No man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed. (Palmer v. Toledo)

- Must give adequate notice or fair warning to the average citizen that the conduct is forbidden

Requirements-always exceptions
- Act (Conduct element)
- MensRea (mental element)

I. What Constitutes and Act?
Must be willful/voluntary
It is sufficient that the Δ manifest a disregard for the consequences which may ensue from an act and indifference to the rights of others to constitute culpable N.(Decina)

- Could be disregard of a condition that he has (i.e. epilepsy while driving)
- Act (driving) + knowledge (culpable N) + Result
  - Needs to be a causal link btw the act and knowledge, and the result

Possession: power and intent to control
- Intent
  - Mere presence does not suffice and mere knowledge is difficult
  - Actual knowledge of presence is strong evidence of intent so knowledge may infer the intent element.
- Control/power
  - Physical ability to control
- MPC: see p 421 Section 2.01 Possession

Omission: Omissions to fulfill a legal duty, not a moral once
- Duty
  - Can arise out of status relationship—generally close family
    - Parent/child, not vice versa
      - Parent has legal D to provide care for a minor child
    - Generally not grandparent
    - Master/Servant
    - Spouse
• Contract-implied or express
• Voluntary assumption of care and secluded as to prevent others from rendering aid
• Statute imposes a D
• Creation of peril + abandonment (Van Buskirk)
• The duties of more than one person can be concurrent
• Can be delegated within reason

• Murder by omission
  • Intentional or knowing, Malicious omission of the performance of a duty

• Manslaughter by omission
  • negligently omitting to fulfill a legal D
  • must be more than ordinary N
  • leave someone in a state of peril where death is a foreseeable result, and the person is killed
  • Δ must have been capable of performing the act which was omitted
    • i.e. financially capable of paying child support (Teixera)
  • the omission must always be the immediate and direct cause
  • MPC 2.01 Omission as basis of L

II. Mens Rea
Culpable N (Criminal N)-Δ was unaware of the risk but ought to have been
  • Result is N homicide
  • Must objectively constitute a gross deviation from the standard that a reasonable prudent person would have observed.
  • Gross incompetency, inattention, criminal indifference, to the patient’s safety
  • When judging the criminal N of a medical professional, it does not matter whether the person is medical professional or that he simply holds himself out as being one. (Gian-Cursio)
    • Gross ignorance, Not simply mistake in judgment
  • Contributory N does not have bearing on criminal L.

Reckless-aware of the risk, but consciously disregards it
  • Result is involuntary manslaughter (just Manslaughter if MPC)
  • Aware of the risk
  • And high degree of risk-unjustifiable
  • Consciously disregarded it
• Gross deviation of the standard of care
• Little or no social utility (such as speeding to race to hospital)—also think necessity as an affirmative defense
• L for a death is not ended upon a prudent act by the Δ if the same hazards which the Δ created are still present (Peterson)
  o You cannot simply turn your L on and off.
  o Period of time to cool down from the recklessness mental state of Δ is significant with respect to the intended victim.

Intent
• To engage in the conduct, commit the act
• To commit a particular crime (Result): specific intent
• Cant be guilty of attempt to commit a crime w/o specific intent
  o Attempted murder, need intent to kill
• CL differentiates btw the intent for attempted and a completed crime only where the completed crime may be committed without an intent to commit that crime

Malice
• no room for an interpretation to include negligence.

Knowledge—can suffice as the mens rea for criminal liability
• Actual knowledge (subjective)
  o Most Js require actual knowledge (i.e. stolen goods)
  o May Infer actual belief
• Reasonable person would know (objective)
  o dont want to charge people with criminal L for something they should have known
• deliberate ignorance (willful blindness) of the truth coupled with a high probability equates w/ knowledge
  o Must be same general category of what was suspected
  ▪ i.e., thought transporting drugs, actually a body

Willfulness
• Generally does not require bad purpose, but depends on the nature of the criminal act
  o Usually just need to know what he is doing
• Supreme Ct
  o Intentional, knowing, voluntary, not accidental
• Criminal statutes
With bad purpose, without justifiable excuse, stubbornly, obstinately, perversely, a thing done without ground for believing it is lawful, conduct marked by careless disregard whether or not one has the right to act.

Two distinct types of crimes in criminal law:

- CL crimes (mala in se): the act is bad in and of itself.
  - Two elements: the mental element and the physical element, and so intent is necessary.
- Mala prohibita: made criminal by statute and are not bad in an of themselves.
  - Mental element is not necessary for commission of the crime. And one who violates the statute is guilty of the crime irrespective of intent or belief.

III. Homicide

Murder at CL is homicide committed with malice aforethought, either express or implied.

