conduct. The trial judge said Marrero was right. Prosecution appealed. The Appellate division reversed the trial court in a split decision. He is then convicted, and the Appellate court upheld the conviction on a 4-3 vote. So how clear can it possibly be? Every court that reviewed this was very split!
      f) In this case D misread the statute. He knew it was a crime to carry the weapon unless he was a peace officer. His mistake would have to have been based on an official representation or interpretation of the law that was mistaken.
   iv. **People v. Weiss**
      a) **RULE:** Since intent to act “without authority of law” is an essential element of kidnapping, D must be allowed to prove that he honestly thought that he was acting within the law as a part of his defense.
      b) Ds (people deputized by NJ detective) in this case helped a NJ cop capture a suspect in NY (Lindbergh baby). They thought NJ detective had the authority to arrest the guy, but he didn’t. This was for the purpose of coercing the guy to confess. D’s were charged w/kidnapping. They claim they thought they had the legal authority to do what they did.
      c) D requested an instruction that if he had an honest belief he was acting under the authority of law that he wasn’t guilty of kidnapping. Trial court wouldn’t give the instruction, but Ct. of Appeals overturned that decision.
      d) The court says he didn’t have the intent to commit the crime of kidnapping b/c he thought he was acting under the law.
      e) If you wanted to compare this to **Cude** you would say that the mistake wasn’t about kidnapping law, it was...
about their legal authority as cops.

c) The majority says the intent requirement requires that you intend to UNLAWFULLY seize and confine. Most statutes don’t have this requirement of intent to act unlawfully.

d) Lambert v. California

a) **RULE:** One may not be punished for failure to register as a convicted felon unless the state can show:
   - (1) circumstances which might move one to inquire as to the necessity of registration or (2) actual knowledge of the duty to register.
   - b) D was convicted of failure to register as a felon in Los Angeles. She claimed it violated her due process rights. She was right. The code says that if you are in LA for more than 5 days or more than 5 times in 30 days, and you have been convicted of a felony in CA or of a crime that CA considers a felony in another state, then you have to register as a felon. She had lived in LA for 7 years. She was convicted of forgery during that 7 years, but she never registered.
   - c) Court says that although ignorance or mistake isn’t normally an offense, in this case there is a due process violation. It is permissible for a legislative body to create a mal in prohibita statute. But in this case she didn’t DO anything—she was completely passive. Supreme Court is concerned about notice and the fact that there was no showing made of the probability of such knowledge. Mere presence in the city of LA was not enough to put her on notice that she might have an obligation to register. If on the other hand she had taken the affirmative step to go into a commercial endeavor, then there is a probability that she should know that she has to get permits, etc. This is unconstitutional as applied to a person who wouldn’t have reason to know that there is a legal requirement for them to register.

e) Long v. State

a) Guy moves from DE to AR for health reasons and to get a divorce. Then moves back to DE and gets married again. Before the AR divorce was final he went to DE to renew his vehicle registration and interview for a job.
   - b) He had consulted an attorney and his attorney told him his second marriage would be valid. Long wanted an instruction telling the jury that it was ok for him to rely on his attorney’s advice. The court says that ignorance is generally no excuse, but if you have in good faith consulted a lawyer and relied on that lawyer’s advice you ought not to be prosecuted.
   - c) This makes sense from a policy perspective, but there is a flip side. This might open the door for incentive for the lawyer to give bad advice. There’s a possibility for fraud and collusion between the lawyer and the client. But there can be professional penalties for lawyers who give bad advice. So the court isn’t very concerned about this. But what is to prevent Mr. Long from shopping for bad legal advice. So look at the facts to see if he is acting in good faith. He would have to make full disclosure of all relevant facts to the attorney to use this legal advice as a valid defense. This creates a narrow enough exception.
   - d) The court imports some sort of general intent requirement, and says with the good faith requirements they import that the general intent is negated so he can’t be guilty of bigamy. The court here obviously felt sorry for the defendants. Basically this is a strict liability crime. OUTRAGOUS!!!!

f) People v. Vogel

a) Vogel remarries because (1) his wife told him she was going to get a divorce and (2) she remarried.
   - b) The court imports an intent requirement. The dissent says there are two exceptions, and your wife saying she is going to divorce you isn’t one of them. The dissent says there is no intent requirement mentioned in the statute.
   - c) This is not the majority view on bigamy. The dissent is. The statutory rape rule is generally applied.

g) People v. Cash

a) **RULE:** A reasonable mistake of age is no defense to a statutory rape charge.
   - b) Girl who was one month shy of her 16th birthday tells guy she is 17 and they fuck like jackrabbits. She then narcotics on him. She admits in court that she lied about her age, and she’s 5’8” 165lbs. Cash was 31 years old. They met at a bus station. She was running away from home. They rolled into a hotel and did the deed.
   - c) Court says that although ignorance or mistake isn’t normally an offense, in this case there is a due process violation. It is permissible for a legislative body to create a mal in prohibita statute. But in this case she didn’t DO anything—she was completely passive. Supreme Court is concerned about notice and the fact that there was no showing made of the probability of such knowledge. Mere presence in the city of LA was not enough to put her on notice that she might have an obligation to register. If on the other hand she had taken the affirmative step to go into a commercial endeavor, then there is a probability that she should know that she has to get permits, etc. This is unconstitutional as applied to a person who wouldn’t have reason to know that there is a legal requirement for them to register.

