Defining Criminal Liability

- “A crime is any social harm defined and made punishable by law.”
- A crime is made up of two parts, forbidden conduct and prescribed penalty; the former without the latter is no crime. *It must be recognized as a crime by law.*

Void for Vagueness Doctrine

Examples & Explanations p.15: A statute can be constitutionally void on its face OR as applied to a specific case. The statute must (1) give adequate notice of what conduct is forbidden, and (2) provide adequate enforcement standards.

A statute void on its face does not satisfy either of these requirements.

A statute void as applied to specific case does not satisfy the two parts for this specific conduct.

*Palmer v. City of Euclid* (void for vagueness as applied to these circumstances)

* Criminal liability must be defined in terms of social harm definite enough to give “a person of ordinary intelligence fair notice that his contemplated conduct is forbidden.”
* While the defendant could understand from the statute that his being out late, dropping off friend, talking on phone, and not giving satisfactory explanations to the police officer were proscribed, the statute’s “without visible or lawful purpose” provision was not adequately defined to give fair notice.

*State v. Stanko I* (void for vagueness on its face)

* Statute provided that a person driving on the highways must drive in a “careful and prudent manner” and “at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation.”
* A statute that proscribes behavior, which can only be determined by an individual officer calculating several factors that are given no priority or weight, is so vague that it is void on its face.
* A vagueness challenge to a statute can be raised on two grounds: (1) the statute is so vague that it can be voided on its face; or (2) the statute is vague as applied to particular circumstances.

*State v. Stanko II* (not void for vagueness)

* Same defendant charged with two counts of reckless driving. Statute: driving “in willful or wanton disregard for the safety of persons or property.” Tickets indicated factors beyond speed.
* Although statutes may be invalidated due to vagueness, statutes are not ruled unconstitutional simply because “certain marginal offenses fall within in their language”
* Statute that proscribes driving in a “willful or wanton disregard for the safety [of others],” is not vague when applied to the D’s particular situation and considering all circumstances.
* Different from first case because that statute only considered speed, this one considers other factors as well.

Actus Reus

Criminal Act

*State v. Taft* (act must be voluntary)

* D was convicted of DUI even though he claimed brakes were accidentally released.
* Criminal liability may only be based upon voluntary acts. Need affirmative act that d has control of (kind of like intent).

*People v. Decina* (criminal negligence and knowledge of physical condition and possible result)

* D was aware of his condition, had an epileptic attack in car, crashed, killed four people.
* Voluntary actions placing an actor in a position in which his involuntary actions may result in harm to others is an “act” of wantonness or negligence if the actor has prior knowledge of the danger.

State v. Kimbrell (mere presence insufficient to have possession; must have power and intent to control)
* D was asked to watch cocaine while husband was gone. To be guilty of trafficking, one must be knowingly in actual or constructive possession.” Convicted of trafficking.
* Mere presence at the time of the alleged criminal act is not enough to sustain a conviction.
* One is in possession when they have both power and intent to control object’s disposition.

MPC – General Principles of Liability p.379
* Based on “conduct” which must include a “voluntary act or omission to perform an act.”
* Does not include a “bodily movement” that is not “conscious or habitual.” An act is not:
  • Reflex or convulsion.
  • Bodily movement during unconsciousness or sleep.
  • Conduct during hypnosis or hypnotic suggestion.
  • Movement not a product of effort or determination of actor.
* Possession is an act if one “knowingly procured or received” or was “aware of his control for a sufficient period to have been able to terminate his possession.”

Omissions—failure to act is not a crime unless a legal duty to act is affirmatively established.

Biddle v. Commonwealth (negligent omission)
* D convicted of murder in the first. Baby died from malnourishment. Evidence indicated that mother’s care was dependent upon how the husband was treating her.
* If a homicide is the direct consequence of the actor’s malicious omission, then the actor is guilty of murder, but if the omission is only willful or negligent, then the actor is guilty of manslaughter.
* When the actor’s care towards her child and other family members is dependent upon how her husband treats her, then malicious intent for omitting care cannot be proved beyond a reasonable doubt.

State v. Teixera (must have ability to perform)
* D was convicted for neglecting to pay child support. Statute provided criminal penalties for a parent who “neglects or willfully refuses to support.”
* One cannot be guilty of neglecting to act when one does not have the capacity to perform the act.
* For an actor to be convicted of neglecting or refusing to pay child support, the State must prove beyond a reasonable doubt that the actor could have paid.
* Must have knowledge of duty + ability to perform.

Nonfeasance

Walker v. Superior Court (duty – degree of care)
* D was charged with involuntary manslaughter and felony child endangerment. Mother was a member of a church that believed disease should be treated through prayer.
* The proper treatment that a mother owes a child is that which a “reasonable and prudent” person in that situation would provide.
* A provision in a statute proscribing a misdemeanor offense for failing to provide food, shelter, medical attendance, or “other remedial care” to a child, does not provide a defense for a felony.
* Despite a constitutional protection for freedom of religion, the State must balance the interest of religious freedom, and the interest the State has in protecting society.
* Felony liability exists where serious threat to health and failure to treat is gross departure from reasonable conduct.

**Jones v. United States**  
(duty—contractual and voluntary assumption of care)

* Involuntary manslaughter. D was contracted to care for children and they lived in her home—mom lived there too. Evidence showed that the date of termination of the contract (contractual obligation), and when the D moved out of the home were disputable facts (voluntary assumption of care).

* A person cannot be held criminally liable for a failure to act unless it is shown that the person owed a legal duty which was breached by his omission.

* The duty neglected must be a legal duty and not a mere moral obligation.

* **Legal duty to act:**
  - Statutory
  - Relationship
  - Contractual
  - Voluntary assumption of care

**Davis v, Commonwealth**  
(duty—implied contract)

* Involuntary manslaughter. D’s mother died from severe neglect in care and malnourishment

* To support a conviction of involuntary manslaughter, an accused’s conduct must be criminally negligent, i.e., of such reckless, wanton, or flagrant nature as to indicate a callous disregard for human life in the probable consequences of the act or omission.

* One has a legal duty of care when one accepts her parent’s social security and foodstamps, and when one represents caring for the parent in an official document.

* Quid pro quo = implied contract → legal duty.

**Moreland v. State**  
(duty – aware of criminal acts of one under your authority and control)

* Involuntary manslaughter. D’s indictment came from an accident where his chauffeur’s reckless driving caused the death. Chauffeur was speeding, passing cars in the wrong lane, and hardly slowing for sharp turns.

* Failure of a party to prevent the criminal act of someone under the party’s control and in his presence is intentional neglect (failure to act) upon which criminal liability must be imputed.

* A person may be criminally liable for his agent’s acts when he is aware of the danger caused by his agent’s criminal acts, and when the person has the capacity to control his agent.

* Duty arises out of master/servant relationship.

**Van Buskirk v. State**  
(duty – causing circumstances that killed victim)

* 2nd Degree Manslaughter. On the side of the road D struck boyfriend with her car and left him lying on the ground. Later he was hit and killed

* One who negligently places another in a “position of peril” where it is reasonably foreseeable that the victim would be injured by subsequent acts of others is criminally culpable if such injuries occur.

* Duty arises where actor created the danger intentionally OR innocently.

**Case Study – Billingslea**

* Son severely neglected to care for his mother. State had to remedy by altering the statutory code.

**Robinson v. California**  
(d’s status)

* Conviction due to addiction. CA statute outlawed the use or addiction of narcotics.
* A statute that imprisons a person for an addiction, status, or condition where the acts of the condition may not have even occurred within the state, inflicts a cruel and unusual punishment in violation of the 14th Amendment.

* Because degree of punishment must be relative the severity of the crime, one cannot be punished for addiction where there is no proof of actions pertaining to the addiction (use or influence).

* Liability for commission of offense may not be based on an omission unaccompanied by action unless the omission is made sufficient by law.
Responsibility: in General

MENS REA- culpable state of mind

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<td>e.g. burglary—must have intended</td>
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- **MPC p.700-01**
- blameworthiness is essential to criminal guilt
- must have union of act and intent, or criminal negligence
- same acts can have different mental states, therefore different crimes.
  **crime = specific action + type of mental state**

Mens Rea Continuum:

| N | R | K | W | M | S |

1. N = Negligence: - Failure to perceive a great risk (objective test)
2. R = Recklessness: - Consciously disregard a great risk
- Risk is substantial and unjustifiable, a gross deviation from the standard of care of a reasonable person in similar circumstances.

3. **K = Knowledge:**
   - Majority of courts – subjective knowledge is standard (e.g. Beale).
   - Subjective; or, if objective, then reasonably should have known.
   - Willful blindness

4. **W = Willfully:**
   - deliberate, intentional violation of a known legal duty.

5. **M = Maliciously:**
   - intent to injure, vex, annoy, or do wrong.

6. **S = Specific Intent:**
   - intent to bring about the desired result.

**Mens Rea – state of mind**

*Liparota v. United States*
- Convicted of violating food stamp regulations. Statute penalizes someone for “knowingly” transferring food stamps in a way not authorized by statute. D on three occasions purchased food stamps for less than their value. TC said this was strict liability.
- In order to convict one under a regulatory statute that outlaws “knowingly” performing an act that is not obviously illegal, and issues a severe penalty, the State must prove that the one was aware that his conduct was illegal.
- 3 factors for interpreting this statute’s knowledge requirement: (1) Obviousness of illegal act, (2) “knowingly” language, and (3) severity of penalty.

**Criminal Negligence**
- Unaware of substantial and unjustifiable risk, gross deviation.

*Gian-Cursio v. State*
- Manslaughter. Tuberculosis patient died while under the care of two chiropractors who prescribed a special diet and fasting. Had he had accepted medical treatment, he would have lived.
- Criminal negligence exists where a person who undertakes to cure another exhibits gross lack of competency, or gross inattention, or criminal indifference, which creates a “substantial unjustifiable risk” for the patient regardless of whether such person acted in good faith.
- Criminal liability is not focused on whether a chiropractor had a medical license, but is focused on the objective standard of care of a reasonable person qualified for those circumstances (i.e. doctors).
- Consent in circumstances where the victim is “more or less susceptible” to trusting another is not a valid defense.

*State v. Petersen* (reckless)
- Manslaughter. D participated in a drag race that resulted in the killing of the other drivers. D claims he ended the race before the other car crashed into a truck.
- One who participates in reckless conduct cannot withdraw from criminal responsibility by a single “act of prudence” right before the infliction of harm.
- The State does not have the burden of proving the Defendant did not effectively withdraw; rather the State must prove that the Defendant’s conduct created a “substantial and unjustifiable risk to the lives of other[s]” and it “continued up to and including the time of the collision…”
- As long as the reckless acts which the Defendant helped start continued until the injury, then the Defendant is criminally responsible.
* **Recklessness**: aware of substantial and unjustifiable risk and gross deviation from standard of care a reasonable person would observe.

*State v. Howard* (transferred intent)
* 2nd degree murder and manslaughter. D antagonized J. J lunged towards D who fired but hit C who was trying to intervene. D then shot J as he allegedly headed for a gun in the kitchen. Statutory provision for transferred intent saying the level of intent considered when one kills a person while trying to kill another is that of trying to kill the intended victim.
* The defendant believed he was justified in shooting his aggressor although he was really not—still a mitigating factor—bumps 2nd degree murder down to manslaughter—imperfect self-defense.
* The difference between **recklessness/murder** and **negligence/manslaughter**: recklessness is awareness of substantial and unjustifiable risk and gross deviation (subjective standard). Negligence is unaware but ought to have been aware (objective standard).

**Specific Intent**

If a specific intent crime, there must be a type of specific intent (i.e., Larceny = act of taking + specific intent to deprive another; Burglary = breaking and entering + intent to commit a felony).