Mental element for homicide matters for intended not actual victim

- Transferred intent unnecessary if mistakes the person he kills for another, but he hits who he intended: mistaken identity

Time of death:

- Question of causation could be an issue
  - CL: year and a day rule
- CL: born alive rule; if born alive, it is a person
  - Originated because there was no way to tell when fetus died
- Some Js say it is still homicide if fetus dies after birth as a result of the pre-birth misconduct
- Status of the individual at time of death, and it is not necessary that all the elements of a criminal offense be immediately satisfied at the time of the Δ’s conduct

III.

A Murder—unlawful killing of a human being with malice aforethought

At CL, there was just murder in these categories

- Willful (intentional), FM, depraved heart murder, all treated the same
- Universal malice, depraved heart murder, or reckless homicide manifesting extreme indifference to human life
- elements
  - Conscious disregard
  - Depraved indifference for human life
  - Great risk of death/no social utility
  - Gross deviation
- no deliberate intent to kill or injure any particular individual.
  - i.e. shooting into a car

Felony Murder:
- 1.) Δ participated in 2) a felony inherently dangerous to human life, Then, the recklessness (for depraved heat) is presumed, and 3.) Conduct causing the death was done in furtherance of the design to commit a felony
- CL: felonies as were themselves inherently dangerous to life;
  - look at the elements of the felony in the abstract
  - discharging a firearm at an inhabited dwelling house
  - not grand theft
- Many statutes enumerate the felonies
  - Usually not exclusive
- Purpose of FM rule
  - Deter accidental or intentional deaths during the commission of a felony inherently dangerous to human life.
  - Presumes malice or recklessness
- Homicide is committed in perpetration of the felony if the killing and the felony are parts of one continuous transaction
  - If the Δ set the events in motion that caused the death
  - Person killed need not be the object of the felony
  - Still applies if perpetrators are in escape
    - Must first return to a temporary place of safety
  - The murder cannot be too remote from the things preceding the commission from the robbery
    - “line-drawing” contest
    - judicial hostility toward FM rule, so narrowly construed
- Merger doctrine: only felonies independent of the homicide can support a FM instruction; felonies that are an integral part of the homicide are merged in the homicide.
  - Not all states recognize
i.e. intent to assault with deadly weapon makes entry burglary, which raises to first degree murder

1^st^ degree murder
- Willful, deliberate, premeditated = specific intent
  - Willful-intentional, intent to kill (easy)
  - Deliberate-careful thought, weighing considerations
    - Cool mind capable of reflection
  - Premeditated - considered beforehand
    - Time may be short: any amount of time to reflect
    - Actual reflection/not impulsive
    - Another formulation: knowing and intentional
- Evidence pertinent to the determination of premeditation and deliberation;
  - (1.) planning activity, (2.) motive, and (3.) manner of killing.
  - Usually must be proced by circumstantial evidence
    - 1.) want of provocation
    - 2.) conduct and statements before and after
    - 3.) threats and declaration of ill will or previous difficulty
    - 4.) delaying of lethal blows
    - 5.) evidence that the killing was done in a brutal manner.

Is premeditation and deliberation any more than specific intent?
- Probably not

So then what is second-degree?
- Malice aforethought
- By acting on impulse, you still probably “know” what you are doing.
- It is pretty much up to the jury

Statutory-divides the CL into various degrees
- 1^st^ degree-premeditation and deliberation
  - Some FM, some/all-specified
  - Specified means
  - Certain victims
- 2^nd^ degree-excludes premeditation and deliberation
  - Intentional
  - Some (or all) FM-not in first degree
  - Extreme recklessness (depraved heart)
All other murders

B. Voluntary Manslaughter
Voluntary manslaughter is the intentional killing in the heat of passion (CL) as a result of severe provocation by the individual killed

- 1.) evidence of an emotional state constituting heat of passion and,
- 2.) there must be sufficient provocation.
  - provocation that is recognized by law as adequate.
  - conduct sufficient to excite an intense passion in a reasonable person

legal adequacy at CL: The requisite mental state is subjective, but the adequacy of provocation is an objective test.

- substantial physical injury or assault
  - maybe 3rd party assault
  - possibly words accompanying the assault

- mutual quarrel or combat,
- illegal arrest
- adultery with the offender’s spouse
  - generally has been limited to those instances discovered in the act or immediately before or after and the killing immediately follows
  - certain Js, informational words that convey that the victims is adultering may be adequate-no longer “mere words”

Heat of passion is subjective—was he in the heat of passion?
- Had he cooled down?

Adequacy of provocation—objective, is this legally sufficient provocation
- Should he have cooled down?

MPC

extreme mental or emotional disturbance (more broad then Heat of passion) deemed to have a reasonable explanation or excuse from the Δ’s standpoint.