h) State v. Striggles

a) There was a state decision saying a gum vending machine was a gambling device, and then a municipal decision said it was ok. Restaurant owner was shown the municipal decision and other official documents saying that it wasn’t a gambling device. He wasn’t allowed to use this as evidence. He was convicted of having a gambling device.
   - b) The court upheld this conviction. At the time Striggles allowed the machine to be installed the State Supreme Court decision. It wasn’t entered until right around the time he was indicted. The municipal court decision doesn’t have value as precedent.
   - c) He’s not an intentional law breaker, and if we believe his story he is somebody who was trying to follow the law. The only reason he allowed the machine to be installed was that he had a court decision, a county
attorney’s letter, and a mayor’s letter saying it was ok.

x. Model Penal Code §2.04
a) If you act in reasonable reliance on an official statement contained in a court decision then the jury can decide whether or not this is a reasonable excuse.
b) Can reasonably rely on people who are responsible for the enforcement of the law. (like county attorney for example)
c) You can rely on official statements of the law later determined to be invalid.
d) Just talking to an attorney isn’t enough under the MPC.
e) Under section 1(a) if the ignorance or mistake negates the mental state to commit the crime, then you have a defense—this would apply to Cude and Weiss
f) If the plain language of the statute isn’t what it really means or if it is first held unconstitutional and is latter held constitutional, then a mistake based on the statute can be a defense.

xi. People v. Crane
a) RULE: Mistake of fact is a valid defense if the mistake negates the existence of the mental state which the statute prescribes with respect to an element of the offense.
b) Crane beat a guy (allegedly in self-defense) and then burned the body, thinking the victim was dead. The trial court wouldn’t allow an instruction on mistake of fact on the burning of the body. On appeal this was overturned.
c) Claiming self defense in regards to the beating. Claims mistake of fact with regard to the burning of the body (thought he was dead before he lit him on fire, and he very well may have been).
d) If at the time he burnt the body he thought the victim was already dead then when he burns the body he lacks intent to kill or do great bodily harm. The mental state is negated if you believe him.

xii. Model Penal Code 213.06
a) If the victim is 10 years old or younger then mistake of age is not a defense. If age is a critical element of the defense and the victim is over 10, then mistake of age is a defense.
b) The burden is on the D to show preponderance of the evidence that the mistake of age is reasonable.

xiii. Model Penal Code 230.01
a) Deals w/bigamy and polygamy. Considers them to be misdemeanors.
b) Codifies the statutory exceptions that if you (1) believe prior spouse is dead or (2) lived apart for 5+ years and not known to be alive then defense.
c) If there is a judgment purporting to terminate the marriage then it can be used as a defense so long as the D didn’t have any reason to believe the judgment wasn’t valid.
d) If the actor reasonably believes that he is eligible to remarry, then he is eligible to use that reasonable belief as a defense (would apply in case where guy consulted a lawyer)

B. Intoxication and Insanity
i. Intoxication
a) STATE v. COOPER
- RULE: Voluntary intoxication, whether by drugs or alcohol, is not a defense to crime.
- Guy was tweaking and drinking and he kidnapped someone. He was convicted of kidnapping and assault w/a deadly weapon.
- D tried to raise an insanity defense. This insanity was based on voluntary intoxication and the claim that when he was intoxicated he had no clue what he was doing.
- Court says that voluntary intoxication is not an excuse. He is responsible for his own irresponsibility.
- In most jurisdictions the defendant has the burden of proof to prove he’s insane by a preponderance of the evidence.
- If you are in a fixed state of insanity b/c of chronic drug/alcohol abuse, then that is a defense.
- Voluntary intoxication is the ingestion of substances you know will have an intoxicating effect.

b) BURROWS v. STATE
- RULE: IN regard to a defense of involuntary intoxication, the intoxication (1) must be induced by acts amounting, in effect, to duress and (2) must go to such an extend that the mind of the defendant was incapable of understanding the criminal nature of his act.
- 18 year old runaway was hitchhiking and was pulled over by a drunk. The drunk threatens to leave him in the desert if he doesn’t have some beers. The runaway started driving because the driver was drunk. The drunk then threatened him if he didn’t have some whiskey. After the D was “forced” to drink the whiskey he got really sick and shot the drunk. D claims he was so sloshed that he didn’t know what he was doing when he killed the drunk, but after he killed him, he sobered up instantly and hid the body, etc. D claimed he’d never had a drink of alcohol before. D claims involuntary intoxication
- Court says that in order to be involuntary there needs to be fraud or duress. There was no claim of fraud here. As for the duress, there wasn’t strong enough coercion. There is a difference between inducement and coercion. For duress we need coercion. Court is afraid that people will be able to lie and say they were
forced to drink.

