I. **Exam Information:**

A. Closed Book, 3 hour essay
   a. Possibly essay w/ sub-parts
   b. Hypothetically: develop the case/example
   c. MPC provisions will not be on exam itself
   d. Be prepared for other statute to work into CL analysis or MPC analysis
   e. Be prepared to address mental state requirement

B. Contrast CL with MPC
   a. CL w/ statutory variations
   b. Note major differences between CL and MPC
   c. Ex: statutes that modify CL murder
      i. First: state here is what CL said as to murder (3 types)
         1. express malice
         2. felony murder
         3. depraved hear murder
      ii. State statutes often divide murder into 1\textsuperscript{st} and 2\textsuperscript{nd} degree
         1. 1\textsuperscript{st}: premeditated and deliberate
         2. 2\textsuperscript{nd}: ....
      iii. If not given a statute just mention the above in passing (don’t dwell on it): good discussion of CL rules will be almost as many points even if fail to mention this statutory stuff
   d. Ex: Attempt
      i. Some CL has been codified

C. Ability to analogize to relevant case-law
   a. Ex: this is like case where Defendant consumed quart of wine and LSD and court found this was relevant b/c....

D. Policy
   a. Renunciation, withdrawal, unilateral conspiracy
      i. Why law does or does not recognize these things
   b. Policy considerations in the particular circumstances

E. Example Exam Question:
   a. I. “.....”
      i. Questions:
         1. 1(a)......
         2. 1(b)......
         3. 1(c)......
   b. Answer the question according to question as numbered
   c. Essay answer: not just (1) Yes or No and (2) why Yes or No
      i. Instead:
         1. plausible approach to question
         2. start w/ definition
         3. mention strengths
         4. then branch off
      ii. Thread of Analysis through appropriate crimes
         1. apply facts to these elements of crimes

F. Supplement: Criminal Law (by LaFave)
   a. Look to clarify understanding (Table of Contents)
   b. See relationship of principles
   c. Elements of a doctrine

II. **Introduction**
A. Contrast between Criminal and Civil Law
   a. Criminal Prosecution: intervene because conduct presents public danger
B. Burden of Proof: Criminal: beyond a reasonable doubt
C. Act + Intent + Causation = Liability
D. Model Penal Code: promulgated by ALI
   a. Will be contrasted w/ Common Law throughout semester

III. Imputability
A. The Necessity of an Act
   a. Crime requires either a voluntary physical act or an omission when there is a legal duty to act
   b. Palmer v. City of Euclid
      i. Facts: Palmer dropped female friend off at apt.
      ii. Held: statute was void for vagueness as applied to Mr. Palmer
   c. Act: necessary element to form a crime
B. What Constitutes an Act
   a. Voluntary Act: Defendant must have committed voluntary act (subject to a few exceptions): Voluntary Act = “Actus Reus”
      i. Reflex or Convulsion – an act consisting of a reflex or convulsion does not give rise to criminal liability
      ii. State v. Taft
         1. Facts: emergency brake released, charged w/ D.U.I.
         2. Held: the mere movement of a vehicle does not necessarily in every circumstance constitute a “driving” of the vehicle
   b. Voluntary Act: in course of conduct under MPC
   c. Possession: power + intent to control (conscious possession)
   d. MPC Possession: In situation: aware of control and for sufficient period of time to terminate her possession
   e. People v. Decina
      i. Facts: Defendant subject to epileptic attacks and suffered attack, vehicle jumped curb and killed 4 people
      ii. Held: once Decina began to operate the vehicle that is when the act occurred.
         1. Conscious risk-taking: Negligence in this case: operating the vehicle...
   f. State v. Kimbrell Possession
      i. Facts: Charged w/ trafficking cocaine (based on possession of the cocaine), cocaine remained on table while husband was to make the drug deal
      ii. Possession: power + intent to control (disposition)
         1. Ex: could have thrown it away while husband gone
      iii. If possession = element of crime generally construed to be conscious possession
C. Negative Acts/Omission
   a. In some cases: omission may be basis for criminal liability
   b. Legal Duty: (essentially when defendant has a duty to act imposed by civil law)
      i. Relationship
      ii. Statute
      iii. Contract (express or implied)
      iv. Voluntary assumption of care: usually if person isolated (?)
      v. Creation of peril
   c. Biddle v. Commonwealth (CB 492)
      i. Facts: severely malnourished infant, failure to feed infant
      ii. Criminal omission would be based on duty of status relationship between parent and child (Failure to fulfill duty = culpable omission)
1. Failure to feed child
d. Commonwealth v. Teixera
   i. Facts: nonsupport for illegitimate child
   ii. Omission: nonsupport
      1. Legal Duty: statute gave duty to support children
e. Duty to act
   i. Must be legal duty and not just moral duty
   ii. Absent statute requiring Good Samaritan rescue: may have breached a moral
duty but not a legal duty
f. Jones v. U.S.
   i. Facts: child neglect, 2 defendants: Green (mother) and Jones (caretaker)
   ii. Who has duty?
      1. Green: parental status
      2. Jones: contract or voluntary assumption
   iii. Held: trial court failed to instruct that jury must find a breach of a legal duty
g. Davis v. Commonwealth
   i. Facts: mother froze to death or starvation, room where daughter staying had
evidence of person living there
   ii. Held: implied contract b/c defendant derived economic benefits (food stamps,
welfare, live free in mother’s home)
h. Van Buskirk v. State
   i. Argument, boyfriend ordered out of car, girlfriend struck him, she left, boyfriend
hit later by a different car
   ii. If Van Buskirk created the peril: her failure to reasonably alleviate the peril
would be a culpable omission

IV. Responsibility/Mental State
A. Mens Rea
   a. Concurrence: act and intent
      i. Must have an act in addition b/c guilty mind alone cannot constitute a criminal
offense
      ii. Defendant’s conduct (actus reus) often is primary evidence in proving the
defendant’s mental state
   b. requirement that there be a “culpable state of mind”; intent; knowledge (“guilty mind”)
      i. Exceptions: Some crimes are defined in such a way that the “mens rea” is
merely negligence or recklessness
B. Criminal Negligence/Recklessness: substantial deviation from the standard established by law
   a. Criminal Negligence: inadvertent risk-taking
      i. Defendant should be aware of risk
      ii. reasonable person would have realized the risk (Ex: Gian-Cursio)
   b. Recklessness: conscious risk taking, a gross deviation (Ex: Petersen)
   a. Recklessness:
      i. Aware of risk
      ii. Consciously disregards
      iii. Substantial and unjustifiable risk
   b. Elements leading to finding of criminal recklessness:
      i. if degree of risk great enough
      ii. risk substantial
      iii. defendant aware
   c. MPC requires that there be a conscious disregard of a known risk for an act to be reckless
d. Objective Standard v. Subjective Standard:
i. Objective standard – “reasonable person” (i.e. what should he have done)
ii. Subjective standard – done in good faith (i.e. intent)

e. **Gian-Cursio v. State: Criminal negligence**
   i. Facts: Chiropractor treated TB w/ fasting, Mozian died as result
   ii. Difference between medical malpractice and manslaughter: gross incompetence then may rise to level of criminal negligence

f. **State v. Petersen: Recklessness**
   i. Facts: Drag race, Petersen stopped at intersection, Wille continues, hits truck and dies along w/ passenger, Warren
   ii. Held: Petersen took unjustified, huge risk (gross deviation)
   iii. Reckless act: setting the race in motion
      1. Risk he created continued up to and including the time of the collision
      2. Petersen helped set in motion this force (the other driver)

g. **State v. Howard: intent, recklessness, negligence**
   i. Facts: shot guy getting in the way of him protecting his friend, then shot the guy
   ii. Held: No reasonable basis under facts to justify negligent homicide
   iii. Howard was acting **intentionally**: explained by his raising self-defense (intended serious bodily injury/kill)
   iv. Explanation of manslaughter conviction (lower charge to manslaughter:
       1. imperfect self-defense:
          a. if defendant had unreasonable belief
          b. or if reasonable belief: did not justify “deadly force”

D. Specific Intent
   a. **General Intent:** D desired to commit the act which served as the actus reus
      i. Given intent to do actus reus, the intent to do all things that are natural and probable result of the act may be presumed
   b. **Specific Intent:** D, in addition to desiring to bring about the actus reus, must have desired to do something further
      i. For these offense: neither negligence nor the intent to do a different crime is sufficient (Ex: burglary)
   c. **Thacker v. Commonwealth**
      i. 3 drunk men, “shoot lights out” of tent, fired shots that went through Mrs. Ratrie’s bed
      ii. **Specific Intent:** mental state needed for attempted murder = intent to kill (not specific intent to do some other act, i.e. “shoot the lights out”)

E. Other Particular States of Mind
   a. Malice
      i. **Malice:** implies intent to do wrong
         1. intent to annoy, vex or injure another
         2. intent to do wrongful act
      ii. **State v. Nastoff**
         1. Facts: modified chain-saw emitted carbon, smoldered and caused fire
         2. Held: Nastoff didn’t intend to do the wrongful act the statute describes: intent to injure property (the malice the statute describes)
   b. Knowledge (Scieneter)
      i. **Knowledge**
         1. Majority view: have actual knowledge (subjectively know)
         2. Minority view: objective: the defendant should have known
         3. MPC: A person acts **knowingly** under the MPC w/r/t the nature of his conduct or the surrounding circumstances, if he is “aware” that his
conduct is of a certain kind or that certain circumstances exist; aware that it is practically certain that his conduct will cause that result