- Did Δ have extreme mental or emotional disturbance? (subjective)
- objective/subjective test of reasonableness
  - “from the viewpoint of a person in the actor’s situation”
    - all relevant characteristics are taken into consideration

extreme emotional disturbance will not reduce murder to manslaughter, if the actor intentionally, knowingly, recklessly, or negligently brought about his own mental disturbance.
• does not require the provocation to emanate from the victim.
• MPC wanted to put it in the hands of the jury.

What's the difference btw insanity/diminished capacity/ extreme mental or emotional disturbance?

• Insanity—prolonged condition. The consequences of finding insanity are that the person is not L for the consequences of their actions
• Diminished capacity—incapable of forming the requisite intent. Still criminally L, but lesser
• Extreme mental or emotional disturbance—try looking at the situation from the Δ's view, using all his characteristics, and then is the explanation reasonable—manslaughter instead of murder

C. Involuntary Manslaughter/N homicide

Negligence - at CL, is involuntary manslaughter
• Needs to be more than ordinary N
  o Risk must be of such nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation
• No justification for engaging in the conduct
• Voluntary manslaughter—intentional but extenuating circumstances

MPC: negligence results in N homicide; recklessness results in manslaughter

Crimes based on N
• must show cause in fact of the death and the victim was foreseeable endangered in a foreseeable manner and degree

MPC
Article 210 Criminal Homicide: 210.0-210.4 pp 186

IV. Causation

Whether Δ’s conduct caused the death involves
• 1.) was Δ’s conduct a C in F of the death and
  o substantial factor
  o To be superseding, the intervening cause must be independent, not a cause of Δ’s antecedent conduct.
• 2.) was it a legal cause in the contemplation of statutes imposing Criminal Liability.
result is within the area of risk which the rules of caution violated by the Δ are intended to minimize and Decedent was within the class endangered by the conduct

One who recklessly participates in an automobile race may be criminally responsible for a death, even thought his vehicle was not the instrument of death

Arguably not a legal cause of the death of a willing participant, but still can be

CN and A of the R are not defenses against responsibility for criminal conduct.

**Felony Murder**

- The homicide need not be committed to perpetrate the felony.
- not limited to those deaths which are foreseeable.
- strictly L for all killings committed by him or his accomplices in the course of a felony.
- As long as the H is the direct causal result of the robbery, the FM rule applies whether or not the death was a natural or probably consequence of the robbery
  - The robber takes the victim as he finds him.
    - As long as the condition is not the only substantial factor contributing to his death on that day

**Medical malpractice**

- Where one unlawfully inflicts a wound upon another calculated to endanger his life, it is no defense that the wounded person might have recovered if the wound had been more skillfully treated.
- Medical malpractice will supersede L only if it constitutes the sole cause of death, new and independent

Where Δ is not the immediate cause of the death

- if he was connected with the intervening cause, or if the act or intervention was the natural result of his act. Δ cannot escape the consequences of his act by a supervening cause naturally resulting from his act. – i.e. shooting at the water causing victims to drown.

**Killings committed by others during the commission of a felony**

- A participating felon is guilty of murder when a homicide has been committed by a co-felon.
• Majority of Js have held a participating felon is not guilty of murder when the killing is done by a person other than the participating felon or his co-felons.
  o “agency” theory of FM. –present trend
    ▪ As they all act in concert for a common object, each is the agent of all the others, and the acts done are therefore the acts of each and all;
    ▪ May be able to use in shield cases
• Under the causation theory of FM, cts hold a participating felon is guilty of murder when a killing is committed by a person other than the accused felon or co-felon, including the death of the co-felon by his own hands or the hands of another.
  o Causation theory is appropriately applied to “shield cases”, BC using a victim as a shield constitutes a lethal act against a victim.
  o Foreseeable consequences of committing the dangerous felony-minority
• What if one of the felons accidentally kills another felon?
  o Can probably impute malice or recklessness bc of FM

V. Attempt
A. elements of attempt
1.) the intent to commit the crime
   • Cannot have attempt without specific intent, even if specific intent is not part of the underlying crime
2.) overt Act towards commission
   • more than mere preparation
   • Preparation for a crime consists of devising or arranging the means necessary for the commission of the offense
   • Dangerous proximity test
     o Dangerously close so would have committed the crime but for the timely intervention of an outside force
     o Proximate physically or in time
     o Look at what remains to be done
   • Substantial step test (MPC)
     o acting with the kind of culpability otherwise required for the commission of a crime, purposefully does or omits anything
which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.
  o Looks to what has already been done
  o Exact object of the crime is unnecessary
    ▪ i.e. “a” bank, not necessarily “the” bank