- In order to win he has to show he was intoxicated, that it was under duress, and that the degree of the intoxication was so great that he didn’t know what he was doing.

c) Commonwealth v. Graves

- Graves and cousins planned to rob a guy. During the robbery they wound up killing the victim. Graves was drinking wine and tripping on LSD.
- In the precedent case there was an allowance for voluntary intoxication to lessen the degree of murder.
- Majority says that you can’t use voluntary intoxication as a defense, but you can use it as evidence that you lacked the specific intent to commit the crime. You have to allow this, or else the jury can’t determine whether the D has the requisite intent to commit the crime.
- Dissent says that this nuts and that no matter how you put it you are letting voluntary intoxication be an excuse for crimes.

d) Model Penal Code Section 2.08

- Intoxication is not a defense unless it negatives an element of the offense. (Just like Graves)
- If recklessness is part of the offense, and they would have realized their behavior was reckless if they had been sober, then the unawareness of the recklessness due to intoxication is not a defense.
- Intoxication in itself does not constitute a mental disease.
- If the intoxication is not self-induced, or if it is pathological (have a grossly excessive reaction that you are unaware of) then if it produces temporary insanity it will constitute a defense.
- If there is a permanent mental disease or defect you are covered under the insanity section.

ii. Insanity

a) Historical Perspective

- M’Naghton—cognitive impairment—do you know the difference between right & wrong
- Irresistible impulse test—some courts added this to the M’Naghton test to add a volitional element and ask the question: Was the defendant able to control his conduct. Was the defendant under the sway of an overwhelming impulse to engage in this conduct? This has been criticized b/c you can’t really know whether there was an overwhelming impulse.
- Durham Test—it’s a product test. This is a “but for” question. Would the defendant have engaged in this conduct but for his mental impairment? (This started out as substantial factor, but it moved to was it a contributing factor?)
- Model Penal Code Test—variation on M’Naghton plus irresistible impulse test known as the substantial capacity test. Ask “was the D substantially impaired so as to not understand the wrongfulness of is acts or was he substantially impaired from acting in line with the law? Model penal code’s inclusion of irresistible impulse is controversial. Whether the D lacked the substantial capacity to understand or regulate his conduct?
- Mens Rea test—did the D have the intent to do the act? If yes, then he is legally responsible.
- Diminished Capacity Test—
- Guilty but Mentally Ill—

b) State v. Fetters

- RULE: When conflicting psychiatric evidence is presented to the fact finder, sanity is clearly an issue for the jury to decide.
- D planned to escape mental facility and planned to kill her aunt to get money. D claimed that she got the power from Satan to kill the aunt. She killed the aunt, tried to take keys and money, couldn’t find them, so she changed out of her bloody clothes and took some necklaces. She freaked out, ran and told a neighbor to call the cops. D was bawling and told the cops she killed her aunt. She raised the defense of insanity.
- The test for insanity was that she had to prove it by the preponderance of the evidence. The Iowa code said that someone is mentally insane if they meet the M’Naghton test. The insanity need not exist for any particular amount of time.
- In some jurisdictions insanity is an affirmative defense, in others it’s a matter of presumption of sanity.
- Prosecution expert says there is no evidence of any diagnosable mental disorder. Defense expert says she was in an acute psychotic state.
- The question is did she know what she was doing? Yes. Did she know it was wrong? An example of not knowing the difference between right & wrong is if you think you are shooting an enemy combatant on the battlefield.
- This is a jury question, so unless the jury REALLY fucks up, the appellate court won’t overturn it.

iii. Diminished Capacity/Guilty but Mentally Ill

a) State v. Smith

- RULE: The defense of diminished capacity applies to disabilities which fall short of insanity and may serve to reduce the degree of the crime or to negate the existence of a requisite mental state.
- A guy got into a house, raped the baby sitter and killed the little boy she was watching.
The diminished capacity instruction should have been given.

Diminished capacity differs from insanity in that diminished capacity applies to cases that are not extreme enough to warrant insanity. VT follows the Model Penal Code for insanity, and qualifying under that would be a complete defense. Diminished capacity is not a complete defense. Instead it acts to reduce the degree of crime rather than to excuse its commission. You reduce degree of the offense to a level where the defendant could have had the requisite intent.

This idea came out of California courts. The CA legislature didn’t like this, so they enacted a statute that banned diminished capacity and irresistible impulse. They also said evidence regarding intoxication, trauma, mental illness, disease or defect shall not be admissible to show or negate capacity to form the mental state of the crime.

The MPC doesn’t explicitly recognize diminished capacity, but it hints at it.

b) People v. Ramsey
- RULE: A statute providing for convictions of guilty but mentally ill is constitutional.
- Husband stabbed his wife...a lot. He said he did it to exercise demons from her, and that she wasn’t supposed to die. The same day he did this he called his mom and he was really excited that he had returned to God. The hospital diagnosed him as acutely psychotic.
- This jurisdiction adopted the MPC definition of insanity.
- MI has a statute allowing for the verdict of guilty but mentally ill, because they thought too many people were getting off because of insanity. This is the verdict found in this case.
- Simply b/c you have a mental illness or defect does not mean that you can’t form malice aforethought. If you can form that mental state then you can be found criminally responsible.
- Allowing for this verdict allows the D to be held responsible while acknowledging that mental illness was a factor. Therefore, it’s a conviction; not a defense. You are sentenced to the same amount of time as you would if you were just found guilty, but you will serve that time in a psychiatric facility until you are found to not be mentally ill, at which point you’ll be shifted over to the general prison population. If the person is still severely impaired and dangerous at the end of his sentence, then there will be a civil commitment proceeding.
- When a person is found not guilty by reason of insanity you can’t send them to prison. In some jurisdictions there is an automatic commitment procedure where you get thrown in the loony bin until you are no longer a danger to yourself or others. Other jurisdictions do not have auto-commitment and there would have to be a separate determination as to whether or not this person is now a danger to himself or others. If he isn’t, then he walks free.
- Some states have abolished insanity (like 4 states). The Supreme Court says that insanity is not a constitutionally guaranteed defense.