4. **Willful blindness/deliberate ignorance** at CL

5. **MPC**: if **person is aware of a high probability of its existence** that can be a substitute for knowledge

### ii. **State v. Beale** Knowledge: Subjective Test

1. Facts: antique store, customer believes items are stolen, goods put back on display and sold
2. Held: D himself must have believed that the goods were stolen i.e. **subjective test**: Subjective → believed → culpability

### iii. **U.S. v. Jewell** Willful Blindness

1. Tijuana, “Ray” offers marijuana then offers $100 to drive car across the border, defendant looks around car and sees nothing
2. Even if found that defendant did not know subjectively then **willful blindness** can serve as a proxy for knowledge
3. Willful blindness here:
   a. Aware of high probability that there was marijuana in car (MPC)
   b. Deliberate ignorance: Jewell didn’t want to know the truth b/c of the consequences (CL)

c. **Willfulness**

   i. **Willful**: intentional or purposeful

   ii. **Fields v. U.S.** Willful

      1. Facts: didn’t produce 3 documents for House investigation committee
      2. Willful in this context does not mean evil purpose
      3. **Willful**: (here) more like deliberate purpose

d. **Strict Liability**

   i. **“malum in se”**: evil in itself → mens rea
      1. Act + mental state
   ii. **“malum prohibitum”**: statute criminalizes, no mental state necessary, can impose strict liability (not inherently bad: legis. authority makes act criminal)
   iii. Accused’s good faith or innocent mistake is not a defense: liability depends solely upon commission of the prohibited act

   iv. **Commonwealth v. Olsheski** Strict Liability

      1. Facts: overweight truck, weigh bill
      2. With this type of statute: does not matter that Olsheski did everything in his power to obey the law

e. **Unlawful Conduct**

   i. **General Intent**: volitionally doing a prohibited act
      1. intent to commit the act which constitutes the crime

f. **Transferred Intent**

   i. Elements:
      1. If contemplated harm was criminal
      2. And there is great similarity between that harm and the actual result
      3. Then: the actor may be held criminally liable for the actual result

   ii. **Gladden v. State**: Transferred Intent

      1. Facts: Bad heroin deal, Gladden shot wildly at Siegel, hit 12 years old boy who died
      2. Theory of case: not that Gladden was reckless but this is intentional murder
         a. “intention follows the bullet”
iii. Cuellar v. State: **Who qualifies as “another”**
   1. Facts: fetus, car accident, baby born alive (emergency c-section) then died 43 hrs. later from injuries
   2. analogous to CL rule: baby must be born or in process of being born

V. **Offenses Against the Person (Homicide)**
   A. Homicide: What mental states will suffice?
   B. Murder
      a. Common Law: malice aforethought, intent to kill or injure
         i. Malice aforethought (express or implied)
            1. express:
               a. Intent-to-kill
               b. Intent to commit grievous bodily injury
            2. implied:
               a. felony-murder rule: commission of underlying felony: presumption of malice
               b. depraved heart murder: so extremely reckless or indifferent to value of human life generally that malice is implied
      ii. Depraved Heart Murder (reckless indifference)
         1. universal malice, not directed at any one person
         2. **Depraved Heart Murder Elements:**
            a. know risk but disregard
            b. unjustifiable risk to human life
            c. no social utility
      3. King v. State
         a. Facts: followed out of nightclub, then shot at tires of vehicle
         b. Reckless → extreme indifference → life generally
            i. High degree of risk: death
            ii. Awareness of risk: consciously disregard it
         a. Ex #1: walking down suburban street, shoots out windows of home, hits occupant: Jury will find: person aware of risk
         b. Ex #2: walking in forest, cabin appears abandoned, shoot out windows, there was occupant who was killed: Harder case
      5. Conduct = *gross deviation* from the standard of care a reasonable person would exercise
      6. Consider the possible social utility: if justifiable for taking the high degree of risk
         a. substantiality of the risk: likelihood / probability that it will cause harm, but the higher the justification for the conduct you can have a lower degree of risk.
      7. State v. Hokenson **Part of continuous transaction: criminally liable**
         a. Facts: D calls in prescription, enters w/ bomb and knife, was under arrest, bomb went off in officer’s hands
         b. We are presuming recklessness for what period of time?
            i. Responsible for the *forces set in motion* by your recklessness → continuous transaction
            ii. Until the forces are not in motion anymore: you will be strictly liable
1. Felony-Murder Elements:
   a. unintended killing
   b. underlying felony: no mens rea for murder but need it for underlying felony
   c. Inherently dangerous felony
2. Presumption of Malice: b/c underlying felony is inherently dangerous
3. Inherently Dangerous Felony Test:
   a. Must look at the felony in the abstract
   b. Must show: high probability of risk of death (more than 50%)
   c. Natural and probable consequence (Ex: Patterson below: is death natural and probable consequence of furnishing cocaine?)
   a. Facts: chiropractor treating 8 year old for cancer
   b. Held: No felony-murder applied here b/c not an inherently dangerous felony
      i. Here: person could commit fraud (medical fraud) w/o ever causing a serious risk that someone would die
5. People v. Patterson: Inherently Dangerous Felony Issue
   a. Facts: Defendant supplied cocaine, Jennie Licerio died
   b. Held: case remanded to determine if felony of furnishing cocaine = inherently dangerous
6. Problem: Felony-Murder Rule divorces responsibility element from the culpability element (Presumes malice)
   a. If criminal liability rests on moral culpability: then isolate F-M rule as much as possible
7. State v. Mayle When does felony end?
   a. Facts: attempted robbery at McDonald’s in Ohio
   b. Held: felony still occurring when the officer was shot
   c. F-M rule includes: things immediate and that immediately follow the commission/attempt of the felony
   d. Complete and continuous transaction until they reach a place of safety
8. People v. Wilson Merger Principle
   a. Facts: killing of Mrs. Wilson in the bathroom
   b. Court concerned: losing distinctions between different types of murders: Assault w/ deadly weapon merging into homicide
      i. Ex: Voluntary MS always a felony and if it is allowed as a predicate for F-M then voluntary MS will always get bootstrapped up to murder
   a. Facts: clearly reckless conduct (if he would have known the kids were inside he would not have shot)
   b. Shooting into occupied building: Assaulitve conduct (felony)
   c. Held: doesn’t merge into homicide
10. California stance on F-M rule:
    a. Merger Principle: If all you have in the box is “assault”: not enough for F-M
11. Human Shield Cases: Clearly a case of murder as it is a reckless act with extreme indifference to human life.
    iv. Premeditation/Deliberate Murder
    1. Elements: (measuring cold calculated judgment v. impulse)
a. Willful $\rightarrow$ intentional
b. Deliberate $\rightarrow$ thought
   i. Cool mind that is capable of reflection
c. Premeditated $\rightarrow$ beforehand
   i. Actual reflection beforehand

2. People v. Perez Planning/Motive/Manner
   a. Facts: victim stabbed 38 times, D went to same H.S.
   b. Typical premeditation categories:
      i. Planning
      ii. Motive
      iii. Manner
   c. Held: sufficient evidence to support jury’s finding of premeditated/deliberate murder

3. **Length of time to form:** does not have to be long
   a. Just: cool reflection showing conscious decision to kill victim (rule out impulse)

4. Provocation: Something considered provocation can negate the cool deliberation needed for premeditation
   a. 2nd degree murder: can include intentional killing
   b. 1st degree murder: must add cool mind and actual reflection

5. State v. Schrader **No appreciable time required to form intent to kill**
   a. Facts: D to purchase war souvenirs, argument over authenticity of German sword
   b. Deliberate/premeditated: held to be knowing and intentional

6. Midgett v. State Homicide must be premeditated/deliberate
   a. Facts: Father hit malnourished child in stomach and killed him
   b. Held: Father intended abuse but had no intent to kill
   c. **Ex:** if D thought for a long time planned to kill boy and then got drunk to get up courage
      i. Court likely to find: premeditation and deliberation

7. State v. Forrest **Moral Justification not Adequate to reduce charges**
   a. Facts: D kills father, terminally ill in hospital
   b. D admitted intended this (put father out of misery)
   c. Elements: Armed, D’s statement, Multiple shots (cocked pistol), No provocation, Helpless victim
   d. Use Elements to determine: If cool mind and Deliberate act

b. **Statutory Homicide**
   i. 1st Degree
      1. premeditated and deliberate
      2. Some jurisdictions: focus on the method/means, may include F-M
   ii. 2nd Degree
      1. include all other murders: go back to Common Law: every C.L. murder not in 1st degree category falls in this catch-all category

C. **MPC Murder (CB 216)**
   i. Purposely/knowingly: similar to Common Law Express Murder
   ii. Felony Murder: similar to Common Law (presumption of malice)
      1. enumerated felonies (MPC 210.2(1)(b))
   iii. Recklessly: extreme indifference to value of human life: similar to C.L. depraved heart

C. **Voluntary Manslaughter**
   a. Voluntary Manslaughter Policy Issues:
i. Recognize human frailty: people sometimes act out of heat of passion
ii. Search for rule that mitigates culpability

b. **Common Law**

i. Intentional killing of another human being

ii. **Heat of Passion:** extreme emotional state
   1. sudden
   2. subjective test: did D lose control?