* **Thacker v. Commonwealth**
* Attempted Murder. D was drunk with companions. Stated he wanted to shoot light out before asking woman to give them shelter. After being denied, the D again made the statement and shot a round.
* Criminal attempt requires that the act be done with the specific intent to commit the particular crime allegedly attempted.
* Specific Intent – intent to commit a specific unlawful act. Required in certain crimes such as attempt.
* Here, if he killed anyone, he could be convicted on a charge of manslaughter, or 2nd degree murder.

**Malice**

* **State v. Natsoff**
* D intentionally used a chainsaw knowing that it had been altered in violation of state law. Sparks emitted smoldered for two days and caused a forest fire. Statute renders criminal penalties for “malicious injury to property.”
* Criminal statutes which proscribe “malice” punish conduct that is performed with the intent to do the wrongful act, and not a different act whose consequences are ultimately wrongful.
* The plain language of a statute which proscribes a “malicious” act does not also proscribe a negligent act which results in the same consequence. Furthermore, when the penalty is that for a felony, the punishment is unreasonable for mere negligence.

**Knowledge**

Knowledge – person is aware of a high probability of its existence, unless they personally believe it does not exist.

* **State v. Beale**
* “Knowingly” concealing stolen property. D’s wife informed him that a customer brought in a police officer and claimed some items were hers. D sold items next day.
To convict a person for the knowledge required in a criminal statute which proscribes concealing stolen property, the State must prove the person subjectively believed the specified element.

A minority of jurisdictions hold that only an objective standard, “that a reasonable person would have believed…” is needed to prove knowledge. The subjective standard does allow looking at the situation through the objective standard as evidence of knowledge.

This is an application of “mistake of fact.” Mistake of fact can refute the necessary state of mind.

**United States v. Jewell** (willful blindness doctrine)

Conviction of “knowingly” transporting drugs. D was paid to drive across the Mexican border into the U.S. and leave a car in a parking lot. Never looked to see if there were drugs, but probably suspected there were.

“Willful ignorance” is equivalent to knowledge when a person knows of facts indicating a high probability of illegality but purposely fails to investigate in order to remain ignorant.

In order to deny the defense of deliberate ignorance, to act “knowingly” must mean not necessarily to act with positive knowledge but also to act with an awareness of the high probability of the existence of the fact in question.

**Willfulness**

**Fields v. United States**

Conviction for “willfully” withholding documents subpoenaed by Congress. D claimed he submitted four documents in good faith which is evidence that he was not willfully withholding another document.

The meaning of the word “willful” depends upon the nature of the crime and the facts involved but generally means only that a person charged with a duty knows what he is doing.

Because “willful” does not have a consistent legal meaning, the word must be construed as to not defeat the purpose of the statute. Here, if the purpose or reason for “willfully withholding” were not immaterial, then the statute would be defeated if a person could circumvent the penalty for default by professing a willingness to comply.

**Cheek v. United States** (subjective belief)

D for a several years evaded taxes in numerous ways. Evidence showed he attended seminars on how to evade these taxes and that he believed tax laws were unconstitutional.

To prove the willful evasion of taxes, the Government must prove the law imposed a duty onto the defendant, the defendant was aware of this duty, and the defendant violated said duty.

If the Government cannot prove knowledge of a duty because the defendant was ignorant of the law, misunderstood it, or believed it did not exist, then this subjective misunderstanding of the law is a defense to willful tax evasion. This decision has not been extended beyond tax laws.

The subjective belief does not have to be objectively reasonable—but can look at objective circumstances to prove subjective belief is not sincere.

Defendant’s belief that a law is unconstitutional does not negate the duty imposed by the law.
Strict Liability

Courts consider penalty in relation to crime (i.e., man gets 10 years for having possession of gun that he did not know could fire automatically; Court overruled.)

* Commonwealth v. Olshefski (Mala Prohibita)
  * Violation of truck weight. D obtained slip that weight of truck was legal. The following day he went to a police roadblock to obtain a slip for another area. Different weight that exceeded the limit.
  * Even thought an act is not evil or bad per se, the Legislature may make regulations that provide penalties for conduct in which no element of intent must be proved (strict liability)—no mens rea.
  * Legislature may deter conduct without proving evil intent if the penalties are not severe and there would be too much burden of litigation to prosecute.

Unlawful Conduct

* State v. Horton (Unlawful Act Doctrine)
  * Convicted of involuntary manslaughter due to an unlawful act. D was hunting on another’s property without permission. This was a misdemeanor offense. Although no proof of criminal negligence, jury found D guilty on unlawful act theory.
  * For one to be guilty of manslaughter due to an unlawful act, the said unlawful act must be malum in se and not merely mala prohibitum. Because this was malum prohibitum, doctrine doesn’t apply.
  * The intentional doing of a malum in se crime carries moral culpability sufficient to justify holding a person responsible for a misfortune or chance which results from it, while a mere mala prohibitum does not.
  * This is an example of excusable homicide.

* United States v. Rybicki
  * Conviction of obstructing IRS laws. D threatened two agents with a shotgun when they were trying to take his car for taxes.
  * Although the standard rule is that an act can be a crime regardless of the status of the victim, knowledge of the identity of persons as government agents is necessary before a conviction for interference with such acts can be supported.
  * This is because had they not been agents, his conduct would have been lawful.

Transferred Intent / Status of the Victim

* Gladden v. State (transferred intent)
  * Conviction of murder. Fighting over a drug deal, D chased and shot five errant bullets and killed an innocent bystander.
  * The mental state a defendant has in attempting to kill another is the same mental state used to convict the defendant if he accidentally kills a third party.
  * Transferred Intent Doctrine – “intention follows the bullet.”
  * The physical element which consists of a certain general mental pattern is not varied by the particular person who may be actually harmed.

* Cuellar v. State (“born alive” doctrine)
  * Conviction of intoxication manslaughter. Drunk D collided with pregnant woman’s car. She was rushed to hospital; child was born alive but later died due to injuries sustained before the child was born.
A conviction for homicide may be authorized if the victim attains the status of an individual after the alleged misconduct.

Other jurisdictions and MPC say victim has to be born and alive at the time of the conduct.

“Born alive” doctrine – defendant is guilty of murder if a child dies due to harm delivered by the defendant while the child was a fetus. The basis for the doctrine lies in the difficulty of proving the defendant’s actions were the cause of death for the fetus. If born alive, and then dies, it is easier to prove causation.

Similar circumstances today in that law enforcement may not know if an abandoned child was born alive or dead. States have “concealing the birth statutes” that punish mothers for abandoning a child.
## Homicide

### MURDER (STATE OF MIND)

<table>
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<tr>
<th>COMMON LAW</th>
<th>STATUTE</th>
<th>MODEL PENAL CODE (210.2)</th>
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<tbody>
<tr>
<td><strong>Intent to Kill Homicide</strong></td>
<td><strong>1st Degree</strong></td>
<td><strong>Purposely or Knowingly</strong></td>
</tr>
<tr>
<td>1) Desires result</td>
<td>- premeditation and deliberation</td>
<td>MPC did away with malice aforethought</td>
</tr>
<tr>
<td>2) Substantially certain result will occur</td>
<td>- felony murder</td>
<td>Murder is a felony in the 1st Degree</td>
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<tr>
<td>- Deadly Weapon Doctrine—infer intent from the use of a deadly weapon.</td>
<td>- sometimes homicides by particular means.</td>
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<td>- Includes first degree (deliberation and premeditation) and second degree</td>
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<td>NOTE: mental state is not accompanied by other redeeming or mitigating mental or external factors.</td>
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| **Intent to do serious bodily injury Murder** | **2nd Degree** | |
| - No intent to kill but to cause serious injury—2nd degree | All other murder—intent to kill, intent to do serious bodily harm, depraved heart. | |

| **Depraved Heart Murder** | **Recklessly** (extreme indifference to human life) | |
| 1) Unjustifiably high risk | - Subjective state of mind of recklessness | |
| 2) △ is or should be aware of risk | | |
| Social utility of △ conduct | | |
| NOTE: Some courts have an objective standard “reasonable man” and others use an subjective standard | | |
| -2nd degree murder | | |

| **Felony Murder** | MPC rejects the Felony Murder rule per se. |
| 1) intent to commit a felony | However MPC establishes a rebuttable presumption of recklessness…manifesting extreme indifference to the value of human life where the △ engaged or is an accomplice in the commission of, or |
| 2) foreseeable danger to human life | |
| 3) casual relationship between the felony and killing | |
Identifying felonies that apply:
- felonies inherently dangerous to human life
- felonies at common law
- felonies which are malum in se

| attempt to, or flight after committing (BARRK). If rebutted MPC should then be contrasted if available with the FMR |

**Elements of Murder**

1. Actus Reus (affirmative act, or omission to act [duty])
2. Mens Rea (accompany state of mind)
3. Legal cause of Death (proximate cause)

**Recklessness**

- “Extreme indifference to human life” in general, not to the specific victim.

* King v. State
  * Conviction of murder. After an argument, D followed victim onto the highway and said he wanted to shoot his tires out. D fired and killed victim.
  * One can be convicted of murder (reckless homicide) if his actions “manifest extreme indifference to human life.”—“depraved heart”
  * Doesn’t have to have intent to kill particular person or be indifferent to certain person’s life—it’s indifference to life in general.

* State v. Hokenson (extreme indifference to human life; also felony murder)
  * Conviction for first degree murder. Armed with a bomb, D attempted to rob a store but failed. After police arrested him and took him away, the bomb exploded in the store killing one officer.
  * Because a defendant may be criminally liable for the **natural and probable consequences** of his unlawful acts as well as unlawful forces set in motion during the commission of an unlawful act (felony murder), and because the defendant’s unlawful acts “manifest extreme disregard to human life” that result in murder (depraved heart), the defendant could be found guilty under “depraved heart” murder or felony murder.
  * Depraved heart murder and felony murder are similar in that both involve conduct that creates a dangerous risk to others, and both result in the death of an unintended victim. However, the burden of proof for felony murder is much less. The defendant’s conduct must not necessarily be reckless for one to be guilty of felony murder.

**Felony Murder**

* People v. Phillips (must be inherently dangerous felony)
  * Conviction of 2nd degree murder. D was a chiropractor whose patient died from cancer. TC instruction read “If a death occurs in the perpetration of a course of conduct amounting to Grand Theft” and if the conduct was the proximate cause of death, then the D is guilty of 2nd degree murder, even without intent.
  * The felony-murder rule may only be applied to such felonies that are “inherently dangerous to human life.”
Due to the felony-murder rule’s highly artificial concept of deterrence and that it lessens the burden in proving culpability, the assessment of the felony’s threat to human life should not be constructed by looking at particular facts or the “course of conduct” which would result in creating no limits for its application.

To assess the inherent dangerousness in any given felony, a Court must “look to the elements of the felony in the abstract.” This is a common law holding, whereas states may enumerate what felonies apply to the rule.

By allowing the defendant to be convicted of 2nd degree murder through his felony of Grand Theft, the trial court effectively removed the issue of malice by applying the felony murder rule.

**State v. Mayle** (Res Gestae)

* Conviction of first degree murder. D and accomplice attempted to rob McDonald’s. Unable to, the two stole an employee’s car and fled. Two miles away, the police spotted the two allegedly attempting to break into a gas station. A melee ensued which ended in an officer being killed by the D’s accomplice.

* A person may be convicted of first degree murder if an accomplice to the felony commits a homicide. **Res Gestae**—acts immediately following the transaction and so closely connected with it as to form in reality a part of the occurrence.

* Statute lists three elements to “felony murder rule”: (1) felony or attempt thereof; (2) D’s participation therein; (3) death of a person during the commission of a crime.