VI. Special Defenses
A. Self Defense
i. Elements
   a) (Reasonable) Belief that there is an imminent threat
   b) To use deadly force needs to be a threat of death or serious injury
   c) To use non-deadly force there needs to be a threat of some lesser harm
ii. State v. Realina
   a) Victim had warned D to stay away with his wife. The victim followed the D to the police station. The victim threatened to kill the D on numerous occasions, including the night in question. The victim grabbed the D to prevent him from leaving. The D then chased the victim into the police station with a knife. D was convicted of terrorist threatening.
   b) D claimed self-defense. To prevail he needs to show that he reasonably believed that there was an imminent necessity to use force and that he is entitled to use the level of force he uses to prevent the force.
   c) To use deadly force in self defense you must reasonably believe you are in danger of death or serious bodily harm.
   d) The question is, could D reasonably believe he was entitled to use any degree of force to defend himself. In accessing the reasonableness of the belief, the relative sizes of the assailant and the defendant might be relevant. We really don’t know the answer to that. Also, the background relationship (the death threats) is relevant. Also, the D drove to the police station b/c it was a safe place to go, and then the victim comes up to him, starts yelling death threats at him, and grabs him to prevent him from leaving. So its legally significant that the victim has committed the crime of kidnapping (used force or the threat of force to confine him) by grabbing D’s shirt and preventing him from leaving with the intent of terrorizing or harming him. So that could justify the use of deadly force! The statute defining deadly force requires intent to use deadly force.
   e) Once the D was kidnapped it’s clear that he is entitled to use some degree of force in self-protection.
   f) The court isn’t certain that brandishing the knife is a use of deadly force. He was chasing him into the cop shop
iii. People v. La Voie
a) **RULE:** When a person has reasonable grounds for believing, and does in fact actually believe, that danger of his being killed or severely harmed is imminent, he may act on such appearances and defend himself, even to the extent of taking human life.

b) Drunken guys were screwing with the D and kept bumping his car. D got out of the car. The four drunken guys started walking up to D in a menacing manner. D shot the drunk in front. He was charged with murder. The trial court informed the jury they should find a verdict of not guilty (b/c it was justifiable homicide).

c) So why is it justified? Well, its 4 against 1, they’ve rammed his car through a red light, and they are threatening him. Also, its 1:30AM.

d) It doesn’t matter if he was mistaken in his decision to use deadly force, so long as that decision was reasonable.

e) The fact that there are four of them alone doesn’t = the right to use deadly force, but when it is put in this context where they are drunk and threatening him and just rammed his car, then it is relevant.

f) Should he have a duty to retreat?

iv. **People v. Humphrey**

a) **RULE:** The right to kill in self defense exists if the D reasonably believes in the existence of imminent harm, evaluated objectively form the standpoint of a reasonable person and not a reasonable person in the D’s position.

b) D shot and killed her husband. He had threatened to shoot her the night before, and he actually shot at her. He said “Next time I won’t miss.” They argued all day. She picked up the gun and shot him. But she had been drinking and he hadn’t. But there is no dispute as to the fact that he was very abusive. There was expert testimony on battered woman syndrome. Defense was trying to use this to show that her belief that deadly force was necessary was reasonable. Trial court wouldn’t allow it, but appeal court would, and said that it is also relevant to her credibility.

c) The court is not changing the standard to that of a “reasonable battered woman,” but ultimately its whether her actions were objectively reasonable so the jury needs to understand the situation she was in. The evidence was relevant as to her belief that deadly force was necessary and to the reasonableness of her belief. The jury has to consider a reasonable person, not a reasonable battered woman. Expert testimony that a battered woman can pick up on when violence is going to escalate, and she feels like she has no avenue of escape. This evidence clearly goes to her credibility when she says she really believed deadly force was necessary.

d) Was her belief in the necessity of force reasonable from the objective standard of a reasonable person who is put in her shoes?

e) **Perfect vs. Imperfect Self Defense**

- perfect self defense is that you had the reasonable belief that you needed to use the deadly force and this is completely justified
- Imperfect self-defense is where you honestly believed you were justified, but that belief wasn’t reasonable reduces the degree of the offense like diminished capacity.

f) Problem in this case is that the trial judge didn’t give an instruction on perfect self-defense.

g) Three models of battered woman syndrome cases:

- Confrontational Killings – case where victim is battering defendant, and during the battering the victim kills the batterer. You can call this case a confrontational killing if you believe the story that he shot at her the night before and was beating her all day.
- Non-confrontational Killings occur when the batterer is asleep or passed out drunk. At that point he’s physically helpless and the battered spouse/partner who feels trapped and feels the violence escalating things “I have no way out, and here’s my chance. If I kill him now, he can’t kill me when he wakes up.” Calling this self-defense is hard, b/c there is no imminent threat. So do you let the evidence of the syndrome in to help the jury determine whether it was reasonable for her to believe the threat was imminent?
  - Hired Killer – I’m helpless, but I’m going to enlist my son or a hit man to kill the batterer.

v. **People v. Ligouri**

a) **RULE:** To avoid a felonious aggression against one’s person, a man is justified in standing his ground and, if necessary, in destroying the person making the felonious attack.

b) D is arguing that he doesn’t have an obligation to retreat before using deadly force.

c) First prong of statute says that if you have a reasonable ground you can use deadly force in self defense, and the second prong says that if you are being feloniously assaulted you can stand your ground. If you are under the first prong, you can only stand your ground if it’s reasonable to do so.

d) If you are being assaulted the danger is clear, where as under the first prong its not as clear. So no duty to retreat if you are being assaulted

vi. **Brown v. United States**

a) **RULE:** If a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant he may stand his ground and repel the attack with all necessary force.

b) Victim had assaulted D many times, so D took a gun to work. The victim starts swinging a knife at D, so D
shoots the victim 4 times and kills him.

c) Did he have to retreat before using deadly force? Given the history of prior threats and assaults and the current attack then the privilege to protect yourself shouldn’t require a cool clear decision to retreat. So Brown had no duty to retreat. The privilege of self-defense does not hinge on a cool reflection on retreat.

d) Is it relevant that Brown shot four times? The fourth shot was fired after the “victim” was already down. Also, the “victim” only had a knife, so when the fourth shot was fired there was no longer a risk of imminent harm. Well, there are a few theories (1) heat of the moment, (2) accident, and (3) gratuitous last shot. If (3) is what happened, and that fourth shot is what kills him, then self defense isn’t cognizable in this case. The court was satisfied that (3) isn’t what happened.

vii. Cooper v. United States

a) RULE: A person has a duty to retreat if such would avoid further encounter, even in his own home.

b) Cooper lived w/ his brother Parker. Parker left for 10 days. When he got back Cooper and Parker got into a fight about it. Parker started hitting Cooper w/ a radio. Cooper shot Parker.

c) Three Theories on Retreat:
   • American Rule: No duty to retreat
   • Middle Ground Approach: No duty to retreat but failure to retreat is a circumstance that the jury can consider in determining whether the defendant was trigger happy
   • Common-Law View: retreat to the wall doctrine

d) This court follows the middle ground rule.

e) Castle Doctrine: no duty to retreat in your own home

f) Exception to Castle Doctrine: There is no castle doctrine for when you are dealing with cohabitants.

g) Not error to not give castle doctrine instruction, but most courts would.

viii. State v. Broadhurst

a) RULE: An aggressor, in a combat which led to the death of the assaulted party, cannot claim that he struck the fatal blow in self-defense unless, before the blow, he withdrew in good faith from the combat, and, in addition, brought home to the assaulted man notice of his intention in such a way that the adversary must have known that the assault was ended.

b) Mrs. Broadhurst hired Williams to kill her husband. Williams pretended to have car trouble and hit the victim with a tire iron 1 or 3 times, then decided to quit. The victim then attacked Williams, so Williams shot him. Williams claims self-defense.

c) When you are the initial aggressor you lose your privilege of self-defense.

d) In order for an initial aggressor to reinstate the privilege of self-defense he must abandon his attack and make it clear to the initial victim that he has abandoned the attack. The communication of your abandonment must be effective. If its impossible to effectively communicate your abandonment because you’ve knocked your victim senseless, that’s your own fault.

e) Since Broadhurst hired Williams to do the killing she is guilty of first degree murder as an accessory. If in fact this hadn’t been murder (if it had been self defense) then Broadhurst is guilty of attempted murder.

ix. People v. Goetz

a) RULE: A person is justified in using force against another when he reasonably believes such is necessary to defend himself.

b) Goetz was on the subway and he shot four youths who he thought were trying to harass him.

c) Initially he managed to get the indictment dismissed because the grand jury was charged with an objective test. But eventually the indictment was upheld on the objective grounds.

d) He knew they didn’t have weapons (two of them had screwdrivers) one asked him for money. Then later two came up and asked for money. Then he went on a shooting spree and he wanted them to suffer as much as possible and he intended to murder them. He admits this. He established a pattern of fire.

e) He’s claiming he was justified in using deadly force on the grounds that he was trying to avert a robbery.

f) In NY you can use deadly force to prevent “death or serious harm” OR “kidnapping, rape, or robbery.”

g) His case is based on the theory that he subjectively believed that this kids were trying to rob him. But the NY statute requires that this belief be reasonable.

h) One relevant factor to perception that deadly force is necessary might be that there are four of them.

i) Belief is subjective, reasonable is objective.

j) But when we talk about reasonableness we talk about for a person in the actor’s situation….which makes it kind of subjective again. So what do we take in to account:
   • Prior muggings
   • Prior knowledge of the victims
   • Physical attributes—Goetz was a tiny guy and was afraid to go out of his house.
   • He’s outnumbered.
   • He’s in an enclosed environment
   • Race/clothes?
• Body Language
k) The objective component kind of melts away.
l) Hypo:
• Goetz accidentally kills an innocent bystander
• Goetz uses a sawed-off shot-gun and kills the four felons, but with the sprayed shot, he also kills ten other passengers—has liability for the deaths of the bystanders b/c the manner in which he defended himself was unreasonably dangerous to the bystanders

x. MPC gets rid of reasonable component and makes it a purely subjective “if the actor believes” test. But if you are mistaken in the need to use force and your behavior is reckless or negligent toward innocent people then it is no defense.