iii. **Adequate Provocation**
   1. legal adequacy: defined in rigid CL categories
   2. Defendant acts in response to a provocation that a reasonable person would lose self-control (objective inquiry)

<table>
<thead>
<tr>
<th>Legal Provocation</th>
<th>Objective Test</th>
<th>Insufficient Provocation</th>
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<tbody>
<tr>
<td>Severe assault</td>
<td>reasonable man</td>
<td>mere words</td>
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<td>Mutual combat</td>
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<td>Adultery</td>
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<td>Illegal arrest</td>
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<td>Injury to 3rd parties</td>
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<tr>
<td>Informational words (if would have equaled adequate provocation)</td>
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iv. **State v. Guebara** **Mere Words (Provocation = purely objective standard)**
   1. Facts: D shot common law wife who had served him w/ divorce papers and misdemeanor assault charges
   2. Held: no adequate provocation: Mere words not sufficient provocation

v. **State v. Stafford** **Adequate Provocation**
   1. Facts: husband knocks glasses off her, she then kills husband
   2. Held: murder conviction stands: Minor assault not sufficient provocation

vi. **People v. Chevalier** **Adequate Provocation?**
   1. Facts: wives taunting about committing adultery
   2. Held: not adequate provocation
      a. Communication of adultery is not adequate here: History of marital discord so not a sudden shock when husband finds out

g. **State v. Dumlao (CB 190)** **Subjective/Objective Test**
   i. Facts: very jealous husband, shot mother-in-law
   ii. Announces **4 Part test: Subjective/Objective Test** (incorporates CL elements)
      1. adequate provocation (objective)
      2. provocation in fact (subjective)
      3. cooling off- reasonable person (objective)
      4. Did D cool off? (subjective)
   iii. Hawaii adopted different statutory definition of manslaughter from CL

h. Statutes with Manslaughter:
   i. Incorporate C.L. or M.P.C.

i. **MPC Manslaughter (recognizes mitigation): 210.3(1)(b)**
   i. Elements:
      1. Extreme Mental or Emotional Disturbance (subjective)
      2. Reasonable explanation/excuse (from perspective of person in actor’s situation)
   ii. MPC also includes “recklessly”: allowing for mitigation
iii. Reason for MPC standard: CL manslaughter doctrine divorced the legal standard from “mens rea”
   1. Recognizes: Manslaughter deals w/ mitigation (Still murder but D is somewhat less culpable)

<table>
<thead>
<tr>
<th>Common Law</th>
<th>MPC</th>
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<tbody>
<tr>
<td>Heat of Passion (sudden)</td>
<td>Extreme Mental/Emotional Disturbance</td>
</tr>
<tr>
<td>Provocation (adequate and rigid construction)</td>
<td>Reasonable Explanation or Excuse (actor’s situation)</td>
</tr>
</tbody>
</table>

j. MPC: criminally negligent homicide
k. MPC v. CL regarding Manslaughter
   i. CL test = easy to administer
   ii. MPC Test: asks jury to determine:
        1. Extreme Mental/Emotional disturbance
        2. Reasonable Explanation (difficult)
           a. Ex: put yourself in Dumlao’s shoes (hypersensitive, jealous man: is this reasonable excuse)
   iii. Heat of Passion may not need to be sudden under MPC as at CL
       1. See: Dumlao (wife talked to men for long time) and Forrest

F. Involuntary Manslaughter/Negligent Homicide
   a. Common Law: Involuntary Manslaughter
      i. Elements:
         1. Criminal negligence
            a. inadvertent risk taking/failure to perceive unjustifiable risk
         2. Death is accidental
      ii. State v. Hardie (HO 58): Failure to perceive risk a reasonable person would
         1. Facts: D joked w/ gun (thought didn’t work), shot neighbor Mrs. Suften
         2. Held: Criminal negligence: D fails to see risk that reas. person would have observed (pointing a deadly weapon at another person)
      iii. State v. Bier (CB 202) Consequences reasonably foreseeable from an objective standpoint
         1. Facts: D cocked gun, challenged wife, both intoxicated
         2. Held: criminally responsible despite ambiguity (did she pull trigger?)
            a. Foreseeable: sufficient b/c foreseeable someone would be shot
         3. Act of Negligence: pulling gun out of closet, loading it and cocking it
            a. As long as D’s negligent act is direct cause of death (set events in motion)
         4. Victim was foreseeably endangered in a manner and to a degree that matched what happened
   b. Statutory: Involuntary MS/Negligent Homicide
   c. MPC: Negligent Homicide
      i. Negligent: if defendant fails to perceive substantial or unjustifiable risk

G. Causation: causal link between act and harmful result
   a. Substantial Factor Test, Felony-Murder
      i. People v. Stamp F-M is strict liability doctrine, substantial factor
         1. Facts: chest pains before and after robbery
         2. Held: Robbers liable under F-M rule
            a. heart attack: even if unforeseen, still liable b/c F-M = strict liability (all that occurs during commission of felony)
         3. Causation here: shortening life (substantial factor)
4. **Example:** V hides, not lead out by gunpoint, V still knew robbery was going on, then V dies shortly after
   a. Unseen/unforeseen victim will not undercut finding that robbery was cause of death b/c still *substantial factor*

b. **Need:** Both Cause in Fact and Proximate Cause
   i. **State v. Sauter:** Poor medical treatment does not break chain of causation
      1. D = stabbing victim, surgeon performed emergency surgery but failed to repair a blood vessel, V bled to death
      2. Held: medical malpractice was not an intervening cause
      3. Only if doctor’s malpractice is sole cause of V’s death does it break the chain of causation for criminal liability
         a. **Example:** if D causes minor wound and surgeon commits major blunder

4. **But-For Cause**
   a. But-for the knife attack, V would not have been in surgery and subject to surgeon’s malpractice

5. **Proximate Cause:** sufficiently close link (sufficiently connected)
   a. The longer the time in between: the more tenuous the connection

6. **Sole Cause:** if an act is the only cause of the injury and there is absolutely nothing else which contributed to the injury in any way, the act is the proximate cause of the injury
   a. However an act need not be the sole cause in order to be criminal

c. **Letner v. State** (CB 593): Normal Response Does not break Chain of Causation
   i. Shooting from cliff, Walter jumps out of boat, boat capsizes so Alfred and Walter both drown
   ii. Held: Normal response by victim does not break causation and liability of D
      1. Not an unanticipated result: a boat occupant would jump out of boat

d. **Campbell v. State:** Agency Theory v. Proximate Cause for F-M
   i. Facts: cab driver was victim of robbery, Either policeman or cab driver shot/killed co-felon
   ii. Held: felon #2 not liable for death of felon #1
   iii. Co-felon liable for crimes committed by other felon under F-M rule
      1. “Agency Theory”: liability for deaths caused when furthering felony commission
   iv. Minority View is Proximate Cause: is act of committing robbery the Proximate Cause of felon #1 being shot?
      1. **Example:** Victim shooting policeman
         a. But-For the felony: victim would not be acting in self-defense and have occasion for bad aim and shooting the police officer

VI. **Attempt and Kindred Problems**
A. **Inchoate Crimes:** incomplete b/c have some unachieved goal
   a. These theories have a lot of overlap
      i. Attempt: punishing under substantive law (big area)
      ii. Solicitation: invite someone else
         1. If person successfully completes attempt or solicitation: merges into completed crime
      iii. Conspiracy: conspire w/ others

B. **Attempt In General**
   a. **Intent to commit**
      i. Mental State: would have been enough to satisfy mens rea of substantive crime
ii. Intent to act w/ the purpose of causing the result element of the target offense

b. Act toward commission
   i. some overt act in furtherance of plan of criminal conduct
   ii. beyond preparation

C. Definitions
   a. Act Towards Commision
      i. Moffet v. State Must be perpetration to be liable for attempt
         1. Facts: Moffett force Linda to write suicide note, victim escaped
         2. Act towards commission: beyond preparation
   b. Substantial Step
      i. Model Penal Code (substantial step)
         1. conduct culminates in crime
         2. strongly corroborative: actor’s purpose
      ii. Section 5.01(2): Conduct which may be held to be a substantial step:
         1. lying wait
         2. enticing victim to go to the place contemplated for the crime’s commission
         3. reconnoitering the place contemplated for commission of the crime
         4. unlawful entry of structure/vehicle/enclosure where contemplated crime to be committed
         5. possession of materials to be employed in commission of the crime (designed for unlawful use or serve no lawful purpose under circumstances)
         6. possession/collection of materials at or near place contemplated for commission of the crime
         7. soliciting an innocent agent to engage in conduct constituting an element of the crime
      iii. Young v. State: Substantial Step
         1. Facts: Young w/ gun and mask comes up to bank but it’s closed
         2. Attempt under Substantial Step
            a. Trying to open door = point of attempt here
            b. At least an attempt when gets out of car, clips on scanner, puts on mask (substantial step)
   c. Last Proximate Act: D has done everything to fix liability for the crime if the result actually occurs
      i. Ex: wife wants to poison and kill husband, puts poison in his whiskey, on way home husband hit and killed by bus
         1. D has done everything that is needed and everything intended for desired result to occur (Last Proximate Act)
   d. “Dangerous Proximity”: what is left to be done? Closeness in space and time to completing the crime...
      i. Examines if physically close to intended victim or set in motion a chain of events that created a high probability that the crime would be completed
      ii. reasonable probability the crime would have been complete but for timely interference
      iii. People v. Rizzo: Dangerous Proximity/preparatory phase is not attempt
         1. Facts: Rizzo planned to rob Charles Rao of payroll, looked for him all over NYC
         2. Held: conduct was not an attempt
3. Opportunity to commit crime comes when Rizzo is in presence (finds) victim (Here no opportunity presented although there was an intent to commit the crime)