* The felony murder rule may only be applied to deaths occurring during the commission of the felony (part of the continuous transaction) which may include the act of escaping. Felony ends when reach point of safety.

**People v. Wilson** (felony must be independent of homicide)

* First degree murder. D entered place where wife was with intent to commit an assault with a deadly weapon. TC then told jury if they found this, he was guilty of burglary, and if guilty of burglary the felony murder rule could be applied.

* The felony murder doctrine’s purpose to deter criminals from killing other during the commission of a felony can only be served if the felony is independent of homicide.

* Where the intended felony of the burglar is assault with a deadly weapon and the statute does not distinguish burglary and assault with a deadly weapon, a court may not apply the felony murder rule because its purpose cannot be served. Assault with a deadly weapon is integral part of homicide.

**Intent to Kill**

**State v. Schrader** (intent can form instantaneously)—not followed

* First degree murder. D was arguing with the owner of a souvenir shop. When the owner acted as if he was about to pull out a weapon, the D stabbed him 51 times all over his body.

* To convict a defendant of “willful, deliberate and premeditated” murder the state must prove that the defendant had a conscious intent to kill at the time of the crime.

* The Court held that the severity of this instruction (collapsing the distinction between 1st and 2nd degree murder) is diminished when the trial court properly instructs the jury of other degrees of murder.

* West Virginia later changed the statute: “any interval of time between forming the intent and killing is a sufficient duration if it is long enough for the actor to be fully conscious of what he intended.”
Midgett v. State
* D was tried for first degree murder. D was father who repeatedly abused his son. Father was drunk when he hit his son in the stomach and in the back. He took son to hospital who later died.
* First degree murder is divided into two forms:
* (1) felony murder rule where the felonies are usually enumerated by statute, and
* (2) murder with a) an intention to kill, b) deliberation – cool mind that is capable of reflection, and c) premeditation – actual reflection. Can’t be instantaneous because destroys distinction between 1st and 2nd degree murder.
* There is not enough evidence to prove first degree murder when the death occurs either due to a pattern of abuse or due to the D’s drunken state.
* This is how majority of jurisdictions are.

State v. Forrest
* First Degree Murder. D admitted his father into a hospital who was suffering from a series of ailments. The father’s status was “No Code” meaning no extraordinary measures were would be used to save him. While visiting his father, D pulled out a gun and killed him with four shots. He then immediately surrendered and told authorities he promised his father he would not let him suffer.
* Premeditation and deliberation relate to mental processes and must be proved by circumstantial evidence, such as:
  * want of provocation on the part of the deceased;
  * the conduct and statements of the defendant before and after the killing;
  * threats and declarations of the defendant before and during the course of the occurrence giving rise to the death of the deceased;
  * ill-will or previous difficulty between the parties;
  * the dealing of lethal blows after the deceased has been felled and rendered helpless; and
  * evidence that the killing was done in a brutal manner (such as nature and number of victim’s wounds).
* Dissenting judge feels the Majority failed to note that the distinction between murder and manslaughter is the absence of malice. Here, the son obviously had no malice in shooting his father.

<table>
<thead>
<tr>
<th>CASE</th>
<th>Schrader</th>
<th>Midgett</th>
<th>Forrest</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEANING OF PREMEDITATION</td>
<td>Intentional</td>
<td>Cool mind capable of reflection</td>
<td>Thought out before for some length of time</td>
</tr>
<tr>
<td>MEANING OF DELIBERATION</td>
<td>Knowing</td>
<td>Actual Reflection</td>
<td>Cool Mind</td>
</tr>
<tr>
<td>TIME REQUIRED FOR P&amp;D</td>
<td>Instantaneous</td>
<td>May be Brief</td>
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</tr>
</tbody>
</table>
## Common Law

### Voluntary Manslaughter
- 1) Intent to Kill
- 2) Under extenuating circumstances

**Requirements**
- Reasonable provocation
  - At CL, had to come from victim. Modern view that provocation doesn’t have to come from victim.
  - Acts in a “heat of passion”
  - No reasonable time to cool off
  - Did not actually cool off

  - If △ lacks reasonable provocation and no reasonable time to cool off= 2nd Degree Murder
  - If △ lacks heat of passion and did not actually cool off= 1st Degree Murder

**Objective Standard**

### Involuntary Manslaughter
- 1) Unintentional killing
- 2) Behavior is grossly negligent or reckless

**Types**
- Criminal negligence manslaughter—must be proximate cause.
- Unlawful act manslaughter
- Inherently dangerous objects

**Conduct** is measured by an objective standard with a subjective component.

Some states require actual awareness, and others do not.

## Model Penal Code 210.3

### Manslaughter
**Extreme Mental or Emotional Disturbance**
- Manslaughter if committed under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse.

  **Somewhat Subjective Standard**—reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor’s situation under the circumstances as he believes them to be. However it still has an objective component.

  Merges the two concepts of heat of passion and diminished capacity

### Recklessly
- The actor consciously disregards a substantial and unjustifiable risk amounting to a gross deviation from due care. § 2.02(2)(c)
  - Requires actual awareness

### Negligent Homicide
- Actor should be aware of a substantial and unjustifiable risk, and his failure to perceive the risk under all the circumstances, involves a gross deviation for the standard of care that a reasonable person would observe.
  - Actual awareness is not required
MANSLAUGHTER

Voluntary Manslaughter

State v. Guebara (Common Law – objective standard)
* D was denied request for voluntary manslaughter. He planned on killing his wife, hinted this to another—upset about divorce, criminal charges. He killed her when she attempted to walk away. Evidence indicated he smoked marijuana prior to this and that he had an anti-social personality disorder. Guilty of 1st degree murder.
* Innate peculiarities of a defendant may not be considered in deciding whether a basis for a manslaughter instruction exists.
* Voluntary manslaughter is an intentional killing in the heat of passion as a result of severe provocation.
* “Heat of passion” – an intense emotional estate that would cause an ordinary man to act on impulse rather than reason—subjective.
* The test to determine if provocation is legally adequate is an objective test. If the provocation is sufficient to deprive a reasonable person of self-control and cause him to act out of passion, then the provocation is legally adequate.
* Here, no provocation on part of wife.

State v. Dumlao (MPC – subjective standard)
* Convicted of murder for shooting mother-in-law. Would get insanely jealous when wife talked to relatives.
  (1) Manslaughter

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

Involuntary Manslaughter
* Failure to see unjustifiably high risk that could result in death and it does result in death.

State v. Hardie (common law—inherently dangerous weapon)
* Old case. D tried to scare woman with broken gun. Killed her. D requested instruction on his reasonable belief of the gun being broken.
* If a death results from one’s conduct that is reckless and careless with an inherently dangerous weapon, then one is guilty of involuntary manslaughter.
* The court considered the gun to be an inherently dangerous weapon and his general conduct in trying to scare a woman with a gun to be “most reckless.”
* To determine if behavior is reckless or negligent, the degree of risk must outweigh the social utility of the conduct in the surrounding circumstances.

**People v. Rodriguez**  (criminal negligence must be proximate cause)
- D was mother of four children. Left them locked in the home. House burned down killing one child.
- For one to be guilty of involuntary manslaughter, the State must prove that criminal negligence or criminal intent concurred with the act, and that said criminal negligence or criminal intent proximately caused the death (Criminal Negligence Manslaughter).
- The standard for criminal negligence is whether a man of ordinary prudence would foresee that the act would create a high degree of risk of death or great bodily harm.
- One can also be guilty of involuntary manslaughter under “unlawful act manslaughter” where the unlawful act must be a violation of the law less than a felony.
- Here, not guilty because no evidence that showed the death was a natural and probable result of a criminally negligent act—she couldn’t foresee that house would start on fire and child would die.

**Negligent Homicide (MPC)**

**State v. Bier**  (gross deviation; foreseeable risk)
- Arguing with drunk wife, D got out his gun,cocked it, and threw it on the bed. She picked up the gun and held it to her throat. D attempted to knock it away, but failed, she was shot. Unsure who made the gun fire.
- A person is guilty of negligent homicide when his conduct constitutes a gross deviation from a reasonable standard of care.
- D’s pulling, cocking, and throwing a loaded gun within his intoxicated wife’s reach clearly showed a gross deviation from a reasonable standard of care, despite that his intention was for her to shoot him, and the D is guilty of negligent homicide.
- Deliberate homicide charges (i.e., first degree murder) requires the D to purposely or knowingly act, but negligent homicide does not require an element of intent; rather, conduct that is a gross deviation from a reasonable standard of care.
**CAUSATION**

**Intervening Acts**

- Superseding—relieves d of liability.
- Acts that would not have occurred but for d’s conduct—only relieved of liability where unforeseeable and abnormal.
- Acts that are coincidences, unforeseeable, and break chain of causation will relieve of liability.

MPC – p.563

*People v. Stamp* (felony murder—direct cause)
* D’s robbed store, scared storeowner who had heart condition, he died. Guilty of felony murder.
* Felony murder doctrine is not limited to foreseeable deaths. As long as the homicide is the direct causal result of the robbery the felony murder rule applies whether or not the death was a natural or probable consequence of the felony.
* Felon takes the victim as he finds him. So long as the preexisting condition is not the substantial factor bringing about the death, the condition and d’s ignorance of it in no way diminish his criminal responsibility.
* Causation can be established by a reasonable medical certainty.

*State v. Sauter* (chain of causation – intervening act)
* D stabbed Lines, Lines had surgery, surgeon fucked up, d guilty of voluntary manslaughter.
* Intervening sub-par medical attention does not excuse homicide where d stabbed victim unless medical treatment was sole cause of death. If reckless or grossly negligent, will be supervening intervening act.
An act intending to cause serious bodily harm allows no defense for malpractice later.
If the intervening act supersedes the act, the other crimes can be pursued against original doctor.

Letner v. State (intervening act)
- D shoots at kids in boat, one kid jumps out causing the boat to capsize, other kid drowns. D guilty of involuntary manslaughter.
- Criminal causation will not be broken because an actor’s conduct was not the immediate cause of death, if it was connected with the intervening cause, or if the intervening cause was the natural result of it. This intervening act is foreseeable.

Campbell State
- D and co-felon robbed taxi driver, taxi driver escapes, either police officer or victim shoots co-felon. D not liable for the death.
- Agency theory (majority view)—reason for holding co-felon liable for death of another person is that his co-felon killed in furtherance of pursuing common goal—each acts as agent for the other. Here, no act in furtherance of goal. Culpability is limited to lethal acts committed by accomplices.
- Proximate cause theory (minority view)—co-felons are responsible for any death that occurs during the commission of a felony, no matter who causes it, because d set in motion something that caused the death and the death was foreseeable.

Insert Table and Hypos for Agency / Proximate Cause Theory
### Attempt and Kindred Problems

MPC - p.414-415
IN GENERAL

*Moffett v. State*
* Facts: M collects items needed, breaks into victim’s home, ties her up, makes her write suicide note, victim escapes.
* Holding: Despite not beginning the death-producing action, one can be guilty of attempted murder because he has performed an act **beyond mere preparation** with **specific intent to commit the crime**.

- Elements of attempt:
  ⇒ Intent to commit the crime.
  (a) Can prove intent by circumstantial evidence—for example awareness of likely consequences. Knowing results are highly likely is not equivalent to intending the results, but if substantially certain, enough.
  ⇒ Performance of some act toward its commission.
  ⇒ Failure to consummate its commission.

PERPETRATING ACT

*People v. Rizzo*
* Facts: plan to rob payroll man, drove around looking for him, but never found him, arrested before did anything.
* Holding: One cannot be in “dangerous proximity to success” without a victim because the crime would still not be committed even with police interference. *Asking what remains to be done.*
* Court seems to suggest that one must be physically close. This is not necessarily so.