B. Defense of Others
i. State v. Saunders
a) RULE: A person who acts in self-defense or in defense of another is not guilty of murder.
b) Guy’s brother is getting beat up. Guy runs and gets a gun and shoots one of the guys attacking his brother. First he shot a warning shot. Then he shot the victim in the leg and ran away.
c) D wants an instruction saying he can intervene to protect his brother. Trial court wouldn’t give it. Overturned on appeal.
d) Alter Ego Rule: If you are intervening on behalf of another person then you can use only the degree of force that the victim on whose behalf you are intervening would be entitled to use. There are a couple questions to ask:
   • What degree of force would the victim of the initial assault be entitled to use?
   • Was that victim free from fault or at fault for the initial confrontation?

e) The explicit threat is of death right now, so absent other limitations Saunders would be entitled to use deadly force. But there is another issue:
f) The brother helped precipitate the fight. But the escalating of the threat to that of death changes things, unless the brother provoked that escalation.
g) What’s the purpose of the Alter Ego Rule? Well, it allows intervention but it also discourages it—discourages you from using deadly force against the wrong person.

ii. Alexander v. State
a) RULE: Defense of others is available if the D, based on what he has witnessed, believes the party he is helping is the victim.
b) Alexander assaulted a corrections officer who was restraining another prisoner (Alexander was a prisoner).
c) Common-law rule: can only intervene on behalf of close relative or close associate→ no longer the case
d) Alexander Rule: depends on the reasonable perception of the intervener regardless of whether the person on whose behalf he is intervening has the right to use that level of force in self defense.
e) Purpose of this rule is to protect good-samaritans and encourage people to intervene with out fear of being convicted for doing the right thing.
f) The defendant must be free from fault.

iii. Model Penal Code—(purely subjective, but still subject to 3.09 which says that if you are reckless or negligent in forming your belief then even though you’re not guilty of a crime that requires purposefulness or knowingness, you can be guilty of a crime for which recklessness or negligence suffice.)
a) (1) Actor believes
   • (a) that he would be privileged to use force in her own defense if she were in the position of the person on whose behalf she is intervening (subjective) AND
   • (b) that the person on who’s behalf she is intervening would be justified in using force, AND
   • (c) Intervention is immediately necessary to prevent the death or serious harm to the person on whose behalf she is intervening.
b) (2) Even if the actor would have a duty to retreat if it were self defense he is only required to retreat if in doing so he KNOWS he can save the person on whose behalf he is intervening.
c) (3) If the victim has a duty to retreat and its feasible for this to happen safely and the actor knows this, then the actor has to try to persuade the victim to retreat before using deadly force.

iv. Hypo: Husband is aiming gun at step-son, so wife stabs husband. We later learn that the gun wasn’t loaded and the husband was trying to teach his step-son self-defense. And the son wasn’t afraid.
a) In a Saunders jurisdiction (Alter Ego Rule): Son would have had to have been justified using force for the mother to be justified. So Wife isn’t privileged to use defense of others.
b) In an Alexander jurisdiction the Wife can act on the situation as it reasonably seems to be to her. So if her perception that her son was in danger was reasonable then she’s good to go, regardless of whether her son was entitled to use self defense. The reasonableness is an objective standard, but in some jurisdictions it’s going to be objective from the standpoint of someone in that situation. Reasonable is objective, belief is subjective. The Wife must, however, be free from fault.
v. Hypo: Same as above, except the husband hadn’t told the step-son that the gun wasn’t loaded or that he was training him. Instead the husband was just trying to test the step-son’s reflexes.
   a) In a Saunders jurisdiction (Alter Ego Rule) the son would be entitled to use self-defense, so the mother is entitled to defend him.
   b) In an Alexander jurisdiction the analysis is the same as it was in the last hypothetical.

vi. Hypo: H is pointing yellow plastic gun at S. W comes in and sees this. Her thought is “he’s going to shoot him.” Acting under this belief she goes and gets the knife and stabs the husband. Is she guilty? Well, the MPC doesn’t say anything about a REASONABLE belief. The MPC is purely subjective. But if her believing this is a real gun she is being reckless or negligent she may be liable for manslaughter or negligent homicide.