D. Impossibility
   a. **Factual Impossibility**
      1. intent: to commit crime
      2. inability to commit crime due to unknown fact
      ii. Ex: would be pick-pocket reaching into empty pocket
      iii. Not a defense: almost never successful
      iv. **People v. Rojas** (CB 472): **Factual Impossibility/Police intervention did not destroy criminality of attempt**
         1. Facts: stole $4500 of electrical conduit
         2. Held: guilty of attempt to receive stolen goods
         3. Holding here depends on D not knowing the goods had been recovered
   b. **Legal Impossibility**
      1. intent: to commit crime
      2. D does everything intended to do
      3. What D intended to do and did is not a crime
      ii. Everything goes as planned but not a crime: D mistaken about crime’s definition
      iii. Constitutes a defense: Courts will likely acquit if true legal impossibility
      iv. **Booth v. State**: **Legal Impossibility**
         1. stolen coat → legal v. factual impossibility
         2. Held: not guilty, Intended consequences was not a crime
   c. **Factual v. Legal Impossibility:**
      i. True Factual Impossibility
         1. Only thing precluding actor from what he intends to complete:
            a. failure of means b/c of mistaken assumption regarding a fact
      ii. True Legal Impossibility
         1. Ex: Actor thinks it is illegal to shoot squirrels
            a. But it is not prohibited by law
      iii. Harder Cases (can make these come out either way):
         1. Ex #1: D shoots at tree stump, thinks it was a person
         2. Ex #2: D shoots at V, but V was already dead
            a. Underlying issue: V dead/not dead
         3. **Mistaken assumption about legal status of something (Hybrid Impossibility)**
            a. objective is criminal: if underlying assumptions were correct the criminal would have committed the substantive crime
            b. Hybrid Impossibility: criminal objective but failure b/c of legal status
   d. **MPC:**
      i. Test:
         1. You’re guilty if you thought you were committing a crime
         2. You’re not guilty if the actions don’t amount to a crime
      ii. no defense for factual impossibility: Section 5.01(1)(b)
      iii. Ex: put time bomb in building, bomb would explode in 1,000 hours but timing device failed
         1. Would cause result if circumstances were as he believed them to be (Falls under (1)(b))
   e. Ex: D shoots at V (Present Capacity Example ??)
      i. Include:
1. V out of range
2. Unloaded gun/or shooting blanks
   ii. No way D could kill V in same way that Oviedo could never distribute heroin
       (b/c substance was not heroin)
   iii. Physical Impossibility: (failure of means) is not a defense to attempt
       1. could be defense to the completed crime
E. Intent: not very problematic
   a. Differentiate: preparation v. perpetration
   b. Can still have intent but it is physically impossible:
      i. Ex: old man is impotent, wants to commit rape
         1. guilty of attempt
         2. cannot be guilty of completed crime of rape
   c. State v. Mitchell: **Intent and Present Capacity**
      i. D fired gun where he thought Warren was lying but Warren not there
      ii. took all steps to kill, even shot into room, but man wasn’t there
      iii. Held: guilty of attempt
         1. Intent and present capacity
         2. Here: clear specific intent to shoot Warren
F. Abandonment/Renunciation of Criminal Purpose
   a. MPC: recognizes renunciation as an affirmative defense but it must be voluntary and complete (limited circumstances)
      i. Abandonment must be
         1. voluntary
         2. complete
   b. Voluntary
      i. Not voluntary if motivated by something unknown at the beginning of the commission (Frustration of criminal purpose)
      ii. Ex: D (Stewart) demands all the $ in gas station, attendant says $ kept in lock box behind pumps and attendant does not have key
         1. not voluntary: Stewart was frustrated in his criminal purpose
   c. Complete
      i. Not complete if decide to do it at a better time (postponement)
      ii. Ex: can’t be approaching gas station, ready to rob, see police officer and decide to come back later
   d. Not all CL jurisdictions recognize abandonment: once someone has gone so far as to meet elements of attempt, don’t let them off
G. Solicitation
   a. **Solicitation Defined (at Common Law):**
      i. Commands, encourages, entices
      ii. Another to commit a crime
   b. Solicitation comes farther back in time than attempt
      i. Conspiracy: between solicitation and attempt
   c. Solicitation is often (but not always) an independent offense
   d. State v. Blechman (CB 486) **Target Offense need not be carried into effect**
      i. If solicitee commits crime: then solicitor liable for substantive crime (could be: aider/abettor)
   e. Ex: abandoned house is eyesore, “I wish someone would burn this house down”
      i. Act not specific enough
      ii. Intent: if I say it as a joke and don’t intend for you to do it then there is no intent and no crime
f. **Ex:** leave message, $500 to burn house down, message left on answering machine but person has moved and never gets message
   i. **Solicitation still punishable even if not communicated**

VII. **Conspiracy (Chapter 6)**

A. **Elements: Dual Intent:**
   a. Intent to agree
   b. Intent to commit specific crime

B. Proof of intent/knowledge not always required for conspiracy
   a. **Ex:** Food & Drug Act, can violate by transporting adulterated food w/o knowledge that the food is adulterated

C. Solicitation can merge into Conspiracy: when solicitor attains agreement of solicitee

D. **Wharton’s Rule Defenses:** crimes that require concerted action of 2 people
   a. Agreeing to such action does not allow for conspiracy charge
   b. **Ex:** dueling, adultery: can’t have conspiracy between 2 people in dueling or in adultery
   c. **Ex:** Harris v. Miles in duel, Bennet as Harris’ second and Frech as Miles’ second
      i. **3rd party exception to Wharton’s Rule:** Wharton’s Rule would not apply and could have conspiracy between the 4 parties contemplating this duel
   d. Applying Wharton’s Rule: look at elements of crime in the abstract

E. **People v. Swain** (CB 519): **Dual Intent**
   a. Drive-by shooting, van w/ people shooting semi-auto weapons
   b. Mens Rea requirements to prove conspiracy: here Court talks about dual intent:
      i. Intent to agree (conspiracy = specific intent crime)
         ii. Collateral intent: intent to kill
   c. Held: jury may have convicted on unpermissible theory:
      i. Implied malice not permissible in conspiracy context b/c need a specific intent to kill (**Ex:** F-M = accidental killing)
   d. Possible: this was not an intended killing
      i. Jury must examine evidence:
         1. one person bragged about shooting the kid
         2. group started out w/ revenge: retribution for the stolen automobile

F. **People v. Lauria** (HO #2, 1) **Knowledge to prove Intent**
   a. Facts: Lauria provides legitimate service, telephone answering service
   b. Evidence that Lauria has positive knowledge that prostitutes using the service
   c. Conspiracy:
      i. Knowledge
      ii. Intent to promote
   d. Knowledge
      i. Illicit purpose: State requires: intent to promote the illicit purpose
   e. Held: Lauria cannot be charged w/ prostitution or conspiracy to commit prostitution
      i. No evidence that Lauria agreed to assist subscribers in their prostitution business
   f. **How state can prove intent from knowledge:** **Inference of intent beyond mere knowledge**
      i. Stake in venture: tends to show if person had knowledge then intending to promote
         1. Here: Lauria has separate records, charges $1/call for prostitute customers and $.50/call for others
         2. inference: intends to assist prostitutes in promoting business
      ii. No legal purpose
         1. Here: telephone answering service could be legitimate
         2. **Falcone:** sugar, yeast, cans supplied to distillers
a. Not enough to infer intent to promote unlawful distilling business

3. Direct Sales: morphine, country doctor, 300 times the need for the community, stronger than normal tablets

iii. Disproportionate Volume or Percentage:
   1. Here: if Lauria only provides services to prostitutes
   2. Falcone: if all sugar was being sold to illegal distillers
   3. Direct Sales: volume discounts, 50% of volume to country doctor

iv. Aggravated Crime
   1. Here: if Lauria knew a high percentage of his customers were kidnappers and using his services to collect ransom
   2. Even if goods have potential for legitimate use, if the supplier of the goods knows of the purchaser’s intended use of the good for aggravated crime

G. Pinkerton v. U.S. (CB 527) Imputing liability to Conspirators who didn’t participate in acts
   a. Facts: violation of IRS laws (violating substantive laws), Walter engaged in the conduct, no evidence that Daniel participated yet both convicted of substantive offense
   b. Held: each of conspirators act as agent for the other (hold both brothers liable for substantive crime)
      i. Commission of overt act by one = commission of overt act by all
   c. Imputing liability to a person who didn’t participate in acts
      i. Ex: agree to only use blackjack to rob, don’t want to hurt victim, victim resists, Walter hits victim and victim dies
         1. Daniel still liable: furtherance of conspiracy and reasonably foreseeable
      ii. Ex: conspiracy to shoot animals out of season, Walter holds up a store
         1. Here: not foreseeable, out of realm of what parties intended
         2. Court will likely find: not in furtherance of conspiracy