**Hypo**
* Suppose d buys bottle of Tylenol, puts poison in, puts back on shelf.
  • He’s done everything he can do even though don’t know who the victim is—**last proximate act**. Some crimes, unlike robbery, don’t need physical proximity.
* What if the defendant was waiting for victim?

*State v. Young*
* Facts: several banks in area had been robbed, police saw him casing the bank, went to doors in disguise (guy who wore rubber gloves), doors locked, ran back to car, arrested.
* Holding: Under MPC, this is attempt. There was an **overt act**—purposely do or omit to do something 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. *Asking what has been done.* Must be strongly corroborative of criminal purpose.
* Under MPC, casing bank may be substantial step, but not for sure.

IMPOSSIBILITY
* **Factual impossibility** – exists where the accused is unable to complete what he intends only because of some intervening fact.
* **Legal impossibility** – the defendant has done all he intended to commit the crime, but still has not committed a crime.
* *Ask: would d’s conduct have been criminal had the facts been as d supposed them to be?*
⇒ Legal impossibility—NO
⇒ Factual impossibility—YES → attempt

_State v. Mitchell_
* Facts: thought guy was sleeping in bed, shot at bed where he thought guy would be lying.
* Holding: A criminal attempt may be committed when the defendant shows his present capacity and intent to commit the crime, although he did not know completion of the crime was impossible. Factual impossibility is like mistake of law which is a defense in order to negate a mental requirement. Here, the intent of the defendant was already shown.

_People v. Rojas_
* Facts: d’s received property they thought was stolen but wasn’t because police seized it before they got it. Charged with receiving stolen property.
* Holding: only attempt to receive stolen property. What they intended to do was a crime—evidence of criminal purpose—shouldn’t be exonerated because of good police work.
* An attempt is not prevented by impossibility merely because, unknown to the accused, completion of the crime has become impossible.
* Punishment for thoughts alone undesirable.

_Booth v. State—contrary to Rojas_
* Facts: thief stole coat, was arrested before Booth got it, police went ahead with setup, arrested Booth on charge of attempting to receive stolen property.
* Holding: not guilty of attempt. If none of the consequences which d sought to achieve constitute a crime, unsuccessful efforts don’t either—man cannot be punished merely because he has a criminal mind—must also do an act which is forbidden by criminal law.
* Legal impossibility may not only prevents conviction of the substantive crime, but also the attempted.

_U.S. v. Oviedo_
* Facts: d sold substance he said was heroin—arrested—later found out it wasn’t heroin. D was charged with attempt to distribute heroin
* Holding: no attempt. Court moving away from factual/legal impossibility distinction—for criminal intent, the objective acts of the actor with corroborating mens rea are required. If objective act is missing, the test of mens rea alone is too subjective and open to error to be useful.
* The proper approach is to require that the objective acts, without reliance on mens rea, mark the conduct as criminal. The purpose of this requirement is to prevent the conviction of persons engaged in innocent acts on the basis of a mens rea proved through speculative inferences, unreliable forms of testimony, and past criminal conduct.
INSERT TABLE COMPARING 1) LEGAL IMPOSSIBILITY RATIONALE  2) OVIEDO 3) MPC

Hypos:

1. D believes bullet will not reach the Victim. He fires;
   i. If the bullet kills the victim then he is guilty of some degree of homicide
   ii. If the bullet does not kill the victim then there can be no charge b/c there was no specific intent

2. Pulls trigger but no bullet
   i. Attempt = Factual Impossibility + Specific Intent

3. Defendant thinks he is killing an endangered bird
   i. No crime = Legal Impossibility (nonexistent crime) + Specific Intent

* Culpability required is that which is required for the crime. For example, for receiving stolen property, must intend to receive stolen property and believe that it’s stolen.
* Conduct would constitute crime if circumstances were as actor believed them to be—don’t have to worry about legal and factual impossibility.
* Does or omits to do anything with the purpose of causing or with belief that it will cause such result without further conduct on his part.
* Under circumstances per belief, substantial step to completing the crime. For substantial step, conduct must be strongly corroborative of criminal purpose.
* Focus is on subjectivity—what did d intend to do and what did he believe he was doing?

INTENT

People v. Guerra
* Facts: d security guard plans robbery and kidnaps 2 other security guards, one is accidentally killed.
* Holding: Murder convictions require specific intent, implied malice, or felony murder; however, attempted murder must have specific intent. Since the jury found the defendant guilty of murder without stating under what category and leaving no decision on specific intent, the case must be remanded to decide.

ABANDONMENT

Stewart v. State
* Facts: trying to rob service station worker, police drove up, hid gun, says abandoned.
* Holding: The fact that the defendant abandoned his robbery attempt after seeing the police arrive does not lessen his guilt because he had already made an overt act with specific intent to complete the crime.

Commonwealth v. McCloskey
* Facts: d was going to escape, turned himself in, changed his mind while attempting to escape.
* Holding: so long as the acts are confined to preparation only and can be abandoned before any transgression of the law or others’ rights, they are within the sphere of intent and don’t amount to attempts. Here, acts were in preparation—no attempt.
Concurring opinion: In deciding whether or not the attempt was complete, the Majority like other courts was influenced by an additional factor: voluntary abandonment by defendant. Voluntary abandonment should be the deciding factor because:

1) Gives incentive to criminal to abandon his crime.
2) Once having abandoned, the criminal is no longer dangerous.

MPC

* Voluntary abandonment is affirmative defense even to attempt—renunciation.
* Must consider the decision to abandon: Physical v. Psychological Barriers.
SOLICITATION

<table>
<thead>
<tr>
<th>COMMON LAW</th>
<th>MODEL PENAL CODE</th>
</tr>
</thead>
</table>
| Request or Encourages Another to perform a criminal act  
- No overt act required  
- No corroboration required.  
- Intends to induce other to commit the crime.  
- Must have mental state required for the crime.  
--if communication not received, not clear—some jurisdictions still say solicitation, others say just attempt. | Commands, Encourages or request Another Person to engage in specific conduct  
--Immaterial that solicitation was uncommunicated |

DEFENSES
No defenses recognized

State v. Blechman—
* Facts: d convicted of counseling another to commit arson, other person didn’t do it.  
* Holding: solicitation is itself an act done toward the execution of evil intent—indictable. Not attempt to commit the crime, but a crime in itself.  
* Notes: The crime of solicitation is completed when the accused is shown to have counseled, incited, or solicited another to commit a felony or misdemeanor.  
* Can abandon if after solicitation the actor persuades the solicitee not to commit the crime or does something else to prevent the crime from being committed. (Same as MPC)  
* MPC—with purpose of promoting/facilitating commission, actor commands, encourages, or requests another person to engage in specific conduct which would constitute such crime or attempt to commit such crime—does not matter if not communicated if conduct was designed to effect such communication.

Spectrum of Substantive Crime

<table>
<thead>
<tr>
<th>Solicitation (agreement)</th>
<th>Conspiracy (substantial step)</th>
<th>Attempt (completion)</th>
<th>Completed Crime</th>
</tr>
</thead>
</table>
**Conspiracy**

Agreement, express or implied, between 2 or more people to commit a crime.

MPC 473

<table>
<thead>
<tr>
<th><strong>COMMON LAW</strong></th>
<th><strong>MODEL PENAL CODE</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Elements:</strong></td>
<td><strong>Elements:</strong></td>
</tr>
<tr>
<td>Agreement (between two or more persons)</td>
<td>Agreement (Unilateral Theory).</td>
</tr>
<tr>
<td>- Could be Implied</td>
<td>individual liable for conspiracy if he just</td>
</tr>
<tr>
<td>- Pursuing common objective not enough</td>
<td>simply agrees with another person.</td>
</tr>
<tr>
<td>- Not necessary to know identity of other person</td>
<td>Not necessary to know identity of others</td>
</tr>
<tr>
<td>Unlawful Objective/Means</td>
<td>Need overt act in furtherance of the conspiracy</td>
</tr>
<tr>
<td>Culpable Intent</td>
<td>unless felony in 1st or 2nd Degree</td>
</tr>
<tr>
<td>- Intent to Agree</td>
<td>Æ mere preparation is enough</td>
</tr>
<tr>
<td>- Intent required for the crime</td>
<td></td>
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<tr>
<td><strong>Wharton’s Rule</strong></td>
<td><strong>Rejects Wharton’s Rule</strong></td>
</tr>
<tr>
<td>Where it is impossible under any circumstances to</td>
<td>- Unilateral Theory (only need one person to commit conspiracy)</td>
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<tr>
<td>commit the substantive offense w/o cooperative action, the preliminary</td>
<td></td>
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<tr>
<td>agreement b/t the same parties to commit the offense is not an indictable</td>
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<tr>
<td>conspiracy i.e. adultery, incest, bigamy, bribery, and gambling</td>
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<tr>
<td><strong>Pinkerton Rule</strong></td>
<td><strong>Reject Pinkerton Rule</strong></td>
</tr>
<tr>
<td>An overt act completed by one conspirator in furtherance of a conspiracy is</td>
<td>Simply being a member to a conspiracy is not enough to</td>
</tr>
<tr>
<td>imputed to all conspirators. (agency)</td>
<td>charge the individual of the substantive crime. Would</td>
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<td></td>
<td>need to use accomplice liability.</td>
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<tr>
<td><strong>DEFENSES</strong></td>
<td><strong>DEFENSES</strong></td>
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<tr>
<td>Withdrawal</td>
<td><strong>Abandonment/ Renunciation of Criminal Purpose</strong></td>
</tr>
<tr>
<td>No defense for conspiracy itself but will relieve of liability for</td>
<td>Complete defense relieving liability for all prior</td>
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<tr>
<td>subsequent acts.</td>
<td>involvement in the conspiracy</td>
</tr>
<tr>
<td>Must give notice to all co-conspirators or tell police.</td>
<td>Thwarted the success of the conspiracy under</td>
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<td></td>
<td>circumstances manifesting a complete and voluntary</td>
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<td></td>
<td>renunciation</td>
</tr>
<tr>
<td></td>
<td>Presumed if no overt act within SOL</td>
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<tr>
<td></td>
<td>Must advise all co-conspirators or inform police</td>
</tr>
<tr>
<td></td>
<td>of conspiracy</td>
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</tbody>
</table>
U.S. v. Payan
* Facts: farm equipment disappearing from TX. Convicted of conspiracy to transport stolen goods and transporting stolen goods.
* Holding: the crime doesn’t require 2 people, so takes it outside Wharton’s Rule and he can be charged with both.
* Wharton’s Rule—generally prohibits convictions for both conspiracy and substantive offense when it is impossible to commit substantive offense without cooperation of two parties (adultery, dueling – when two people duel it is assumed that at some time they agreed to duel). Generally, apply to crimes where parties to agreement are the only ones who participate and bear the immediate consequences. Exception: when add more than the necessary 2 people, then punishable for both conspiracy and substantive offense.
* Wharton’s Rule is an old rule that is only applied absent a legislative intent to the contrary. Some jurisdictions apply rule as substantive law—others say it’s rebuttable presumption about what legislature intended to do.
* Unlike the traditional offenses of Wharton’s Rule such as dueling and adultery, the offenses here affected those beyond the offenders. Furthermore, Congress intended these statutes as independent offenses.

Gebardi v. U.S.
* Facts: man and woman indicted for conspiring to transport woman to have sex—convicted of violating the Mann Act.
* Holding: if doesn’t go beyond consent, woman cannot violate the act—woman cannot conspire to move herself. If one person of 2 did not legally conspire to commit a crime, neither did the other.
* When a statute creates an affirmative legislative policy to protect one from punishment, then the conspiracy laws cannot circumvent this purpose and punish those the statute sought to protect.
* In applying Wharton’s Rule, look to the elements of the statute dictating the crime, and not the facts of the case. Here, the statute punishes the man for both consensual transportation and forced acquiescence. Therefore, Wharton’s Rule may or may not apply. Therefore, Wharton’s Rule may never apply.
* Where substantive law requires 2 or more people but only one of them is punishable under the substantive statute, all may be convicted of conspiracy—but, as in this case, there may be policy reasons for not permitting conspiracy convictions in this case (statutory rape).
* MPC accepts part of Gebardi—but under MPC, guy could still be convicted of conspiracy because of unilateral theory.