C. Defense of the Habitation
   i. State v. Mitcheson
      a) RULE: A person is justified in using force against another in protection of his habitation.
      b) Victim sold car to D’s father. D and victim fought over whether or not the wheels were included in the sale. There were lots of confrontations. D got a rifle and went to his sister’s house. Victim when to the sister’s house and tried to get the wheels. There was a confrontation and D wound up shooting the victim.
      c) This isn’t about self-defense or defense of co-occupants. This is about the defense of the habitation itself.
      d) A person is justified in using force if he reasonably believes it is necessary to do so to prevent people from making unlawful entry. You can only use deadly force if the entry is for the purpose of assault or personal violence.
      e) How does the sister’s house count as D’s habitation? The court broadly defines habitation for the purpose of protecting the peace as your home, a temporary home, or the home of another where you are a guest. Habitation is in place where a person is present lawfully as an invitee and when you are there you expect a place of sanctuary (in the sense that they have a right to expect to be safe there).
      f) Under a self-defense analysis did he have a reasonable belief that the use of deadly force was immediately necessary to prevent death or serious bodily harm? Given the facts we have there isn’t much of a case for using deadly force in a self-defense context. How about defense of property? The law generally says that if someone is stealing your hubcaps or your dog you can’t shoot them because human life is more important than personal property.
      g) So what’s the basis of using deadly force to protect your habitation? Habitation = sanctuary. If someone is trying to break into your home you have an interest in preventing them from getting in, b/c they will be much more dangerous once they are in your home
      h) Under this statute to use deadly force the entry needs to be in a violent and tumultuous manner and you reasonably believe that the purpose of the entry is to commit some violent crime. For just regular force you just need a reasonable belief that it is necessary to use force to prevent unlawful entry. Do we have an arguable case for violent and tumultuous entry? Well, there were death threats and they were trespassing and yelling and refusing to leave the premises. They seem to be advancing rather than retreating.

   ii. People v. McNeese
      a) RULE: A D homeowner is immune from prosecution for the use of deadly force in the defense of his home if he can establish that he had a reasonable belief that an intruder (1) entered unlawfully and (2) that such person was committing or intending to commit a crime against a person or property within the home.
      b) Victim and wife have a fight. Wife moves in with D. D and wife get into a fight because of D’s sexual advances. Wife goes home and gets the Victim and his friend to help her get her stuff from D’s apartment. They go and use her key to get in. D winds up killing the victim and the friend and killing them both. It was part of the Wife and D’s agreement that the victim would never be allowed in the house.
      c) Any occupant is justified in defending the habitation under this statute. He/she can use any degree of force so long as there has been an unlawful entry and the occupant reasonably believes that the entrant is going to commit any crime and intends to use any degree of force against any occupant.
      d) This case focuses on the unlawful entry component. Wife’s entry was lawful b/c she had three days to collect her belongings because she had an oral lease. The friend’s entry was lawful. The victim’s entry is a different question. His entry was a violation of the oral lease, so it was unpermitted.
      e) Reasonable belief of unlawful entry isn’t enough—it has to actually be an unlawful entry.
      f) Statute allows for the use of
         • Any force
         • Unlawful entry
         • Reasonable Belief
           • Committed a crime
           • Intends to commit a crime
         • 4 Reasonable belief—might use force
      g) Was Victim’s entry unlawful? There is a sharp distinction between uninvited and unlawful. You can’t enter
D. Defense of Property

i. People v. Ceballos

a) RULE: Except where an exception may be made for a dwelling house, deadly force may never be used solely for the protection of property.

b) Guy rigged a spring gun on the door of his garage. Some kids broke in to steal some stuff, and one of them was shot. Ceballos argues that he doesn’t have a lot of possessions, and he’s entitled to use deadly force to prevent a burglary. Also, most burglars are crazy, so if he stumbled across one that burglar would probably kill him.

c) The statute has two subsections. It says that homicide is justifiable if the actor is resisting an attempt to (1) commit a felony or (2) is using violence or surprise to commit a felony.

d) In early common-law all felonies were punishable by death. Felony used to mean a very serious crime like murder, robbery, kidnapping, rape, and larceny. Felonies today have proliferated like rabbits, and they aren’t all violent crimes. There are things included like fraud, bribery, and perjury that wouldn’t involve a personal danger to anyone. So the court says that they can’t believe that the legislature would have intended the term felony to be read broadly. So in order for this justification statute to make sense earlier cases have construed felony to mean an atrocious crime that involves force and reasonably creates a fear of great bodily harm or death.

e) Not all burglary is excluded, but not all burglary is included. Burglary is no longer limited to the common-law definition. It used to have to be in a dwelling at night with intent to commit a felony. Modern statutes include this but also include public places, vehicles, warehouses, and garages.

f) Since nobody was there you can’t satisfy the requirement that you know it’s a burglar instead of someone like a fireman. The spring gun has no legitimate use like a guard dog, so even if you warn you are still out of luck. We value human life more than property. Could he use protection of his personal possession as justification for the use of the spring gun. Nope. Not even if the taking of the property would be felonious. Human life is far more valuable than possessions. There was a common-law exception to use deadly force if the victim was trying to dispossess the D of his dwelling or destroy the dwelling, but there is no evidence of this here.

ii. Model Penal Code – Deadly force in Protection of Property

a) Expands the common-law rule

b) Use of deadly force unless the actor believes that the person he is using against is attempting to dispossess him of his dwelling (other than under claim of right) or if the person against whom force is used is attempted to commit arson, burglary, robbery or other felonious theft or property destruction

c) Person must have threatened deadly force in the presence of the actor or used lesser force that subjects the actor or others to substantial danger of serious bodily arm.

d) There needs to be a request to desist unless it’s clear that the request would be useless or dangerous.