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<th>Two Theories of Vicarious Liability</th>
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<td>Pinkerton: Conspiracy</td>
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<td>- Agency</td>
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<td>- Furtherance</td>
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<tr>
<td>- Crime</td>
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<tr>
<td>Any criminal objective achieved in furtherance of conspiracy</td>
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<td>Foreseeable: natural and probable consequence of agreement</td>
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*** Note: There will be overlap w/ these 2 theories of vicarious liability when the crime committed in furtherance is homicide

H. People v. Sconce (HO #2, 7): Withdrawal from Conspiracy
   a. Facts: plan to blow up Estephani’s car
      i. Sconce → Garcia ($10,000)
      ii. Garcia → Dutton ($5,000)
      iii. Sconce then calls it off
   b. Held: Withdrawal = defense to conspiracy if before overt act
   c. Overt act has to be in furtherance of the conspiracy
      i. overt act of one fixes liability for all in conspiracy
ii. any crimes then in furtherance of the conspiracy → liability attributable to all in the conspiracy
d. To be effective the withdrawal must be communicated to all parties to conspiracy
e. 2 types of withdrawal defenses talked about by Court:
   i. Defense to Crime of Conspiring to commit murder
   ii. Defense to terminate Pinkerton liability
f. Pinkerton withdrawal can occur after the conspiracy is complete
   i. Will be a defense for other crimes (defense going forward)

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<th>Two Types of Withdrawal</th>
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<td>Retroactive</td>
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<td>No conspiracy liability</td>
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<td>Complete Defense</td>
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g. **Overt Act Jurisdiction:**
   i. conspiracy not complete until:
      1. Agreement
      2. Overt act
h. **Non-Overt Act Jurisdiction**
   i. Conspiracy complete with just agreement → withdrawal will not be a defense to conspiracy

I. MPC comparison to Withdrawal to Conspiracy Concepts
   a. Renunciation (MPC) (CB 539): similar to withdrawal theory
      i. D renounces
      ii. Voluntary and complete renunciation
      iii. Thwart success
   b. What constitutes thwart success?
      i. conspiracy set in motion this group danger so high requirement “to thwart” because w/ just a withdrawal still a good chance the criminal actions will go forward
   c. MPC requires overt act for conspiracy unless 1st degree felony
      i. talking about murdering someone: that is sufficient manifestation
   d. Successful renunciation under MPC has same effect as Withdrawal at CL (before overt act)
e. MPC does not incorporate Pinkerton liability
   i. Liability for substantive crime for being part of conspiracy is dealt with as separate issue (aiding/abetting)

J. Abandonment/Termination
   a. Conspiracy ends:
      i. Conspirators have achieved the objectives they intended to achieve in furtherance of the conspiracy
      ii. If all members of conspiracy decide to abandon their plan for whatever reason

K. **U.S. v. Feola** (HO #2, 10) **Conspiracy can’t require more than substantive crime**
   a. Facts:
      i. Assaulting federal official
      ii. Conspiracy
   b. Held: Conspiracy statute does not require knowledge that was federal official
      i. **Feola**: D had intent to assault regardless of whether it was a federal official
   c. Element of crime proving that V = federal official held to be jurisdictional element (Thus not element of the crime)
L. **Marquiz v. People** (CB 530): **Rule of Consistency**
   a. Facts: 3 men took Debra Terhorst to Lookout Mtn. and stabbed her
   b. “Rule of Consistency”: When all Defendants are tried together:
      i. As long as there is one conspirator who has not been brought to trial on the merits: can find only D guilty of conspiracy
   c. MPC: allows conspiracy as one person’s agreement (unilateral theory)
      i. Under MPC: appears no need for “Rule of Consistency”

M. **People v. Foster** (HO #2, 17) **Unilateral Conspiracy**
   a. Facts: Foster talked w/ Ragsdale, Ragsdale feigned agreement (never overtly agreed to conspiracy)
   b. Held: the amendment did not adopt the unilateral conspiracy theory
   c. Solicitation (a person): Unilateral conspiracy appears to collapse into solicitation
   d. Solicitation: As solicitor I am enticing another to commit the crime for me
      i. Inviting someone to join crime may not equal solicitation
   e. Motivation for unilateral theory under MPC illustrated here:
      i. Foster had criminal intent/purpose
      ii. Foster no less guilty b/c Ragsdale feigned agreement

VIII. **Parties to Crime (Accomplice Liability)**

A. **Aider and Abettor:**
   a. Intent to Aid
   b. Knowledge of purpose

B. **Accessory Liability (Beeman and Hoselton)**
   a. Knowledge (of purpose)
   b. Intent (to aid): Dual Intent
      i. Intent to act (the encourage/aid/assist part)
      ii. Intent to commit: target crime

C. **Result → mental state required w/ respect to that result (Foster)**

D. **Foreseeable Consequences (Linscott)**

E. **Aid/Abet purpose (policy): liability for those involved in crime committed by someone else**
   a. Derivative liability → attribute crime to the accessory

F. Actual felon must have completed crime to find the accessory liable (see **Genoa**)
   a. Must prove all the elements of the underlying crime vicariously

G. **Accessory After the Fact**
   a. Elements:
      i. D commits felony
      ii. Accessory knows (subjective)
      iii. Accessory comforts and aids
   b. Independent crime

H. **MPC (CB 568-569)**
   a. **Accomplice**
      i. Act w/ purpose of promoting or facilitating the commission of the offense (2.06(3)(a)(i))
         1. solicits
         2. aids/agrees/atttempts
         3. fails in legal duty to prevent commission of offense
      ii. Act w/ culpability as to result
   b. **Accessory After Fact**: straight forward: “Hindering apprehension or prosecution”
      i. Detailed list of what is considered Accessory After Fact liability

I. **People v. Beeman** (CB 552) **No knowledge of D = No accessory liability**
a. Facts: Beeman too easy to identify, gave floor plan and cars, plan was to rob his relatives, Beeman said “wanted nothing to do w/ it”

b. **Aider and Abettor:**
   i. Knowledge of purpose
   ii. Intent to Aid

 c. Here: need specific intent to aid
   i. Even if floor plan useful and provided aid that standing alone not enough: must have knowledge that sketch of floor plan was to be used in the robbery
   ii. Must specifically intent to aid those who are carrying out the crime

J. **State v. Hoselton** (HO #2, 21) *Need intent to provide assistance/aid*
   a. Facts: group of friends on a barge, friends got into supply room, Hoselton left barge and returned to automobile
   b. Held: conviction can’t be upheld b/c insufficient evidence to sustain theory that D was a lookout
      i. D didn’t give active assistance, D didn’t help put stolen goods in car
   c. **Lookout:** can equal aider and abettor b/c watching and will warn those committing crime

K. **State v. Foster** (HO #2, 24) *Unintended Consequences*
 a. Facts: D’s girlfriend raped, attacker had razor blade, D went to get girlfriend to identify attacker, Cannon had knife and stabbed attacker while waiting, the attacker (Middleton) apparently charged
 b. Foster charged w/ Criminally Negligent Homicide:
   i. High risk
   ii. Failed to perceive
   iii. Ordinary person would have perceived

 c. Arg: conspiracy or attempt are specific intent crimes
   i. Can’t conspire or attempt to commit criminally negligent homicide b/c not a specific intent crime
      1. inadvertent crime: high risk-taking

d. Foster did have criminal intent here: Foster committed assault and kidnapping as principal

 e. Held: Could be accessory to criminally negligent homicide if D had the requisite mental state

 f. **Ex:** passenger in my car, encourages me to drive 80mph in a 20mph zone, I hit another car causing a fatality: Liability?
   i. Me: liable for criminally negligent homicide or manslaughter
      1. Driver criminally negligent for driving at high speed
   ii. Passenger as accessory?
      1. Here:
         a. Encouraged to violate speed limit
         b. Disregard of human life
      2. Passenger encouraged with knowledge and intent
      3. Passenger criminally negligent for encouraging driver to drive at high speed
   iii. Both driver and passenger are acting criminally negligently
      1. death that occurred was unintended

 g. Apply Foster w/ the analysis of the above Ex
   i. Foster’s intent to aid: was to continue detainment (kidnapping)
   ii. Foster negligent: leaving Cannon w/ knife, foreseeable that Middleton may try to escape
   iii. Third element here for Aid/Abet liability:
      1. must have crime committed by someone else
2. Did Cannon commit criminally negligent homicide that can be imputed to Foster?
   a. Must make the case that Cannon committed criminally negligent homicide to impute to Foster

h. Facts of Stabbing: possible Arg. that Cannon acting in self-defense?
   i. Middleton charged Cannon
   i. Cannon’s claim of self-defense bears on Foster’s liability for criminally negligent homicide
      i. If Cannon acting in Self-Defense, then Foster must have same mental state and it seems clear that Foster did not have the mental state of intent to kill
         1. would mean no negligent homicide to impute to Foster
      ii. Need to know more about facts to resolve these issues (was Cannon negligent, reckless, intentional??)
      iii. holding knife straight at Middleton or up in the air
   i. Cannon’s Self-Defense = worst scenario for prosecution