People v. Swain
* Facts: van drives through town, drive-by shooting.
* Holding: in order to find conspiracy to commit murder it is necessary to find specific intent to kill because an inchoate crime like conspiracy requires intent to agree and specific intent to commit the offense. This cannot be tied to an implied malice killing, which lacks the preparatory stage that inchoate crimes require.
* Note: distinction between conspiracy to commit 1st degree murder and conspiracy to commit 2nd degree murder blurry because no bright line as to how far in advance you have to make the plans.
U.S. v. Loscalzo
* Facts: conspiracy to defraud US stemming from fraudulent representations made in connection with obtaining contract with USPS—said minority headed, but didn’t.
* Holding: aiding and abetting a conspiracy skips the “agreement step” of the test for conspiracy. Aiding and abetting is adjunct to the crime, not separate, so can be used to prosecute on conspiracy theory. If one knowingly aids and abets the conspiracy, one also aids the furtherance of the substantive crime and could be charged as a principal in the crime.
* Courts are split on whether one who aids and abets conspiracy can also be charged with conspiracy because no tacit agreement.

People v. Lauria
* Facts: guy has phone service, some prostitutes use it. Charged with conspiracy to commit prostitution.
* Holding: no conspiracy. Must have knowledge of illegal use of goods and intent to further the criminal enterprise. Knowledge is usually question of fact. Intent can be derived from direct or circumstantial evidence.
* “This intent, when given effect by overt act, is the gist of the conspiracy.” There must be “informed and interested cooperation, stimulation, and instigation.”
* Can infer intent—must look at surrounding circumstances (stake in venture, no legitimate use, disproportionate volume, when objective is very serious crime).
* Note: wheel conspiracy—distiller case—interdependent on each other—no common plan. Chain conspiracy—pharmaceutical case—manufacturer sold to physician, physician sold to dealers—intent to further.
  \[\Rightarrow\] Susceptibility of the goods to be harmful and to be used illegally is important. In Falcone, the D’s were sellers of sugar, yeast, and cans—innocuous substances. In Direct Sales, the D was a wholesaler of drugs who sold co-defendant doctor to sell to addicts.
  \[\Rightarrow\] Relationship between conspirators: Wheel Conspiracy – (1 ringleader, others deal only with him) other conspirators who provide different elements must be bound by common interest. Must show multiple conspiracies. Chain Conspiracy – conspirators form a direct line of passing on illegal activity. Easier to prove.
  \[\Rightarrow\] “stake in the venture” may be considered.
  \[\Rightarrow\] Volume of trade

Pinkerton v. U.S (agency—overt act of one is attributable to all)
* Facts: brothers conspire against IRS. Pinkerton says he withdrew.
* An overt act of one partner in a conspiracy may be the act of all so long as the partnership in crime continues.
* The rationale here is that the crime of conspiracy is an agreement to do an unlawful act and any act done in furtherance of that agreement may properly be held against any conspirator.
* No such liability could be based on an act:
  1) not in furtherance of the conspiracy
  2) not within the scope of the unlawful project, or
  3) that was unforeseeable to the conspirator.
* Contrary: Most states and the Model Penal Code hold that mere participation in a conspiracy is not enough to impose accomplice liability for crimes committed in furtherance of the conspiracy.
* Majority of jurisdictions hold that any act which effectively brings home the fact of withdrawal is enough to preclude liability, whereas the minority of jurisdictions hold the act must frustrate the purpose.

People v. Sconce (withdrawal)

* Facts: S offers money to G to kill E—G enlists help of D, they drive to E’s house, talk about how to do it. S calls it off.

* Holding: conspiracy to commit murder. After agreement and overt act in furtherance of the conspiracy, no withdrawal—if conspirator withdraws after overt act, then no longer liable for subsequent acts, but still for conspiracy.

⇒ Rationale for the opposing view – an effective withdrawal absolves the conspiracy charge – is to encourage abandonment of the conspiracy thereby weakening the group. (Some might argue that this is a “legal fiction” that conspirators know about conspiracy law.)

* Note: to effectively withdraw, must notify all parties or inform the authorities. If effective withdrawal, only liable for the conspiracy, not subsequent acts.

* MPC—This is different from renunciation which is an affirmative defense where D must thwart the success of the conspiracy and must be voluntary and complete per abandonment. Here it is a complete defense, even of the conspiracy (as long as no overt act).

Rule: Agreement + Overt Act

Sconce → Garcia → Dutton

If just Sconce and Garcia (agreement) (overt act)

Sconce’s withdrawal frees him from future acts (murder), but not conspiracy charge.

If all three agree (agreement) (agreement)

Sconce’s withdrawal effectively removes him from all liability.

U.S. v. Feola

* Facts: plan to sell sugar in place of heroin, if doesn’t work out, assault buyers and take money. Turns out buyers are undercover agents.

* Holding: conspiracy to assault federal agents—doesn’t matter that they didn’t know they were federal agents—a stricter sciente requirement is not present. So long as they know they are committing an illegal act, the offender takes the victim as he finds him.

* In order to sustain a judgment of conspiracy to violate a federal statute, the Government must prove at least the degree of criminal intent necessary for the substantive offense itself.

* The “essential nature of the agreement” is unchanged whether or not the official identity of the victim is known.

* “Federal officer” is just a jurisdictional element.

Marquíz v. People

* Facts: 3 conspired to kill woman, killed her. D was convicted of 1st degree murder and conspiracy to commit 1st degree murder—other 2 weren’t convicted of the same—separate trials.
* Although the **rule of consistency** typically exonerates a conspirator when his co-conspirators have all been acquitted, the rule does not preclude conviction of conspiracy when the co-conspirators were acquitted in separate trials.

* The policy behind the rule: Because the evaluation of a conspiracy involves examining the meeting of multiple minds, a conviction of only one conspirator would contradict the meaning of conspiracy and also indicate a bias or unfair weighing of evidence by the jury towards one conspirator.

* This is not inconsistent with the rule. In separate trials there might be: (1) different evidence, (2) witnesses, (3) effort by prosecution, (4) and different composition of jury. Furthermore, an opposite ruling from another jury does not insure that the jury misunderstood the charge or evaluated the evidence differently.

* **Contrary:** This can be bothersome. In one trial, the jury agrees that the defendants had made an agreement (i.e., conspiracy). However in separate trials the bias, whatever it may be, might still affect that single defendant, thus leading to different verdicts despite the reasoning above.

* **People v. Foster**

  * Facts: d wanted R to help him commit robbery, R told police.
  
  * Despite the statute’s similarity to the Model Penal Code which adopts the unilateral theory of conspiracy, the statute does not adopt the new theory when the comments of the statute do not indicate a change; the state has a solicitation statute; and a provision of the statute is not needed if it were to adopt the new theory.

  * Holding: under **unilateral theory**, only 1 of the alleged conspirators need intend to agree to the commission of an offense. This is basically the same thing as solicitation—so if solicitation statute, probably not unilateral conspiracy theory.

* **MPC**

  * With respect to most serious crimes, can be charge with conspiracy without overt act, but with lesser crimes, need overt act.
  
  * Renunciation is complete defense—in order to raise this, must be successful in preventing the object of the crime.
  
  * Abandonment if: (1) all members agree to end; (2) member renunciates AND statute of limitations runs out for member; (3) no overt act by any has occurred within statute of limitations
  
  * Doesn’t have to know who other conspirators are.
  
  * If conspires to commit a number of crimes, only guilty of one conspiracy.

  * **Unilateral Theory:** “A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating it commission he: (a) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime.”
# Parties to Crime

Virtually all states have abolished the distinction between principal in the 2nd degree and accessory before the fact. So if aids and abets in commission, liability doesn’t depend on presence—ACCOMPLICE—accomplice and principal are said to have relationship of complicity.

<table>
<thead>
<tr>
<th>COMMON LAW</th>
<th>MODEL PENAL CODE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principal in 1st Degree</strong></td>
<td><strong>Guilty of an Offense</strong></td>
</tr>
<tr>
<td>-Person who actually commits the Crime</td>
<td>-committed by own conduct, or by conduct of a person</td>
</tr>
<tr>
<td>-Possible for a crime to have more than one</td>
<td>for which he is legally accountable, both</td>
</tr>
<tr>
<td><strong>Principal in 2nd Degree</strong></td>
<td><strong>Legally Accountable</strong></td>
</tr>
<tr>
<td>-Present at the time the crime is committed and aids and abets its commission, but not commit</td>
<td>-acting w/ culpability sufficient for commission of</td>
</tr>
<tr>
<td>-Can be a constructive presence- i.e. “look out”</td>
<td>offense, cause another to engage in conduct</td>
</tr>
<tr>
<td><strong>Accessory before the fact</strong></td>
<td>-accountable for conduct of others</td>
</tr>
<tr>
<td>-Not present when crime is committed but aids and abets its commission.</td>
<td>-accomplice of other person in commission of offense</td>
</tr>
<tr>
<td><strong>Accessory after the fact</strong></td>
<td><strong>Accomplice</strong></td>
</tr>
<tr>
<td>-Does not participate in the crime itself, but furnishes post crime assistance</td>
<td>If for purposes of promoting or facilitating the</td>
</tr>
<tr>
<td>Elements are:</td>
<td>commission of the offense</td>
</tr>
<tr>
<td>-Completed Felony</td>
<td>-Solicits such other person to commit</td>
</tr>
<tr>
<td>-Knowledge of Felony</td>
<td>-Aids or agrees or attempts to aid in planning or</td>
</tr>
<tr>
<td>-Aid the Felon</td>
<td>committing</td>
</tr>
<tr>
<td>-Principal must be convicted first for liability</td>
<td>-Fails to make effort to perform legal duty to prevent</td>
</tr>
<tr>
<td><strong>Foreseeable Consequences</strong></td>
<td>commission of the crime</td>
</tr>
<tr>
<td>Liable for all foreseeable consequences</td>
<td>-Conduct by law establishes complicity</td>
</tr>
<tr>
<td><strong>Defenses</strong></td>
<td><strong>Defenses</strong></td>
</tr>
<tr>
<td>Abandonment</td>
<td><strong>MPC reject Foreseeable Consequences</strong></td>
</tr>
<tr>
<td>-terminate prior to the commission of offense, and</td>
<td>Not liable for crimes beyond those which were intended</td>
</tr>
<tr>
<td>-deprives its effectiveness or gives timely warning to police</td>
<td>to aid or encourage.</td>
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</tbody>
</table>
Aiding and Abetting
- Words may be enough
- Mere presence not sufficient
- Failure to intervene usually won’t suffice unless duty to intervene
- Attempt to assist probably wouldn’t bring accomplice liability, but under MPC it would—under MPC can be accomplice to attempt
- Mental state—d must intentionally aid or encourage—purpose to further the crime, knowledge usually not enough, mens rea of the crime committed.

ACCESSORY LIABILITY
- MPC – p.509

People v. Beeman
- Aider and abettor must act with knowledge of the criminal purpose of the perpetrator AND intent or purpose either of committing or of encouraging the offense. (specific intent crime)
  ⇒ Knowledge + Intent
  ⇒ Note: the principal does not have to brought to justice for accessory to be liable.
- Note: aiding and abetting liability makes all involved punishable as principals (punished in same fashion as those actually engaged in the crime).
- Do some jurisdictions only demand general intent?