3.) failure to consummate its commission

**B. Impossibility and attempt**

Factual impossibility/physical impossibility-no defense
  • Intended Consequences are clearly a crime, but there are ineffectual means or picking the wrong person, etc. (empty bed, pocket)
  • circumstance unknown to the actor prevents him from bringing about that objective
  • Shooting into empty bed, picking an empty pocket

Legal impossibility-defense
  • occurs when the actions which the Δ performs or sets in motion, if fully carried out, would not constitute a crime (object not criminal)
  • If the impossibility negates an element (arguable)

Legal impossibility in the middle that could be factual (hybrid cases)
  • Misapprehension about the legal status of something
    o Recovered stolen property, corpse, uncontrolled substance
  • uncontrolled substance
    o depends if you categorize it as a legal or factual impossibility. Arguably need the substance, otherwise can not objectively infer the underlying intent (Oviedo)
      ▪ objective conduct- there is nothing that says his conduct was objectively criminal- need the drugs itself
      ▪ Objective acts trump intent when all we have is the objective act, but need act + intent for attempt.
      ▪ Where Δ’s intent to sell cocaine was not disputed, he may be convicted of intent to sell cocaine although it was actually a simulated substance.

My own thoughts-it may depend the test used as well. Recovering stolen property may be a defense if it is the dangerous proximity test, but not if it
is a substantial step J. (i.e. took a substantial step toward receiving stolen goods, but was not proximate); can argue there was no attempt.

MPC-Article 5-Inchoate crimes

5.01 Criminal attempt
See  p 451

MPC puts more emphasis on the subjective state of mind than Oviedo-

- Circumstances as he believes them to be

The list puts it in the hands of the jury, whereas at CL, it would have been disqualified.

C. Abandonment

attempt cannot be abandoned once it has already been committed (Stewart)

- Needs to be a complete voluntary abandonment before the substantial step.
- Abandonment is not an affirmative defense to an attempt. It is just evidence that a substantial step was not taken.

Some Js do recognize voluntary abandonment as an affirmative and complete defense to a charge of attempt.

MPC 5.01(4)-p 452

Renunciation of criminal purpose (cannot raise under “circumstances as he believes them to be” theory): renunciation is an affirmative defense

D. Solicitation

The solicitation constitutes a substantive crime in itself (at CL as well)

- Intent +
- Counseling, Commanding, Inciting, Soliciting, Encouraging
  - Does not have to communicate with the person he solicits

MPC 5.02 Criminal solicitation-452

Entrapment is a defense where the person who claims to have been entrapped was not predisposed to commit the crime

VI. Conspiracy—can be found guilty as a principles and guilty of the crime of conspiracy. Always guilty of the crime intended if it is completed. If another crime is committed in furtherance of the conspiracy, depends. Guilty of conspiracy even without the completion of the substantive crime.

Plurality of Js require Dual intent

- need intent to agree
  - The rule of consistency—all alleged co conspirators but one are acquitted, the remaining co conspirator may not be convicted.
If tried separately-majority of cts have held the rule of consistency does not apply.

- Bilateral theory-at least two parties must intend to agree
  - Must state Js
- Unilateral theory- only the charged party must intend to agree to the conspiracy

- and specific intent to commit the substantive offense
  - need intent to kill to commit conspiracy to murder
    - cannot conspire to commit implied malice murder
  - Must prove at least the degree of criminal intent necessary for the substantive offense. Don’t need all the precise details at the time of the agreement. The question is whether the acts are deemed legally different from those actually performed solely bc of the official identity of the victims (Feola).

- overt act by one of the parties to such agreement
  - not all Js are overt act Js. Crime could be completed on agreement

_Wharton’s rule_-where it is impossible to commit the substantive offense without any cooperative action, the agreement btw the same parties to commit the offense is not an indictable conspiracy (dueling, adultery)

- Agreement is implicit
  - Does not apply when there are more parties than necessary to commit the substantive crime
    - Still have the group danger rationale-snowball effect
- focus on the statutory elements of the offense in the abstact
  - Does not prohibit a conspiracy conviction when aiding and abetting is used to get the substantive criminal conviction
- Exception: member of a legislatively protected class, bc statute did not impose any penalties for mere agreement (i.e. participant was the person meant to be protected by the act)
  - maybe if does more than merely acquiesces; aid or assist

_Lauria_

- Normally Mere knowledge of illegal conduct by a customer is not enough to infer the requisite intent to enter into a conspiracy
- Need knowledge of illegal use and intent to further the use
- Ways to infer the requisite intent from knowledge
- Stake in the enterprise
  - Charge higher amount, or gets a percentage
- No legitimate use for the goods or services
- If the volume is a disproportionate amt of total business or disproportionate to any legitimate demand
- Knowledge of a very serious crime
  - Matter of policy
- Always can get intent if there is direct evidence that he intended to participate