L. State v. Linscott (HO #2, 28): Reasonably Foreseeable Consequences
   a. Facts: plan to rob cocaine dealer (Grenier), D broke window, Fuller immediately shot
   b. D Arg: if I would have known Fuller was going to shoot right away, I would not have participated
   c. Issue: Was death of drug dealer Grenier a reasonably foreseeable consequence of the robbery?
   d. Held: Linscott did not need intent for commission of secondary crime as long as reasonably foreseeable
   e. Exam (options for prosecutor): If Fuller acts w/ intent to kill and Linscott is only acting w/ reckless disregard of human life
      i. Traditional Accessory Liability: Linscott not held liable for murder
      ii. Check Jurisdiction: if recognizes reasonably foreseeable consequence of the robbery?
      iii. Then check: F-M
         1. appears fairly clean here
      iv. Then check: conspiracy
         1. agreement to rob (armed robbery)
         2. Pinkerton jurisdiction: natural/foreseeable result (ramification of conspiracy)
            a. then co-conspirator vicariously liable
      v. These theories very close to each other: pieces of evidence will overlap

M. Boswell v. State (HO #2, 31) Circumstances Element
   a. Facts: circumstantial liability: Bowell convicted accomplice of James Thomas sexual assault
   b. Issue: liability for sexual assault if didn’t know lack of consent (aid/abet liability)?
   c. Held: Boswell would have to be reckless as to whether the victim consented to be liable as an accomplice
      i. Because primary has to act w/ reckless disregard of the lack of victim’s consent to be liable for sexual assault

N. State v. Vaillancourt (HO #2, 33)
   a. Facts: D went to scene of would be burglary, went around house, companion appears to try to break-in window
   b. Held: Presence and knowledge is not enough
      i. must show something more than mere presence
      ii. here: no active participation/encouragement
      iii. only evidence: that Vaillancourt just stood there
c. Issues: mere presence v. lookout v. moral support

O. People v. Genoa (HO #2, 35)
   a. Facts: D accepted proposal to buy $10,000 of cocaine, not actual distribution ever occurred
   b. Issue: Did D attempt to aid/abet undercover police officer?
   c. **Drug deal not consummated so no drug deal to impute**
   d. No drug deal was attempted either
      i. Police officer never intended and therefore never attempted
   e. **Aid/Abet Liability: derivative liability**
      i. Not an individual crime: Need a completed crime by another
   f. How about conspiracy here: draws on unilateral/bilateral distinction
      i. MPC jurisdiction: If a person agrees (unilateral liability)

P. People v. Brown (HO #2, 36)
   a. Facts: D driving around w/ Babcock, plan to steal car and wreck it, Brown and Schultz to kick door open and Babcock will go inside and steal car, after door kicked in, B & S decide to not go through w/ crime, tell Babcock they are leaving and Babcock reluctantly goes
   b. Held: kicking the door in was a substantial step for attempted burglary
   c. Held: burglary not committed
   d. Held: Brown did not withdraw
   e. Is Brown guilty of attempted burglary as a principal or as an accessory?
   f. Ultimate Issue: is anyone guilty of attempted burglary?
      i. Did B & S instigate leaving and thus withdrawal?
         a. Court says (HO #2, 37, last paragraph): Brown may be held accountable for what Babcock did
            1. Why look at what Babcock did if what Brown did was sufficient?
            2. Not clear why looking at vicarious liability for what Babcock did
      ii. If Court would look at B & S independently committing an attempt then Babcock accessory as aider/abettor (lookout)
         a. would need to look again at withdrawal defense
         b. And now not withdrawal defense in context of aiding/abetting
         c. Under MPC (Section 4): withdrawal was voluntary and complete
            a. Much cleaner resolution than the court’s use of the accessory statute

Q. State v. Williams (CB 565)
   a. Facts: defendants drove perpetrator Hicks away, Hooker didn’t die until later, defendants lied and said perpetrator wasn’t at scene of shooting
   b. Held: Not Accessory After the Fact to murder b/c the victim had not died yet (victim not dead when these acts of adding happened)
      i. Underlying crime had to be complete
   c. **Accessory After the Fact:**
      i. D commits felony
         a. Accessory knows (subjective)
      ii. Accessory comforts and aids
      d. Accessory Before the Fact Liability v. Accessory After the Fact Liability:
      e. Element of Accessory After Fact at issue here: Accessory must know
         i. Here: defendants don’t know providing post-crime aid to what will be a homicide

R. State v. Truesdell (CB 566)
   a. Facts: 12 year old child shot D’s ex-husband 10 times, Zola charged
   b. Held: D amenable to prosecution for Accessory After the Fact
   c. Concern here: motive of D to protect child after this shooting
i. But intent is still to prevent this child from getting caught
   1. still an obstruction of justice
d. Focus: factual matter: did child engage in conduct that amounted to assault w/ a deadly weapon or homicide?
   i. regardless of whether amenable to prosecution

IX. Responsibility: Modifying Circumstances (Ignorance or Mistake)
A. Ignorance or Mistake of Law
   a. Maxim: “Ignorance of the Law is no excuse”
      i. If ignorance allowed as an excuse, may encourage people to remain ignorant
         1. or feign ignorance in court
   b. Mistake of Law Allowed → negates an element of the crime (Cude)
   c. Personal misunderstanding never a defense (Marrero)
B. State v. Cude (CB 835) Mistake of law allowed → negates element of the crime
   a. Facts: Cude charged w/ larceny under theory that he stole his own car from a garage
   b. Held: Cude could be not guilty if at time of the taking he honestly believed that he had a right to possession of the car.
   c. Mistake of law allowed if negates element of the crime
      i. Mistake of law: different law (property law)
C. People v. Marrero (CB 836) Personal Misunderstanding
   a. Facts: gun possession, Marrero is a federal corrections officer and thought he was a peace officer, misread statute
   b. Statute: can carry concealed weapon if a “peace officer”
   c. Intent:
      i. Gun Possession → only intent = intent to possess weapon
      ii. Marrero had this intent: to carry a concealed weapon
   d. Rule: Personal misunderstanding is never a defense
      i. This is an issue with the many “malum prohibitum” crimes that are felonies
      ii. Thus misreading a statute is not a defense
D. People v. Weiss (CB 841): Statutory Interpretation and Mistake
   a. Facts: confined Lindbergh baby kidnapping suspect
   b. D’s Arg: Told by police officer they had authority so mistake was reasonable
   c. Kidnapping:
      i. Intent to confine (conduct)
      ii. w/o authority of law (circumstances)
   d. Issue: again statutory interpretation
      i. What does intent modify? → confinement or w/o authority of law
   e. Here: reasonable mistake should be a defense to kidnapping
E. Lambert v. California (CB 843)
   a. L.A. Code requires felon registration, Lambert convicted of forgery, lived in CA for 7 years and didn’t register
   b. D’s Arg: didn’t know about law so didn’t register
   c. Held: ordinance unconstitutional in these circumstances (but not on it’s face)
      i. Constitutional Issue: if can show Lambert had knowledge then Lambert would have notice
   d. Issues when passive conduct involved such as here:
      i. Ex: if engaged in construction, highly regulated business, you are on notice that your construction activities are subject to zoning requirements and other requirements
   e. Actual v. Constructive Knowledge
i. Ex: construction manager may not have had actual knowledge but should have known b/c of his business

F. Long v. State (HO #2A, 1)
   a. Facts: bigamy (the triumph of hope over experience!!), Long married in Del., moves to Ark., goes back to Del. And remarries
   b. D’s Arg: I sought legal advice, what Courts suggest that I should do
   c. Issue: is this a valid defense?
   d. If D raises good faith reliance on lawyer
      i. Court will allow prosecution to ask D what corresponded between D and lawyer
      ii. Raising this defense: essentially waives attorney/client privilege

G. State v. Striggles (HO #2A, 4)
   a. Facts: gum/mint vending machines, restaurant owner convicted of having illegal gambling device in restaurant
   b. D’s Arg: had authority for having the device
      i. Municipal court decision
      ii. Mayor’s letter
      iii. County Attorney letter
   c. D’s Arg: good faith/mistaken belief
   d. Held: this evidence not allowed
   e. Problem: statute was always on books just not much caselaw determining what it meant
   f. Held: Only Court of highest jurisdiction will decide what law is

H. MPC (CB 846)
   a. Apply Striggles:
      i. Reasonable reliance on official statement of law
         1. relying on municipal court: leaves question if it was reasonable to rely or not
      ii. Result: not clear if Striggle’s defense would have been allowed under the MPC

I. People v. Vogel
   a. Facts: wife said going to get divorce and later that she had re-married
   b. Held: court read statute to have an intent element and not to be strict liability
   c. Questions for jury to decide:
      i. Did D subjectively believe?
      ii. Was this a reasonable belief?