State v. Hoselton
- Prosecution must demonstrate that the aider and abettor shared the same criminal intent as the principal.
- Accused’s response that “you could say” he was a lookout, standing completely alone, does not establish that the accused was an aider and abettor by participating in, and wishing to bring about the entering with intent to commit larceny.
  ⇒ A lookout is someone who is by prearrangement keeping watch to avoid interception or detection or to provide warning and is principal in the 2nd degree—must have criminal intent.
- Aider and Abettor
  (a) Knowledge of what the principal party is going to do.
  (b) Intent to promote.
  (c) Act.
  (d) Completion of the crime.
  ⇒ HYPO: What if a person flashes his lights to warn others about police trap? Not only would it be difficult to prove criminal intent, but this is a malum prohibitum crime (which no intent is needed for. Does that mean anything?).
State v. Foster (accomplice to criminally negligent act)

* Facts: d’s girlfriend was robbed and raped, he confronted man who fit description, left friend with knife to watch him, friend killed him.

• Because the statute only requires that the defendant have the mental state required for the commission of the crime while intentionally aiding another, an accessory may be liable in aiding another if he acts intentionally, knowingly, recklessly or with criminal negligence toward the result, depending on the mental state required by the substantive crime.

⇒ Do they have to be equal intents?

• This is consistent with the principle of accessorial liability (or accomplice liability). Accessorial liability is not a distinct crime like attempt or conspiracy which require specific intent, but an alternative means by which a substantive crime may be committed.

⇒ When the substantive crime requires an unintended result, a person cannot conspire to commit that crime because it is logically impossible to agree to achieve a specific result unintentionally.

⇒ However, under accessorial liability, the defendant need not aid with the specific intent of attaining a purpose, but only have the same mental state required for the commission of the crime while intentionally aiding another.

• This is consistent with the MPC which states in the comment: “This formulation combines the policy that accomplices are equally accountable within the range of their complicity with the polices underlying those crimes defined according to results.”

• Note: principal doesn’t have to be convicted for accessory to be convicted.

State v. Linscott (Foreseeable consequences)

* Facts: guys go to rob drug dealer, d broke window, F shot drug dealer, d didn’t know F was going to kill drug dealer.

• **Accomplice liability** - If with intent of promoting the commission of the crime (intent), the defendant aids the other person in committing the crime (actus reus), then a person is an accomplice to any crime the commission of which was a reasonably foreseeable consequence of his conduct.

⇒ the foreseeable consequence need not be intended. Therefore, if while promoting the primary crime, the “natural and probable” secondary crime occurs, then the defendant is liable for that as well even if he did not have the requisite intent.

⇒ “natural and probable consequences” doctrine: (1) knowledge of unlawful purpose; (2) intent in committing the targeted offense; (3) act or advice that promoted commission; (4) accomplice committed offense other than targeted offense; (5) additional offense was natural and probable consequence.

• For these facts, there are three possibilities.

  1) Accomplice Liability
     a. Liable for secondary crime that is a natural and probable consequence of the primary crime

  2) Felony Murder
     a. It could work here, but other circumstances where death does not occur but some other crime would not impute the accessory.

  3) Agency Theory (*Pinkerton*)
     a. All acts in furtherance of the objective can be imputed on all of the agents.
**Bowell v. State**

- Where a circumstance is an element of a crime, the state must prove the culpable mental state with regard to the defendant as aider and abettor as well as principal in order to convict for the crime. In sexual assault, as an aider and abettor, state must show intent to promote the offense, intentional engagement in conduct to facilitate the crime, and reckless disregard of victim’s lack of consent.
  1. Knowledge of other’s goal and an intent to promote such goal, and
  2. Aids or abets other
  3. Circumstance (here, consent)

⇒ On the exam, look for an additional circumstance in a statute. Here it is consent, but there might be another kind of “circumstance.”

⇒ The MPC states this is a decision left to the state to decide.

**State v. Vaillancourt**

* Facts: D accompanied friend to rob house, stood by while friend tried to break in and talked to him.
* The crime of accomplice liability necessitates some active participation by the accomplice.
* Knowledge and mere presence at the scene of the crime are not enough for a conviction. Not enough to just say, “Nice work, keep it up.”

⇒ Here, the majority and dissent seem to be arguing over the interpretation of the indictment. Does “accompanying” mean an accomplice or just mere presence.

**People v. Genoa**

* Facts: d agreed to give money for purchase of cocaine when undercover agent proposed the idea-gave money, was arrested.
* Holding: not guilty of attempt to aid and abet crime of possession with intent to deliver. **Underlying crime must have been committed for aider and abettor to be convicted.**
* The statute for aider and abettor provided that the crime to have been completed. Here, attempt was never committed. “Thus, while the conviction of the principal is not necessary to a conviction of an accessory, the prosecution must prove that the underlying crime was committed by someone, and that the defendant either committed or aided and abetted the commission of that crime.” Legislature needs to fix this gap.
* Could have been convicted under: (1) Conspiracy as defined by the unilateral theory, OR (2) Solicitation.

**People v. Brown** *(withdrawal)*

* Facts: went to steal car, kicked in door, decided they didn’t want to do it, left.
* Statute provides that withdrawal is effective when, before the commission of the offense, defendant terminates his effort to promote or facilitate, and does either: (1) wholly deprives his prior efforts of effectiveness in commission; (2) warns law enforcement; (3) makes proper effort to prevent commission of the offense.
* Guilty of attempted burglary because he had intent and he kicked in the door (substantial step).
* The policy of withdrawal is to encourage stopping “the offense.” Is the “offense” attempted burglary or burglary?
* MPC allows withdrawal after criminal attempt is complete.

**AFTER THE FACT LIABILITY**

P committed the crime. D knew. D assisted.
Failure to give information not enough.
**State v. Williams**

* D took shooter away from scene; lied to police about his whereabouts before the victim died.
  * One cannot be an accessory after the fact to a felony, unless the aid is given after the commission of the felony is complete.
  * Note: a principal or aider and abettor cannot be accessory after the fact. Also, an accessory after the fact does not need prior knowledge of intent.
  * Prosecution of the accessory after the fact does not depend on prosecution of the alleged felon.

**State v. Truesdell**

* Facts: d’s son shot dad, mom charged with accessory after the fact.
  * One can still be charged with accessory after the fact even though her son was too young to be charged with crime of murder.
  * Fact that the principal was not charged has no bearing on whether defendant has committed the crime of being an accessory after the fact; it is a separate crime.
    ⇒ The defendant must knowingly aid the felon, merely failing to notify authorities of a felony does not constitute liability.

**MPC** – liability for conduct of another – complicity.

* Legally accountable when have culpability and cause another to engage in conduct.
* Accomplice—with purpose of promoting or facilitating crime, solicits, aids or agrees or attempts to aid, fails the performance of legal duty.
* Has culpability sufficient for the commission of the offense.
* Not accomplice if victim or terminates before the commission of the crime.
Responsibility: Limitations on Criminal Capacity

<table>
<thead>
<tr>
<th>COMMON LAW</th>
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<tbody>
<tr>
<td><strong>Mistake of Law</strong></td>
<td><strong>Mistake of Law</strong></td>
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<tr>
<td>-Traditional view-is never a defense</td>
<td>-defense if it negates the mental state required to establish a material element.</td>
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<td></td>
<td>-state of mind established by ignorance or mistake constitutes defense</td>
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<td></td>
<td>-Not available if △ would have been charged w/ another offense had the situation been as he suppose</td>
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<td></td>
<td>-Mistake can be unreasonable.</td>
</tr>
<tr>
<td><strong>Mistake of Fact</strong></td>
<td><strong>Mistake of Fact</strong></td>
</tr>
<tr>
<td>-Only for specific intent crimes</td>
<td>- Based on △ subjective belief</td>
</tr>
<tr>
<td>-Mistake must be reasonable</td>
<td>-Mistake of age: no defense if under 10</td>
</tr>
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</table>

IGNORANCE OR MISTAKE OF LAW

- For mistake to rebut presumption (usually intent), the ignorance or mistake in the case must be concerned with some other law and not the one violated.

A. In Cude, that was a mistake of property rights. He thought it was his. He could not say he was unaware of a law against larceny (of course). He must depend on his mistake in law and the mistake cannot pertain to the same law he violated.

B. In the “will” hypothetical, the mistake was of trust and estates (witness must be present).

C. In Marrero, his mistake of law was in interpreting the law he violated. He depended on his mistake in law, but his mistake was the very law he violated.

D. Book HYPO for malicious trespass. D tears a fence out of the ground that was in his way. He could be freed if his defense was that his mistaken belief rested on the law of right of way, not if he didn't know there was such a law of malicious trespass (or if he believed it did not pertain to this instance).

E. HYPO: Person forges a signature to claim property she felt was rightfully hers.
   1. If the charge was larceny:
a. it is doubtful she can use the mistake of her understanding of property rights as a defense because she purposely deceived. Why else would someone do that? She must have considered the consequences.
b. Could she use mistake of law of forgery (i.e., daughter uses her mom’s signature to pick up something)?

2. If the charge were forgery:
   a. Could she use mistake of property rights even if she had a bona-fide belief?

- Problems for this:
  A. To what extent does this rule apply to offenses beyond “specific intent”?
  B. May the rule be used for exceptional situations such as:
     1. prosecutions for offenses only requiring a “mens rea”
     2. prosecution for the very law which is misunderstood (Marrero).

- Questions to ask:
  A. What is the law violated?
  B. Why did the defendant violate the law?
     1. interpretation / understanding of the law?
     2. action was based upon understanding of another law?
  C. What degree of punishment is required? (felony, misdemeanor)
  D. Is it malum prohbitum or mala in se?
     1. Note the interpretation of “knowingly” in the foodstamps case. D had to knowingly break the law.

- Compiler case which states two categories for which ignorance of law is a defense:
  A. “instances where the defendant is ignorant of an independently determined legal status or condition that is one of the operative facts of the crime…”
  B. criminal statutes which involve complex regulatory schemes that have the potential of snaring unwitting violators. (foodstamps case)

_State v. Cude_

* Facts: d took his own car from a garage where they were holding it awaiting payment, thinking he had possessory right to the vehicle.
  • If a defendant believes he is entitled to possession, then he did not intend to steal and did not intend to commit larceny.
     ⇒ Required element of intent to steal not present because he thought he had right to take the car.
     ⇒ Note that his mistake of law rests on his belief of property rights. Not beliefs of larceny.
  • Mistake of fact is a defense if, and only if, it negates a mental state needed to find a material element of the crime.

_People v. Marrero_

* Facts: d was prison guard who thought he could carry handgun without a permit, was told this by person at gun store.
  * Criminal responsibility exists, regardless of a mistake in the interpretation of the law, unless such mistake is based upon reliance of an official interpretation.
     ⇒ Here, the defendant argued that the law was ambiguous. This is not a defense.
Mistake of law can be a defense where the defendant seeks and receives an incorrect interpretation of the law from an authority. In malum in se, intent governs. In malum prohibita, the only inquiry is whether the law was violated.

**People v. Weiss**
- Facts: d confined suspect, thinking he had authority to do so because he was helping a police officer.
- Holding: mistake of law here. Must look at intent of d to perform the acts without authority of law—if in good faith d believed he was acting within the law, there could have been no intent to act without authority of law.
- Since intent to act “without authority of law” is an essential element of kidnapping, the defendant must be allowed to prove that he honestly thought he was acting within the law as part of his defense.
- Interpretation of statute: “with intent, without lawful authority, to confine another.” Majority decided this modified both in order to assure police officers they would not be convicted of kidnapping.