Pinkerton (similar to agency theory)
- Each member of the conspiracy is an agent of another
- Overt act of one conspirator is an overt act of all
- So guilty of the conspiracy to commit the agreed crime as well as the crime itself if within the scope of the underlying crime of the conspiracy, done in furtherance of the underlying crime, or a foreseeable result
- Many state Js and MPC do not recognize vicarious L for co-conspirators. Federal Js recognize
- May be able to pursue under FM and conspiracy alternatively

Withdrawal/Renunciation and Conspiracy
- Withdrawal is a defense to conspiracy if complete before an overt act tending towards the commission of the felony.
  - Not an affirmative defense (conspiracy just would not have occurred)
- Withdrawal merely precludes liability for subsequent acts committed by members of the conspiracy.
- To withdraw, need to communicate to all co-conspirators
- Withdrawal v. renunciation: depends on J
  - Withdrawal-just need communication
  - renunciation, need to thwart
- Renunciation-affirmative defense under the MPC
  - Affirmative defense only if the conspirator thwarts success of the crime, and it is complete and voluntary.

MPC 5.03
See p 492
Overt act is required unless it is a felony in the first or second degree
• Overt act of one is overt act of all

Termination and abandonment of a conspiracy

• Termination
  o Legal consequence of abandonment
  o When the objective has been achieved
  o All members of the conspiracy have abandoned
  o S of L begins after all abandoned
  o Presumption of abandonment is assumed if there has been no activity by any conspirators for the applicable SOL

• Abandonment (doesn’t mean not guilty of conspiracy)
  o Legal act you take for the abandonment of the conspiracy
  o If informs all co-conspirators
  o Withdrawal
    ▪ Tells police
    ▪ S of L

VII. Aiding and Abetting

• Another way to be responsible in principle for a crime
• Not an inchoate offense, like attempt or conspiracy

Aider and abettor theory requires

• 1.) underlying crime was committed by principal
  o conviction of the principal is not necessary, but bc A and A theory is vicarious, must show the underlying crime was committed by someone

• 2.) Knowledge of the purpose
  o mere presence is not enough

• 3.) Share the intent to commit or assist the target crime
  o Intent can be, but is not necessarily, inferred from knowledge
  o Need intent to aid and intent to commit the crime
  o The intent can be N or reckless-just needs to be the intent required for the substantive offense, and assists
  o Must have purpose with respect to circumstances if circumstances is an element of the crime (Bowell)
    ▪ i.e., lack of consent for rape

• 4.) intentionally aids, abets, promotes, facilitates the targeted crime
  o lookout-by prearrangement keep watch to avoid detection or provide warning
must be some affirmative act; moral support is arguably 
L as principles as if they had principally committed the crime
• L may extend to a secondary crime committed by the principal 
  (Linscott)
• Most, Js recognize the foreseeable consequence doctrine
  o Did the principal commit the primary crime?
  o Did Δ intend to facilitate?
  o Did principal commit the secondary crime?
  o Was secondary crime a foreseeable consequence?
• How does this differ from FM?
  o Must be Inherently dangerous felony. Also merger doctrine 
    precludes some
  o Can only apply to killings
• How does it differ from the pinkerton theory of conspiracy L?
  o Crime does not have to be homicide
  o Requires proof of an agreement

Whether voluntary abandonment removes L for an attempt under aider and 
abetter theory depends on whether the J allows the person to remove L of 
the attempt or just anything after the withdrawal
MPC 2.06 (P.519)
• (3) the (agrees) recognizes a Pinkerton type L, but needs the 
  requisite mens rea

VIII. Accessory after the fact
Must show
• 1.) the principal committed the felony
  o cannot be guilty of accessory after the fact if all the elements 
    of the underlying crime had not been committed
  o even if the principal cannot be charged with the crime bc of 
    his age or some other reason
• 2.) the accused knew the felony was committed by the principal,
• 3.) the accused received, relived, comforted, or assisted the 
  principal in some way in order to help him escape, or to hinder his 
  arrest, trial, or punishment.