J. People v. Cash (CB 852)
   a. Facts: V is 15 but told D was 17
   b. Held: D’s mistake of age was not a defense here
   c. Minority View: reasonable mistake about age is a valid defense
   d. MPC (CB 858)
      i. Allows mistake of age to be defense
      ii. At 10 years old will litigate this issue

K. People v. Crane (CB 856)
   a. Facts: Crane charged w/ murder, take into account the beating and the burning
   b. Charges:
      i. Count 1 → intent to kill victim or cause serious harm
      ii. Count 2 → aware of probability
   c. Crane’s Arg (raises 2 defenses):
      i. Beating: self-defense
      ii. Burning: mistake of fact
   d. Ambiguity: if V dead at time of burning
   e. Held: jury should have considered evidence about V’s status at time of burning (Belief that V was dead may have been reasonable)
f. Reasonable mistake negates requisite intent for crime

X. Responsibility: Limitations on Criminal Capacity

A. Intoxication (Drunkenness)
   a. Voluntary Intoxication:
      i. Negates specific intent → defense
      ii. Fixed Insanity → defense
      iii. Temporary Insanity (incapacity, irresponsibility) → no defense
   b. Involuntary Intoxication: defense if:
      i. Duress or fraud
      ii. Temporary insanity

B. MPC (CB 831)
   a. Allows intoxication defense → negative element
   b. Voluntary intoxication:
      i. Can negate: purpose or knowledge
      ii. Cannot negate: recklessness or criminal negligence

C. State v. Cooper (CB 804)
   a. Facts: D driving recklessly/high speed, shot at policeman, kidnapped V, crashed into freeway divider, fled on foot and apprehended
   b. Held: no insanity instruction in this situation
   c. Voluntary Act: D consumed alcohol/drugs voluntarily
   d. Ex: D long-time drug-user, lost brain cells, now essentially disabled
      i. Now: fixed insanity (permanent mental disease/defect form his drug use)
      ii. Long-term use (voluntary act) → remote cause → current condition of fixed insanity (no point in punishing)

D. Commonwealth v. Graves (HO #2, 39)
   a. Facts: D drank quart of wine, took LSD, didn’t remember going to man’s house, committing crime, inflicted injuries which proved fatal
   b. Charges: 1st degree murder, robbery, burglary
   c. Held: voluntary intoxication could negate intent
   d. Also at play: F-M
      i. robbery: negates intent
      ii. burglary: negates intent
   e. If voluntary intoxication prevents you from forming the specific intent of the crime:
   f. Here: there was a prior conceived plan
      i. Intent may still be there despite taking intoxicants
      ii. Ex: have plan, don’t have courage so take wine/LSD

E. Burrows v. State (CB 822)
   a. Facts: D hitchhiking, forced to drink or be left in desert, D said he shot the V, got gun from V, Burrows shot V, dumped body/covered it up, took $
   b. For involuntary intoxication: is this duress?
      i. Factors to evaluate:
         1. is the road completely isolated
         2. how bad is the desert
         3. Burrows only 18 years old
   c. Duress:
      i. Must be controlling factor

XI. Defenses

XII. Insanity
A. Insanity
   a. **M’Naghton Test**: cognitive impairment/total incapacity
      i. D incapable of knowing: nature and quality of act
         1. D doesn’t know what he is doing
      ii. D incapable of distinguishing: difference between right and wrong
   b. Irresistible Impulse: added volitional aspect to M’Naghton (volitional impairment)
      i. Overwhelming desire to commit act
   c. **Durham Test**: product test
      i. D’s conduct product of mental disease or defect
      ii. But-For this mental disease/defect would not have committed the criminal action
   d. **Diminished Capacity**: can be a mental disease or other condition
      i. Elements:
         1. Admit evidence as to mental impairment to show legally responsible for some lesser offense
         2. lowers degree of the offense
         3. jury considers: what mental state the D was capable of forming
      ii. Recognizes degree of impairment
      iii. Use circumstances to infer if D acted recklessly/negligently
   e. **MPC**
      i. Elements:
         1. lack adequate capacity *(Smith)*:
            a. appreciate criminality
            b. conform conduct
      ii. something less than total incapacity can still deprive person of criminality
B. **State v. Fetters** *(CB 787)*
   a. Facts: 15 year old, ran away from residential treatment center, had said planned to kill aunt, did kill aunt
   b. Held: insanity was a question for the jury
   c. **M’Naghton Test** *(this jurisdiction)*
      i. Incapable of knowing: nature and quality of act
      ii. Incapable of distinguishing: difference between right and wrong
   d. Here:
      i. Knows nature/qualities of the act
         1. the planning
         2. hitting aunt w/ kettle
         3. Take phone off hook when aunt reaches for it
      ii. Knew difference between right and wrong
         1. ran to neighbors
         2. called police
         3. statement: “I killed my aunt”
         4. crying = remorse for killing aunt
   e. Not know nature and quality of act = total incapacity
      i. Ex: think squeezing oranges
   f. Not know right and wrong:
      i. Ex: person under delusion that in battle and killing people
C. **State v. Smith** *(CB 791)*
   a. Facts: D raped baby-sitter, killed 8 year old boy
   b. **Diminished Capacity**: can be a mental disease or other condition
      i. Recognizes degree of impairment
   c. Ex: murder, will show not capable of premeditation/deliberation
      i. Then: no 1st degree murder
d. Held: jury should have taken into account diminished capacity

D. People v. Ramsey (CB 793) **Guilty but Mentally Ill**
   a. Facts: trying to get demons out, killed wife, then tried to kill himself by stabbing himself
   b. Ramsey acting under delusion but still knew was stabbing her
   c. Guilty but Mentally Ill: result is D still responsible
   d. Insanity Defense: result is D not guilty
   e. Here: jury didn’t buy insanity defense

<table>
<thead>
<tr>
<th>M’Naghton</th>
<th>MPC</th>
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<tbody>
<tr>
<td>Focus: cognitive function</td>
<td>Focus: lack substantial capacity</td>
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<tr>
<td>Did not know: 1. Nature/Quality of Acts 2. Right from Wrong</td>
<td>1. To appreciate wrongfulness</td>
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<tr>
<td>Some jurisdictions add: Irresistible Impulse (lost to chose)</td>
<td>2. To control conduct</td>
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<td>- few jurisdictions have added this Irresistible Impulse</td>
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* MPC: gets rid of nasty term “Irresistible Impulse”
* 4 states have abolished insanity defense
  - only relevant to mental state
  - only circumstance where evidence of mental disease/defect is admissible in these jurisdictions

XIII. **Self-Defense**

A. **Self-Defense**
   a. General Proposition:
      i. not entitled to use deadly force unless reasonable belief that deadly force is necessary to prevent:
         1. serious bodily harm or
         2. death
      ii. If D’s belief reasonable then mistake does not deprive
   f. Some states do name certain felonies where deadly force may be necessary
      i. Depends on jurisdiction
   g. Duty to Retreat:
      i. American Rule: no duty to retreat
      ii. CL Rule: generally duty to retreat to wall
         1. Exception: Castle Doctrine
      iii. Middle Ground: no duty to retreat but evidence relevant

B. **State v. Realina** (CB 960): **Self-Defense**
   a. Facts: D was threatened by Hardisty for being at Hardisty’s home, Hardisty saw D driving one day, followed him into police station and threatened D, then D got out and chased him to the police station w/ a cane knife
   b. Was D entitled to use any force?
   c. What force was D using?
      i. Threat to cause apprehension: not deadly force
      ii. Intent to use (knew substantial risk): deadly force
   d. If looks like D intended to use deadly force, next question: was D entitled to use deadly force?
      i. Justified when facing: death, serious bodily injury, kidnapping

C. **People v. LaVoie** (CB 964)
a. Facts: D’s auto pushed through red light, approached by 4 men in other car, D shot the one advancing first
b. Held: reasonable belief that in danger
   i. D alone, late at night, other vehicle occupants drunk, verbally threatened
   ii. Not unreasonable to think: imminent threat of death/serious bodily harm

D. People v. Goetz (CB 966)
a. Facts: D shot 4 youths on subway who had approached him for $
   i. After initial shooting, saw one youth who was not hit and hiding and shot him
   ii. D: “more bullets, I would have shot more”
b. Issue: jury instruction as to reasonableness
c. Held: Objectively reasonable in D’s circumstances
   i. objectively from the perspective of someone in Goetz’s situation
d. Was this reasonable self-defense?
   i. Only 2 youth approached Goetz and the other 2 tried to flee situation
   ii. That makes Goetz appear more like an “avenger” than someone acting out of necessity to defend himself
e. Focus should be: Goetz may have believed the threat but:
   i. Was this belief objectively reasonable?
   ii. Was his belief of a threat the he would be killed?

E. People v. Humphrey (CB 972): BWS
a. Facts: battered woman’s syndrome, expert testimony to show person abused may have innate sense of when attack is imminent
b. Held: expert testimony on BWS is admissible for:
   i. Actual belief (subjective)
   ii. Reasonable belief (objective)
c. Most jurisdictions: expert testimony is admissible to the pathology of the mindset of BWS
   i. Jurisdictions disagree whether this evidence relevant to reasonable belief
   ii. Most often allowed in cases like this (imperfect defense):
      1. actual belief
      2. reasonable belief

F. People v. Ligouri (CB 978)
a. Facts: Ligouri shot and killed Cosaluzzo who allegedly feloniously attacked Ligouri
b. Statute: Self-Defense
   i. (a) Reasonable Belief → (b) felonious assault
   ii. Danger (imminent): death or serious bodily injury
   iii. (a) Duty to Retreat: safely
        (b) No Duty to Retreat
c. Held: jury not to consider duty to retreat b/c resisting felonious assault.
d. Statute here has 2 standards:
   i. Reasonable belief
   ii. Felonious assault: not necessary to consider possibility of retreat to safety
e. **If there is a duty to retreat: can it be done safely?**

G. Brown v. U.S. (CB 980)
a. Facts: Hermes had twice assaulted Brown, said next time “one would leave in a black box”
b. At issue “duty to retreat”
   i. Duty to Retreat
   ii. No duty: but failure to retreat = relevant
c. In favor of a duty to retreat here:
   i. D had time to go get gun and then get back into the fray
ii. V only had a knife: more time to weigh risks of getting away w/o being seriously injured
d. Failure to retreat can be relevant: to whether the belief of imminent danger is reasonable
   1. D at his workplace (lawful for him to be there)
   2. V had threatened death would happen
   3. V came to D’s workplace and was armed