**Lambert v. State**
- Facts: woman failed to register as a felon—lived in LA for 7 years, but didn’t know about the statute.
- Actual knowledge of the duty to register or proof of probability of such knowledge and subsequent failure to comply are necessary before can be convicted.
  ⇒ The registration provision is a violation of due process—no notice.
  ⇒ The SC noted this was wholly passive: **status + failure to register = crime.**
  ⇒ This ruling could have been avoided if instead of charging her, they gave her a month to register.
- Casenote suggests to keep this as a narrow holding:
- The Supreme Court held that ignorance of the law covering the conduct in question will be a defense only when: (1) the conduct is an omission to act; (2) the omission to act is under circumstances which would not move one to inquire as to the need to act.
  ⇒ HYPO: Good Samaritan statute. If person did not help choking child, the person cannot rely upon this decision b/c a choking child is reason enough to inquire into this law. (I guess timing has nothing to do with this one).

**Long v. State—minority view**
- Facts: guy moves to Ark. to get quick divorce, moves back to DE and remarries, charged with bigamy. He had consulted a lawyer who said this would be fine.
- Where a person before engaging in conduct makes a diligent good faith effort to ascertain the meaning and applicability of the law, then mistake of law is a defense.
  ⇒ To rely on this as defense need: competent lawyer, reliance in good faith on lawyer’s advice, full disclosure to lawyer, pre-conduct consultation.
  ⇒ Besides the reliance of his lawyer, the court also considered the value of punishing those for remarrying under a mistaken belief (remarrying if legal is a good thing, so why punish someone if they think they married someone legally). They consider the crime and punishment. Would they have allowed this based upon reliance if there was an actual social harm (i.e. pollution).

**State v. Striggles**
- Facts: municipal court ruling that machine wasn’t gambling device, S installs machines, prosecuted, *Ellis* decided that were gambling machines.
• Holding: must rely on highest authority. When the court of highest jurisdiction passes on any given proposition, all citizens are entitled to rely upon the decision, but decisions of any court below are not available as defense under these circumstances.
  ⇒ Note: municipal court decisions may have varied, so can’t rely on them. Also can’t rely on mayor’s or attorney’s interpretations here.

MPC
* Defense if negatives the purpose, knowledge, belief, recklessness, or negligence required to establish a material element of the offense or the law provides it as defense.
* Not available if d would be guilty of another offense had the situation been as he supposed—but can reduce the grade.
* Belief that the conduct isn’t a crime is defense when:
  ⇒ Statute is not known to actor and hasn’t been published or made available prior to the conduct.
  ⇒ He acts in reasonable reliance on official statement of the law afterward determined to be erroneous.

IGNORANCE OR MISTAKE OF FACT
* Mistake of fact will disprove a criminal charge if the mistaken belief is:
  ⇒ Honestly entertained;
  ⇒ Based upon reasonable grounds; and
  ⇒ Of such a nature that the conduct would have been lawful if the facts had been as they were reasonably supposed to be.
* Exceptions
  ⇒ At times an honest mistake of fact may be exculpating although not based on reasonable grounds (e.g. specific intent crimes).
  ⇒ In other prosecutions a well grounded belief of a fact which would entitle d to an acquittal if true may not save the person from conviction if erroneous (e.g. strict liability).

People v. Vogel (minority view to bigamy and mistake of fact)
* Facts: d believes wife divorced him, so remarries—wife never divorced despite living with someone else and using other guy’s name.
• One is not guilty of bigamy if he had a reasonable, bona fide belief the facts that existed left him free to remarry.
• Where wrongful intent is required, if person believes he’s acting properly, mistake of fact can be used as defense.
  ⇒ Courts reasons that if one can be prosecuted for bigamy with evidence that he has multiple marriages, then one should be able to present evidence that the other has remarried.
  ⇒ Again, the courts consider how there is no social harm here.
• Note: Mistake of law is dependence upon law. Mistake of fact is a defense b/c of good faith and reasonableness.
• MPC—bigamy defense
  ⇒ Believes spouse is dead.
  ⇒ 5+ years living apart thinking spouse is dead.
  ⇒ Court judgment of divorce or annulment, actor not knowing it’s invalid.
⇒ Reasonable belief he’s able to remarry.

**People v. Cash**
* Facts: d picks up runaway, she lies about her age, has sex with her.
* A majority view holds that statutory rape is a strict liability crime where any mistake of fact is not a defense.
* MPC—mistake of age is no defense if <10; >10, defense if by preponderance of the evidence d reasonably believed person to be above the critical age.

**People v. Crane**
* Facts: d beat G in self-defense, thought he was dead, burned the body to hide the evidence.
* Not guilty of murder because mistake of fact is a valid defense if the mistake negates the existence of the mental state which a statute prescribes with regard to an element of the offense.
⇒ The problem here was the instructions. It probably would have not been a problem proving he did not have a reasonable belief.

### Responsibility: Limitations on Criminal Capacity

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<thead>
<tr>
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<tbody>
<tr>
<td><strong>Voluntary Intoxication</strong></td>
<td><strong>Voluntary Intoxication</strong></td>
</tr>
<tr>
<td>-Defense if it negates specific intent</td>
<td>-Defense if it prevents an accused from having the required state of mind.</td>
</tr>
<tr>
<td>-Does not “excuse” criminal conduct like self-defense or duress.</td>
<td>-Does not negate recklessness or criminal negligence</td>
</tr>
<tr>
<td><strong>Involuntary Intoxication</strong></td>
<td><strong>Involuntary Intoxication</strong></td>
</tr>
<tr>
<td>-duress</td>
<td>-duress—Actual or threatened use of force that reasonable person unable to resist</td>
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<tr>
<td>-mistake as to nature of substance</td>
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--where test for availability of defense is reasonable man, generally can’t use intoxication to mitigate. --intoxication will never be considered to negate the existence of recklessness or criminal negligence.

### INTOXICATION

**State v. Cooper**
* Facts: d drove wildly, shot cop, kidnapped someone while high on drugs.
* Holding: there is a presumption of sanity in every case—to rebut, d must introduce sufficient evidence to generate doubt as to his sanity. Voluntary intoxication is not defense to crime, but evidence of such intoxication is admissible to show lack of specific intent.
⇒ “The voluntary actions of a defendant do not provide a legal excuse for his subsequent irrational conduct.” Not a legal excuse, but it still might negate a specific element.
State v. Brown  (mistake as to nature of substance)
* Facts: d drunk on street and in courthouse, said he didn’t know the liquid would make him drunk.
• If a person takes in alcohol, not knowing of its intoxicating quality, it is considered involuntary intoxication and a defense to his actions.
⇒ It must be severe intoxication for him to have no blame.
⇒ If he is only a little drunk, then there will be some criminal responsibility.
• Involuntary intoxication—ignorance of substance, duress.

Burrows v. State  (duress)
* Facts: d, runaway from military school, picked up by guy, guy makes him drink, he later kills the guy and leaves him in a ditch.
• Forced-to-drink involuntary intoxication defense—(1) induced by acts amounting to duress or fraud (2) to such an extent that d’s mind was incapable of understanding the criminal nature of his act.
⇒ Duress = reasonable person cannot resist. And the threat must be imminent.

Commonwealth v. Graves
* Facts: d burglarized residence of P and robbed him—during robbery, P sustained injuries which later caused his death. D said he took LSD and had drunk wine.
* Intoxication can negate specific intent of crimes that have such a requirement.
⇒ But if the drinking was done to enable him to help carry out the plan, intoxication cannot be raised as a defense even if too intoxicated at that point to have intent.

MPC
* Intoxication not a defense unless it negatives an element of the offense. But, intoxication which is not self-induced or is pathological is an affirmative defense if actor lacks substantial capacity to appreciate criminality or to conform conduct to requirements of law.
* When recklessness is mental state, if d unaware of risk because of intoxication, unawareness is immaterial.
* Intoxication not mental disease.

Defenses

SELF-DEFENSE—complete defense when successfully asserted.
* Requirements:
  ⇒ To resist unlawful force
  ⇒ Force not excessive
  ⇒ Not deadly unless resisting deadly force
  ⇒ Can’t have been the aggressor
  ⇒ Must not have been in position to retreat.
* An aggressor who uses non-deadly force may resist when the other party answers with deadly force.
* No need to retreat with non-deadly force. Only retreat if safe with deadly force.
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<tr>
<td><strong>Objective Belief</strong></td>
<td><strong>Subjective Belief</strong></td>
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<td>Minority Rule—duty to retreat</td>
<td>Duty to Retreat or Surrender</td>
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<td>Majority Rule—No duty to retreat</td>
<td>Castle Doctrine</td>
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<td>Middle Ground—No duty to retreat</td>
<td>-No duty to retreat from dwelling or place of business.</td>
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* The privilege to use force in the effort to avert harm threatened (actually or apparently) by the wrongful act of another is based upon the reasonable belief of the defender under the circumstances as they appear at the moment—neither limited by nor entitled to the benefit of secret intentions or other unknown factors.

* One who is free from fault is privileged to use whatever nondeadly force reasonably seems to the actor to be necessary to prevent being harmed by the wrongful act of another—may use this force without yielding ground unless the endangering conduct of the other is negligent rather than intentional.

* Deadly force is not privileged in the defense against nondeadly force.

* One who is at fault in bringing on the encounter, or in engaging it, is not privileged to use any force to defend oneself against nondeadly force.

* Distinguish excuse and justification: An excuse is a defense which negates culpability while a justification is a privilege to engage in conduct that otherwise would be criminal.

**State v. Realina**
* Facts: d ran after guy into police station after the guy had threatened him and followed him. Guy had threatened D twice previously with a knife. D had notified police prior. D purposely drove to the police station. Guy reached in and removed keys from ignition.
- If one produces evidence for justification in using force, it is the prosecution’s duty to prove beyond doubt that said force was unreasonable.
- When the state concedes that defendant’s use of force was justifiable at one time, then the state must produce evidence to prove that his justification had ended.
  ⇒ belief that other is going to use deadly force must be reasonable.
  ⇒ If State had produced evidence, D could show he had no intent in inflicting harm, he was merely chasing him into the police station.

**People v. La Voie**
* Facts: 4 drunk guys in other car ram D’s car, get out and threaten D, D shoots one who advances.
- If person has reasonable grounds to believe and does believe his life is imminently in danger, he may defend himself even to the extent of taking human life.
  ⇒ Justifiable Homicide = Reasonable Belief + Subjective Belief.
  ⇒ Even though this man might have been able to drive away, we cannot assume that one would be thinking calmly. Furthermore, some jurisdictions allow someone to stand their ground when imminently threatened.

**People v. Goetz**
* Facts: subway shooter, kids asked for $5, shot at them methodically, shot again at boy he missed.
• A person is justified in using force against another when he “reasonably believes” such is necessary to defend himself.

• “reasonably believes”:
  (1) defendant must have subjective belief to use force, and
  (2) this belief must be objectively reasonable.

* Factors to be considered: pattern of fire; reaction of victims; statements before and after incident; prior experience with similar circumstances; license to carry gun does not make him guilty per se, but may be considered as evidence to if he was objectively reasonable; circumstances at the time of the incident (size of aggressors, number, if they surrounded him).

* If justified in shooting someone, and miss, then the doctrine of transferred intent still applies and the shooter is not liable.

**People v. Humphrey**
* Facts: woman shoots abusive husband, battered woman syndrome.

• The right to kill in self defense exists if the defendant reasonably believes in the existence of imminent harm, evaluated objectively from the standpoint of a reasonable person and not a reasonable person in defendant’s position.

• Because evidence of battered woman’s syndrome may help the jury understand the circumstances in which the defendant found herself at the time of the killing, it is relevant to the reasonableness of her belief.

• Commonly the test is articulated as being, what would a reasonable woman in d’s situation, taking into account the prior history of abuse, but not taking into account the particular psychology of the woman herself?