Once you are in the category or aider and abettor, they are punished as 
principals, and cannot also be punished as accessories after the fact.
MPC 242.3, 242.4, 242.5, see 520-521
Hindering Apprehension or Prosecution, Aiding consummation of crime, Compounding

**IX. Responsibility: Modifying Circumstances**

Ignorance or mistake of law

- Everyone is presumed to know the law—a particular case will be disposed of exactly as if the Δ actually knew the law, whether true or not
- Can be rebutted
  - where the mistake of law negates an element of intent
    - i.e., Δ mistakes the law of property so thought he had the right to possession, could not be guilty of larceny
      - mistake not with regard to the offense charged, but with regard to a law that bore on legal status
    - if intent to act w/o lawful authority is an element of the offense, and believe in good faith that they had lawful authority (Weiss)
- Lack of knowledge or understanding of the law
  - Δ’s personal misreading or misunderstanding does not excuse criminal conduct
  - see MPC 2.04, Failure or mistake, see 793
  - For acts mala in se, the intent governs, but for acts mala prohibita, the only inquiry is whether the law has been violated.
  - The defense should not be recognized, except where specific intent is an element of the offense or where the misrelied upon law has later been adjudicated as wrong (Marrero)
  - Notice is sometimes essential
    - Where conduct is wholly passive, a person must know, have reason to know or there be a probability that the person know to be convicted consistently with due process
      - If published, notice has generally been served
  - Good faith effort, mistake of law
    - Most Js do not allow this as an excuse unless it negates an element
• Maybe if the law is malum prohibita, and the Δ erroneously concludes (in good faith) that his particular conduct is not subject to the operation of any criminal law, and it appears that before engaging in the conduct, he made a bona fide, diligent effort, adopting course and resorting to sources and means at least as appropriate as any afforded under our legal system to ascertain and abide by the law, and where he acted in good faith reliance upon the results of such effort.
  o Striggles: when the highest ct passes on a given proposition, all citizens are entitled to rely upon such decision, but reliance decision of a lower ct which has no authority is not a defense.

  ▪ Should take into consideration when passing sentence

Mistake of fact:
• Reasonable 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.
• i.e. reasonable belief that his wife had remarried so he was not committing bigamy
  o read wrongful intent into the statute
  o see MPC 230.1 p 806- allows mistake of fact to the degree it negates the guilty knowledge
• most states do not require guilty knowledge so not a defense-SL
• Statutory rape
  o Reasonable mistake of fact as to a victim’s age may be a defense to a statutory rape charge: most states allow mistake as to age in some form
  o See MPC 230.1 (1) p 805

X. Intoxication

Voluntary intoxication
• Not a defense, but severe intoxication may be evidence to show lack of specific intent-showed the crime did not occur
  o Most Js agree to the point it negates specific intent
• A state of mental illness brought about by prolonged abuse fits into the category of insanity.

Involuntary intoxication
• For intoxication to be involuntary:
  o (1) it must be induced by acts amounting to duress or fraud,
  o (2) it must go to the extent that the mind of Δ was incapable of understanding the criminal nature of his act (right from wrong)-temporarily insane
    ▪ difference btw contributing factor (influenced decision) and controlling factor (duress).

Recklessness
• Relevant to the extent that he was unaware of the risk solely bc of voluntary intoxication-no defense in the MPC
  o Arguably negates the mens rea required
• If aware of the risk and consciously disregards it, does not negate.

Negligence
• No relevance

MPC 2.08 pp 778: Intoxication

XI. Insanity

Four basic tests

M’Naughten-purely focused on cognitive function-right v wrong test
• Presumption of sanity (defense has Burden of proof)
• Mental defect or disease so great that he
  o Did not know difference btw right and wrong (even if she knew what she was doing) OR
  o Did not know the nature and quality of his acts (what he was doing)
• Very stringent
• The terms mental disease or defect do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.
• If you can form the criminal intent to do an act, then the reasons why you think you must do the act are irrelevant.

Irresistible impulse test
• Overtaken by an overwhelming impulse to engage in the conduct
• Volitional element to the M’Naughten test

Durham test (product test): would not have committed the crime but for the mental disease or defect
• Doesn’t specify degree of impairment
• Could be used to provide grounds for acquittal for a sociopath
• criticized as too expansive

ALI test-Substantial capacity test MPC 4.01,4.02,4.03: Insanity, p 748
• Lacks of substantial capacity to
  o Appreciate the criminality of your conduct or its wrongfulness
    OR
  o Conform his conduct to the requirements of the law
• Similar to M’Naughten plus irresistible impulse, but gives more leeway to the jury in determining whether legally responsible
• A person does not have to be totally incapacitated(Mnaughten) but they must have a substantial impairment of their mental capacity, as opposed to simply some impairment as under Durham.