H. Cooper v. U.S. (CB 986)
   a. Facts: Cooper shoots brother, Robert Parker, after Parker tried to hit him w/ radio, co-occupants of same home
   b. Castle-Doctrine: no duty to retreat when attacked in own home
      i. b/c home = last place of refuge (supposed to be a safe place)
   c. Issue: Exception to the general rule that there is not duty to retreat form a person’s own home
      i. co-occupants (2 brothers)
      ii. Not an intruder here: both brothers engaged in a violent confrontation
d. Held: Middle-Ground position
      i. Allows jury to determine if D was trigger-happy
      ii. No categorical duty to retreat
      iii. Will consider if retreat evidence if relevant

I. State v. Hanton CB 990
   a. Facts: D cut V off, V at stoplight, gets out, tries to pull D out of car, D shoots V
   b. Held: can’t have both acting recklessly and acting in self-defense
   c. Recklessness here defined by statute:
      i. Knows of and disregards
      ii. Substantial risk
      iii. Wrongful act will occur
d. Statutory definition of recklessness creates issue in this case
e. Self-Defense = justification
      i. Not a wrongful act
      ii. If justified in using deadly force that is rightful/lawful and not wrongful
f. State has burden to prove recklessness according to this state’s statute:
      i. Thus the practicalities at trial:
         1. prosecutor must prove: prima facie case: D disregarded a substantial risk (element of case)
         2. this will get case to jury
         3. D will then produce evidence that acting in self-defense (needs to bring slight evidence)
         4. Burden then shifts back to prosecutor: prove substantial risk the wrongful act would occur
      ii. Burden of disproving self-defense on prosecutor

J. State v. Broadhurst (CB 993): Withdrawal
   a. Facts: D was “Dr. Broadhurst’s wife”, hired Williams to kill Dr. B, Williams hit Dr. B w/ a wrench, claimed Dr. B then came at him so Williams shot
   b. Rule for Withdrawal: For aggressor to reinstate privilege to use force:
      i. must give notice: intention to abandon, the assault ended
   c. Held: not an appealing case here to find effective withdrawal

K. MPC Self-Defense (CB 995):
   a. If actor believes:
      i. Doesn’t use reasonableness: Purely subjective test

XIV. Defenses of Justification
A. Defense of 3rd Persons
   a. Alter-Ego Rule:
      i. If you are correct: can step into shoes of the person D is aiding. If person has a duty to retreat then D would have an obligation to retreat
   b. Reasonable Belief Rule
      i. Not co-terminous w/ participant’s right to self-defense
      ii. This rule will encourage intervention
   c. Belief (MPC):
      i. Gets rid of reasonableness qualifier: as long as you believe
      ii. But if belief is reckless or negligent (Section 3.09)

B. Analysis for Privilege to Use Force
   a. (1) Is there a privilege to use force
      i. What theory? → self-defense, defense of 3rd person, defense of property, defense of habitation, as law enforcement officer, etc…
   b. (2) If privilege: what kind of force, degree of force is allowed to use?

C. Compare Common Law to MPC:

<table>
<thead>
<tr>
<th>Common Law</th>
<th>MPC (3 parts of section 3.05(1))</th>
</tr>
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<tbody>
<tr>
<td>1. Alter Ego Rule</td>
<td>V would be privileged</td>
</tr>
<tr>
<td>2. Reasonable Belief</td>
<td></td>
</tr>
<tr>
<td>3. Belief</td>
<td>D believes</td>
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</tbody>
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D. State v. Saunders (CB 998)
   a. Facts: bar fight, brother grabs gun and shoots the attackers of his brother
   b. Held: entitled to instruction of an extension of Affirmative Defense of self-defense
   c. Alter-Ego Rule:
      i. If you are correct: can step into shoes of the person D is aiding. If person has a duty to retreat then D would have an obligation to retreat
   d. Policy: encourage intervention is not part of Alter-Ego Rule

E. Alexander v. State (CB 1001)
   a. Facts: Alexander saw “beating” in prison
   b. Held: Alexander had privilege of intervention here: reasonable belief
      i. Not co-terminous w/ participant’s right to self-defense

F. State v. Mitcheson (CB 1007) Defense of Habitation
   a. Facts: D responds to group trying to repossess “Mag” wheels
   b. Defense of Habitation:
      i. Because at sister’s house and protecting sister
      ii. Trying to keep peace at sister’s b/c of threat of fight next day
   c. What counts as habitation?
   d. Focus of Defense of Habitation: protecting person in the home
   e. Includes temporary place of abode
      i. can be just a visitor, a lawfully invited guest
      ii. step into shoes of home-owner and assert the same force

G. Defense of Habitation
   a. Model #1: CL
      i. If actor has reasonable belief
      ii. someone trying to enter
      iii. Is going to inflict violence against the person
      iv. even if not your own dwelling: justified to use force to protect
   b. Model #2: CO “Make My Day Statute” (see: McNeese)
H. People v. McNeese (CB 1009)
   a. Facts: Mrs. Daniels trying to remove belongings from D’s apartment
   b. CO “Make My Day” Statute:
      i. Occupant is justified
      ii. Use any force
      iii. Knowing unlawful entry
      iv. If occupant has reasonable belief:
         1. intruder might commit a crime
         2. intruder might use any force (even slight force) against occupant of the dwelling
   c. Issue: How is D supposed to know if entry unlawful?
   d. Statute:
      i. Goes way beyond any CL rule of justification for use of force to protect the habitation
      ii. Interpretation: must know the entry unlawful takes the teeth out of the statute

I. Defense of Property
   a. Allowed to use some force but can’t use excessive force
   b. If momentarily dispossessed: immediately use some force to re-capture

J. Commonwealth v. Donahue (CB 1018)
   a. Facts: D owed another $1.55 for clothes, attempts to get $20 back from Mitchelina
   b. Held: D allowed to use some force to re-posses the property: But can’t use excessive force
   c. D can’t use a weapon

K. People v. Ceballos (CB 1020) No use of deadly force if not there
   a. Facts: D sets up spring gun in garage after broken-into, his apt. is upstairs
   b. Held: Ceballos did not have privilege to use spring-gun either to:
      i. Prevent from taking property
      ii. Prevent entry of thieves when he comes home
   c. D can’t use deadly force b/c wasn’t there
      i. D will not form a reasonable belief

XV. Claims of Duress
A. Duress:
   a. Threat of imminent harm (great bodily harm)
   b. To D or a close relative
   c. D did not willfully/wantonly place himself in the situation

B. Duress from Contento-Pachonu:
   a. Immediate threat (death)
   b. Reasonable fear
   c. Escapability: D must show no reasonable opportunity to escape
      i. [surrender to authorities: generally limited to prison escape cases]

C. Defense of Necessity:
   a. General welfare
      i. Individual trying to work for general welfare of public rather than for protection of himself/family members
   b. Free Will: choice of evils
      i. Acted on own free will, conscious choice
   c. Natural force:
      i. Storms, tornadoes, forest fires, etc… (force du jour)
   d. Ex: of Necessity
      i. forest fire, choice is burn property A to save the community
      ii. best choice to save other properties
D. **State v. Hunter** (HO #3, p. 1) **Duress and F-M: Gun Point**
   a. Facts: D was hitchhiking, went to elevator took hostages who were killed
   b. Held: **Compulsion defense available for F-M**
      i. If not guilty of underlying felony cannot be guilty of F-M
   c. Policy: allow the defense of duress where a person of reasonable firmness could not resist
      the threat of force
      i. But not to point of taking a life: take your own life first instead of sacrificing an
      innocent victim
   d. Defense of Duress allowed for F-M because:
      i. If D coerced by duress into committing felony
      ii. Co-felon then by happenstance killed a V during felony commission

E. **U.S. v. Contento-Pachon** (HO #3, 4) **Duress: Threats**
   a. Facts: taxi driver in Colombia, forced into taking cocaine balloons into U.S.
   b. Duress:
      i. Immediate threat: death
      ii. Reasonable fear
      iii. Escapability
   c. Immediate Threat:
      i. Specific threat: know names of family members (D’s personal circumstances: where they live)
      ii. Drug dealers w/ power, involvement, and large amounts of $ at stake
   d. Well-grounded fear:
      i. See above: drug dealers w/ power, well-connected and much $ at stake
   e. Escapability: D must show no reasonable opportunity to escape
      i. Fears Colombian police corrupt and Panamanian police corrupt
         l. not getting off plane in Panama hurts D’s case
      ii. D told watched during trip by drug dealer
      iii. Escape would mean pack up family, quit job and try to get beyond reach of drug
      dealers
   f. Held: elements of duress here are jury questions

F. **U.S. v. Castro-Gomez: No Duress: Threats**
   a. Facts: Castro approached by drug traffickers to drive the fast boat
   b. Held: Castro not allowed the duress defense b/c Castro put himself in situation where
      subject to duress
   c. **Rule: reckless if you place yourself in situation so coercion should not be a defense**
   d. Court found no duress here:Castro went back to pizza parlor after failed 1st attempt: put
      himself in position to be coerced a 2nd time

G. **People v. Carradine** (HO #3, 12) **Material Witness**
   a. Facts: witness refusing to testify b/c of fear of reprisal from street gang, material witness
   b. Held: D in contempt (placed in jail)
   c. Policy: need witness to testify
      i. If others also refuse to testify then criminal justice system would not work