E. Compulsion, Duress and Necessity

i. State v. Hunter

a) D was hitchhiking and got picked up by three people. He had a couple guns. He asked to be let off, and the driver told him about previous murders. A cop pulled them over and one of the people in the car shot at the officer. The officer described the defendant. The officer was shot in the arm and the chest. D tried to shot the driver, but accidentally shot a passenger. They then took hostages. A woman who tried to call the cops was killed by the driver. The driver then killed the hostages. One of the passengers was killed in a shoot-out with the cops. The driver pled guilty to all charges.

b) D wants to raise the defense of compulsion—you aren’t guilty for a crime which you commit b/c you reasonably believe great bodily harm will befall you or your family if you don’t commit the crime. He was found guilty of robbery and battery of an enforcement officer and kidnapping and felony murder. Trial court
refused to instruct the jury on compulsion on the robbery and battery charges because he was charged with premeditated and felony murder. The compulsion statute doesn’t apply to murder or manslaughter.

c) To convict on felony murder the prosecution needs to prove that D was actually involved in the felonies. The threatening and accompanying of the hostages means that he was involved in the kidnapping.

d) The Court thinks that where or not there was compulsion is a question of fact that should go before the jury. You shouldn’t lose the defense just because the people who are forcing you to commit the crime kill somebody.

e) Hunter was avoiding something worse than kidnapping (his own death). With that scenario the court says they can understand why he did it. If he participated in the kidnapping under threat of death the绑架 isn’t really “justified” but it is excusable.

f) Can’t argue compulsion in the case of intentional murder—your life isn’t more important than an innocent party’s life. There’s a split. AZ and MO don’t allow compulsion defense for felony murder. But this Court thinks it makes more sense to say that if you have a defense to robbery it doesn’t make sense to say that because you’ve been compelled to be there then you are guilty of felony murder.

g) HYPO: There are 2 mountain climbers tied together by a rope. One of them, V, slips and falls over the cliff. V can’t be rescued b/c D can’t hold on forever. So D cuts the rope and climbs up to safety. This situation is different, because its not D choosing his life over V.

h) HYPO: Terrorist threatens to blow up an elementary school. T tells D “unless you shoot V, I’m going to blow up the school.” D shoots V. Well, the school kids aren’t doomed necessarily if D doesn’t shoot V.

ii. United States v. Contento-Pachon

a) D was a cab driver. His boss contacted him about a driving job. But instead of a driving job it turned out to be an offer to be a mule. He turned it down. He didn’t contact the cops b/c the Bogotá cops are corrupt. A week later they contacted D again and threatened his wife and kids if he didn’t carry the coke. He flew to Panama. Didn’t talk to those cops b/c they are corrupt. When he got to the United States he consented to an x-ray of his stomach that revealed 129 cocaine balloons. He was also being followed the whole time he was on the plane, etc. He claims duress and necessity. Duress includes elements of immediacy and escapability. The trial court said that this case didn’t meet these elements. This court reverses.

b) Can’t claim duress if you have recklessly put yourself into the position.

c) Immediacy requires that the threat be specific enough that D could draw a reasonable inference that his/his family’s life/lives were in danger. He needs to subjectively believe this as well.

d) For escapability there needs to be a reasonable option for escape or else the element is met.

e) He was entitled to present the defense of duress to the jury.

f) Necessity: Free will is properly exercised to achieve the common good, while under duress your free will is overcome by some sort of coercion.

g) Necessity is usually invoked when the D acted in the interest of the general welfare. Like bringing drugs into the United States to save cancer patients.

h) Court finds that necessity is not appropriate in this case.

iii. United States v. Castro-Gomez

a) D was employed by a guy who was friends with a drug lord. The drug lord asked the D to meet him at a pizza place. The drug lord asked him to pick up the coke for him. He threatened him. D took the boat to the wrong location and never made the pick-up. The drug lord got mad, but nothing happened. The drug lord called again and asked him to meet him at the pizza parlor again. Again he threatened him and D actually did the drug run this time. AND...he got busted. D wants a duress instruction. The court disagrees b/c a reasonable person would not have gone to the pizza parlor the second time and would have gone to the cops. This case deals with escapability.

b) Comparing this case to the one before it, in this case the family wasn’t threatened and there is no evidence here of a belief in police corruption. But this time after the second pizza parlor incident they did have someone stay at his house to make sure he followed through.

c) First boat trip was under duress. But the second one wasn’t b/c he recklessly put himself in the situation under which he was coerced by going to the pizza parlor the second time.

d) If the D is in fact coerced but he has placed himself knowingly or recklessly in the situation where he was coerced then he can’t use duress as a defense.

iv. People v. Carradine

a) D witnessed a gang killing and told the prosecutor her story. The prosecutor promised she wouldn’t have to testify. He was a liar. She was then held in contempt for refusing to testify because she was afraid the gang would kill her kids.

b) If someone has been subjected to a very specific threat then that is different from this case.