Not guilty by reason of insanity-complete defense; no sentence
• Some Js have automatic commitment procedures
  o Usually must release when no longer dangerous
• Some Js have civil commitment procedures
  o Mentally ill and a danger to himself or others
• Confined until no longer insane
• States are not constitutionally required to recognize the insanity defense
  o Some states allow evidence as it pertains to Δ’s development of the requisite mental state

Diminished capacity
• Allows evidence in regarding Δ’s mental capabilities that have a bearing on his ability to form the requisite intent
  o May not be able to form the specific intent
• Is a mitigating factor
• allows evidence of mental incapacity to come in
  o expert witnesses, so then don’t have to just rebut the evidence
• MPC and most states do not recognize diminished capacity as a defense

Guilty but mentally ill
• 1.)guilty of the offense,
• 2.)mentally ill at the time of the commission,
Mental illness: a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

3.) not legally insane at the time of the commission.
still subject to the same sentence requirements, but generally receives some sort of treatment until better, if better, and then to the general prison population to serve the rest of his sentence.

XII. Responsible Corporate Officers
Corporate Officers are personally L for crimes they commit during the course of their employment.

Requirements for responsibility for violations of the business
- responsible share in the process or business where violation occurs
  - import some measure of blameworthiness
- Duty (to prevent/detect or correct)
- Omission/failure to act/ to fulfill the corporate mission
  - Or act
- Causation (had the power to stop it)
- Knowledge or intent are not required
Can raise a powerless defense- must be objectively impossible
- Basically a strict L standard unless can show objectively impossible

Calling it a public welfare offense
- Statute designed to protect the public welfare
- Weak penalties

XIII. Justification
A. Self-defense
If requires reasonable belief, must first determine if the belief was reasonable and actual

Belief (reasonable)
- Some Js only require belief, some require reasonable and actual
  - In Js requiring both, if the belief exists, but it is unreasonable, there is imperfect self-defense, i.e., the defendant acted w/o malice and cannot be convicted of murder, but can be convicted of manslaughter.
Reasonable belief
- All Δ’s characteristics and circumstances
- Subjective/objective-similar to MPC’s manslaughter
- Battered Woman’s syndrome (possibly other syndromes)
  - Relevant to belief and/or whether belief was reasonable
  - ultimate question is whether a reasonable person, not a reasonable battered woman, would believe in the need to kill to prevent imminent harm.
    - Difficult to distinguish
  - At least relevant in the context of confrontation
- MPC only requires actual belief- MPC 3.04 (1), (2)(b) 941,942
  - But if recklessly or negligently formed, may be convicted of the type of homicide requiring reckless or N criminal intent
    - If reckless or N, cant have attempted murder, but could have reckless endangerment
- Ok if the appearances were false
- necessary to Protect against the imminent use of unlawful force
  - may include the threat of force
  - Not consented to
  - Not justified
  - If the last shot was intentional and may seem to have been unnecessary, it may be justified if it was in the heat of conflict and Δ believed he was fighting for his life
- Can only use deadly force if the harm threatened is serious bodily injury or death or enumerated felonies (MPC; kidnapping, sexual intercourse compelled by force or threat
  - Deadly force
    - Substantial risk of death or serious bodily injury
    - Intent to use v. scare

Retreat
- Retreat Js
  - required to retreat or otherwise avoid if can do so with complete safety (MPC)
• Look to the statute, but may allowed to use the force if felony already in progress, but must retreat if not

• CL (retreat to the wall rule)
  o D to retreat, if not increasing danger
  o No necessity for killing can exist if there is a safe way to escape the conflict

• American rule
  o No D to retreat. May stand ground to defend yourself

• Middle ground
  o No D to retreat, failure to retreat may be considered as one circumstances in the determination of whether Δ acted too hastily, or whether Δ was actually in imminent danger of bodily harm.

• Castle doctrine
  o No D to retreat in own home (sometimes work) if attacked through no fault of his own
  o Some Js have an exception-split
    ▪ No D to retreat when attacked by a co-occupant

Restoring the privilege after an initial attack

Broadhurst

• Initial aggressor-loses the self-defense privilege
  o Victim-has the privilege

• To restore the privilege, must withdraw
  o Abandonment of the assault in good faith
  o Reasonable notice-effectively communicate
    ▪ Person not required to believe him if he is still holding the weapon or other circumstances
    ▪ May not be able to effectively communicate if the victim is so incapacitated from the initial attack

MPC § 3.09(2), (3) (text appears below)

Section 3.09. Mistake of Law as to Unlawfulness of Force or Legality of Arrest; Reckless or Negligent Use of Otherwise Justifiable Force; Reckless or Negligent Injury or Risk of Injury to Innocent Persons.

(1) The justification afforded by Sections 3.04 to 3.07, inclusive, is unavailable when:
• (a) the actor’s belief in the unlawfulness of the force or conduct against which he employs protective force or his belief in the lawfulness of an arrest which he endeavors to effect by force is erroneous; and

• (b) his error is due to ignorance or mistake as to the provisions of the Code, any other provision of the criminal law or the law governing the legality of an arrest or search.

(2) When the actor believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under Sections 3.03 to 3.08 but the actor is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of his use of force, the justification afforded by those Sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(3) When the actor is justified under Sections 3.03 to 3.08 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those Sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons.

B. Defense of others

Formulations:
• he steps into the shoes of the victim, and is only privileged to do what the victim could have done OR
• He is privileged to do what he would be able to do if the situation were as he reasonably perceives it to be OR
• May be able to protect a brother if he is in imminent danger of death or serious bodily harm even if his brother started the altercation, as long as he did not do so with felonious intent

MPC 3.05...see pp 952

• The retreat rules don’t carry a lot of weight in the context of protecting a third party
  o Must know you can retreat with complete safety
  o If third party would be required to retreat, the intervenor is not deprived of his ability to intervene unless he knows the
victim could have retreated with safety, then must try to persuade the person to retreat rather than remain in the fray

- N or recklessness in forming this belief applies in the same way as being N or recklessness in forming the belief for self-defense

C. Defense of habitation

- At CL, the dweller is privileged to use deadly force if this reasonably seems necessary to prevent the commission of consummation of burglary or arson.
  - Otherwise, generally not for the protection of property
- The dweller is privileged to use reasonable nondeadly force to prevent any unlawful intrusion therein.
- Also includes whatever place he is peacefully occupying as substitute habitation (Mitcheson)

Interpreting habitation statutes-Issues

- Mitcheson
  - Is “entry” onto land or in the house
  - What exactly is a tumultuous entry
  - Is dwelling a verb or a noun?
  - Does dwelling mean: structure, yard, curtilge (CL), proximate to the house?
- McNeese (CO’s make my day statute)
  - Unlawful entry? Actual or knowing
    - knowing violation of the criminal law
    - culpable mental state
    - knowingly and unlawfully entered the dwelling to commit a crime
      - i.e., to commit burglary
    - not against person who remains unlawfully in the dwelling

Mechanical Device (Ceballos)

- cant set up a mechanical device to shoot intruders when he or no one else is present in the house
- In the U.S., cts have concluded a person is L if he sets upon his premises a deadly mechanical device, and that device kills or injures another.
• The felony must be some atrocious crime attempted to be committed by force. When these do not reasonably create a fear of great bodily harm, there is no cause for the exaction of a human life: cant be a reasonable fear if not present

MPC 3.06..pp 967-968
Use of force for the protection of property

D. Duress and Necessity
Duress/Compulsion
• 1.) threat of immediate death or great bodily harm
  o threat of injury is present, immediate, or impending
• 2.) reasonable belief that the threat will be carried out if don’t commit the crime; must believe and the belief must be reasonable
  o person of ordinary firmness and judgment
• 3.) no reasonable opportunity to escape the threatened harm
• 4.) Submit to proper authorities after reaching a place of safety
  o usually not a factor except in prison escape cases
    ▪ must offer evidence of a bona fide effort to surrender or return to custody as soon as the duress or necessity had lost its coercive force.
• Not a defense to murder or involuntary manslaughter, but probably is a defense to FM if the murder is committed by a co-felon
  o Arguable
  o For FM, the commission of the underlying crime provides the requisite malice, but difficult to do this if duress is present
• CL :a person, when faced with a choice btw suffering death or serious bodily harm and committing some lesser crime, could not be punished for committing the lesser offense.
  o refused to recognize any compulsion as sufficient to excuse intentional killing.
• One view is that on a charge of murder, duress, like provocation, should reduce murder to manslaughter and give the ct power to pass whatever sentence might be appropriate in all circumstances
• the defense of duress is unavailable if the Δ recklessly placed himself in a situation, which it was probable that he would be subjected to duress (Castro-Gomez)
• refusal to testify
  o One problem that the ct has is unless it receives the cooperation of witnesses the perpetrators are not going to be brought to justice.
  o Could be an excuse if there is a concrete threat, but probably not where there is a vague, although a reasonable, threat.

Necessity
• available when a person is faced with a choice of two evils and must decide whether to commit a crime or an alternative that constitutes a greater evil.
• Traditionally, the coercion must have had its source in the physical forces of nature. Duress was applicable when the δ’s acts were coerced by a human force
• Necessity is usually invoked when δ acted in the interest of the general welfare; committed crime for the greater good

Duress and necessity could be defenses to a lesser crime if it appears lesser than the crime threatened

Exam--- Know the MPC and CL well
Start with the context and elements in all the questions before applying the facts to the crime.
Know a few broad cases-i.e. m’naughten
Tell her everything you know. Don’t assume she knows anything. Include all relevant steps in the analysis.