• It is the jury, not the expert, who shall determine when defendant’s belief core actions were objectively reasonable.

⇒ Court recognizes 2 defenses:
  (1) Perfect defense where there was the subjective belief and it’s reasonable.
  (2) Imperfect defense where belief, but it’s unreasonable—can mitigate the offense.

⇒ In questioning “reasonableness,” distinguish excuse and justification: An excuse is a defense which negates culpability. A justification is a privilege to engage in conduct that otherwise would be criminal.

⇒ Expert testimony does not go towards exonerating defendant, but it may go to the issue of credibility of the defendant’s actions and belief.

**People v. Ligouri**
* Facts: d emptied 2 guns into guy he said was feloniously attacking him.

• One is justified in standing his ground to a felonious attack and, if necessary, killing the aggressor.

⇒ Person must still have a reasonable belief that it is necessary.

⇒ Here, the aggressor pulled a gun on him.

**Brown v. U.S.**
* Facts: d is afraid of guy threatening him, takes gun to work, guy shows up, d shoots him after standing his ground.

• If a man reasonable believes that he is in immediate danger of death or grievous bodily injury from his assailant he may stand his ground and repel the attack with all necessary force.

⇒ The force can be deadly but it must at least be necessary for the circumstances.
⇒ “The law must reflect human nature on this point … detached reflection cannot be expected in the presence of uplifted knife.” – Holmes

- Possible explanations for the extra shot: passion, accidental, thought he would get up, cold blood.

**Cooper v. U.S.**

- Facts: d gets in fight with his brother, kills brother after brother hits him with radio.
- In considering if a person was in imminent danger of death or serious bodily harm, a jury may question if the encounter could have reasonably been avoided even if the incident was between co-occupants.
  ⇒ This is a **middle ground** approach. Imposes no duty to retreat, but it “permits the jury to consider whether a defendant, if he safely could have avoided further encounter by stepping back or walking away, was actually or apparently in imminent danger of bodily harm.” In other words, ask if the defendant truly was in imminent danger if he never considered turning and fleeing.

- **American Rule**—castle doctrine—right to defend self, no duty to retreat.
- **Common Law Rule**—each has a right to be there, so respect and tolerance is required. Higher standard because they have a higher obligation to each other and are usually related. Duty to retreat if possible.
- **Middle Ground**—no duty to retreat, but failure to do so is to be considered by the jury.

**State v. Broadhurst**

- Facts: woman asks d to kill guy, d attacks guy, severely injures guy’s head, turns around to leave, guy comes at him, d shoots guy in self defense.
- For the original aggressor to claim self-defense he must show: (1) that he withdrew, in good faith, from the combat, and; (2) that he demonstrated his intention in a way that his adversary must have known that the assault had ended.
- Other jurisdictions provide a more stringent test: in part (2) instead of showing that the assaulted person should have objectively known the defendant withdrew, the defendant must prove the person subjectively knew the fight was over.
- **MPC????**
- Self defense justifiable when actor believes such force is immediately necessary for purpose of protecting himself against the use of unlawful force.
- Not justifiable:
  ⇒ To resist arrest.
  ⇒ To resist force used by the occupier or possessor of property or by another person on his behalf. But this doesn’t apply if actor is public officer, actor has been dispossessed of the property; actor believes the force is necessary to prevent death or great bodily harm.
- Not justifiable unless to prevent death, serious bodily harm, kidnapping, or sexual intercourse:
- If the actor provoked.
- 3 questions: Look at Goetz notes.
- If could have retreated. Doesn’t have to retreat in home or if peace officer.
DEFENSE OF OTHERS

<table>
<thead>
<tr>
<th>Common Law</th>
<th>Model Penal Code</th>
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<tbody>
<tr>
<td>Old View</td>
<td>-Subjective Belief</td>
</tr>
<tr>
<td>-Can only defend another if in some personal relationship to one in need</td>
<td>-No personal relationship required</td>
</tr>
<tr>
<td>Today can defend pretty much anyone</td>
<td>-Retreat only if ( \Delta ) knows he can secure the safety of the person being defended</td>
</tr>
<tr>
<td></td>
<td>-Castle Doctrine Applies</td>
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Requirements

Reasonably believes that the other is in imminent danger of bodily harm

Degree of force is reasonably necessary to prevent the harm

Believes the party being assisted would have right to use in his own defense the force d is using.

*State v. Saunders*

- Facts: d’s brother in fight, d fears for brother’s life, gets gun, shoots aggressor.
- A person who acts in self-defense or in defense of another is not guilty of murder.
- *alter ego rule*—one steps into the shoes of the victim and is able to do only as much as the victim himself would lawfully be permitted to do.

*State v. Bernardy*

- Facts: d joined altercation his friend was in that opponent started, kicked opponent in head while on the ground, acted with belief that he would get up and had help coming.
- An individual who acts in defense of another person, reasonably believing him to be the innocent party and in danger, is justified in using force necessary to protect that person even if, in fact, the party whom he is defending was the aggressor.
  \( \Rightarrow \) This is the *minority view* which the modern trend is adopting (subjective view of the objective situation of other).
- The *majority view* is the “stand in the shoes” doctrine: if the person being protected could be privileged to use force under the privilege of self-defense, then the person defending him is also privileged (subjective view of other’s danger).

*Alexander v. State*

- Prisoner holds back a guard when he believes the guard is assaulting a prisoner, however prisoner was initial aggressor. Appeals that the two defenses do not coexist.
- Defense of others is available if the defendant, based on what he has witnessed, believes the party he is helping is the victim.
  \( \Rightarrow \) Subjective of what the helper objectively witnessed.
⇒ Rationale is to encourage the community to prevent violence. This policy is undermined if the person wanting to help another does not because he doesn’t know the entire situation.

**People v. Curtis**
* Facts: d killed brother’s assailant even though appears brother wasn’t entirely blameless.
  • One may come to the defense of an assailed party even when the assailed party is not entirely blameless.
**MPC**
  • Justifiable when:
    ⇒ Actor would be justified in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect AND
    ⇒ Under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in using such force AND
    ⇒ Actor believes intervention is necessary.
  • In other words: first step is to see if the defendant in his friend’s place would protect himself; second step is to see if the defendant believes his friend would protect himself; final step is too see if defendant believes intervention is necessary. There is no alter ego rule, no reasonable belief.

**DEFENSE OF HABITATION**

**State v. Mitcheson**
* Facts: d was at sister’s house, shot deceased who was in front yard taking wheels off d’s van.
  • A person is justified in using force against another in protection of his habitat, even if the habitat is not the person’s actual residence.
    ⇒ Court extends this to “whatever dwelling he is peacefully occupying as a substitute home,” which includes the occupation as a guest in the home of another.
    ⇒ In this case, the habitat was the sister’s home.
    ⇒ Find other examples.

**People v. McNeese**
* D stabbed roommate’s ex-husband and friend when they came in to get her stuff. Her husband was never supposed to come into the apartment. Husband choked defendant. **“make my day” statute.**
  * Under the “Make My Day” statute, a defendant homeowner is immune from prosecution for use of deadly force if he can prove by a preponderance of the evidence: (1) that the “unlawful entry” was in fact not lawful, and the intruder knew it to be unlawful; and (2) that the defendant had a reasonable belief the intruder was going to commit a crime.
    ⇒ Here, the “unlawful entry” in the statute meant:
      (1) An illegal entry, and
      (2) The victim knew it was unlawful
    ⇒ Defendant must have reasonable belief that victim would commit a crime.
    ⇒ Finally, the statute uses both “unlawful entry” and “uninvited entry.” These are not necessarily synonymous. “Uninvited entry” could be a police officer entering the building.
**MPC**
  * Castle Doctrine except where d is aggressor.
  * Deadly force when intruder is trying to commit felony and also believes will or has used deadly force.
DEFENSE OF PROPERTY

*Commonwealth v. Donahue*
- Facts: fight over payment for clothing—d assaulted vendor and retrieved money he paid.
- A man may defend or regain the momentarily interrupted possession of his property by the use of reasonable force. MPC doesn’t limit interval.
  ⇒ Must be reasonable force. One can never use deadly force in defense of property.

*People v. Ceballos*
- Facts: kids break into garage and one gets shot in the face by a spring gun.
- One cannot use deadly force in defense of habitat when one is not present, because one could not possibly have his life reasonably threatened.
  ⇒ This refutes argument: “if able directly [in defense of habitat], then able indirectly”
- “The character and manner of the burglary could not reasonably create such a fear unless the burglary threatened, or was reasonably believed to threaten, death or serious bodily harm.”
- MPC agrees that deadly mechanical device may never be used.

**MPC**
- Justifiable when actor believes that such force is immediately necessary:
- To prevent or terminate unlawful entry or trespass; or
- To retake property
- Must be used in fresh pursuit.
- No deadly force unless attempt of dangerous felony AND has used/threatened force or not using force would invite great bodily harm.

Insanity (complete defense)

*State v. Fetters*
- Facts: d said she was insane at the time she killed her aunt.
- **M’Naughten Rule (right-wrong rule):** The defense of insanity is available if the actor does not have the capacity to know at the time of the incident:
  1. the nature and quality of act, or;
  2. right from wrong
- When conflicting psychiatric evidence is presented to the fact finder, sanity is clearly an issue for the jury to decide.
  ⇒ Here, there was ample evidence that she in fact knew the nature and quality of her acts and right from wrong: planned murder; occurred just as she had planned; cried afterwards; testimony of friends; motive to steal car and money; looked for truck and safe.
  ⇒ Note: It does not matter if it were God, Satan, or whoever telling her to do it. In fact, one could look upon Satan ordering someone to do something as proof that the person knew it to be wrong.
  ⇒ Here, the court starts with the presumption of sanity. It is the burden of the defendant to prove by a preponderance of the evidence. What is the general rule?

*State v. Smith*
- D raped babysitter and killed kid she was babysitting (first tried to strangle, then stabbed). Chased the babysitter as she fled. He had history of treatment for personality disorders.
• The defense of diminished capacity applies to disabilities which fall short of insanity and may serve to reduce the degree of the crime or to negate the existence of a requisite mental state.
  ⇒ Not all jurisdictions recognize this.
• Contrasted with M’Naughten which doesn’t recognize degrees—must be complete lack of capacity for a complete defense.
• Note: California legislature overturned this defense for both diminished capacity and intoxication. The jury may still rule on the mental state, but they will do this without testimony from psychiatrists (removes the “battle of psychiatrists” and gives it to jury). Only objective evidence, witnesses, etc.
  ⇒ Find out to what extent the types of evidence may go.

Davis v. State
  * Insane on subject of wife’s infidelity, killed N.
  • If the defendant acts under an insane delusion which sweeps away his reason, then it may be presumed that he is incapable of malice, a requirement for murder.
    ⇒ Here the “irresistible impulse doctrine” is applied to lessening a mental requirement, thereby mitigating the charge.
  • Irresistible Impulse Doctrine – a defense to criminal prosecution that the defendant, due to some mental disease or defect, was unable to resist the impulse to commit the crime because of his inability to control his actions.
  • Here, the court eventually charged the defendant of voluntary manslaughter, which requires a “cooling off” period. The defendant had that time here so this ruling effectively removed the requirement that the defendant must not have time to cool off for voluntary manslaughter.

Durham v. U.S.
  * D convicted of housebreaking, said was of unsound mind at the time.
  • An accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.
    ⇒ Disease – a condition that is capable of either improving or deteriorating.
    ⇒ Defect – a condition unlike disease that is congenital or due to injury.
    ⇒ Court says this cures defect of leaving out those with mental defects who do know right from wrong. It also has the benefit of allowing psychiatrists to discuss their real opinions and observations without the fear of being pigeon-holed by the M’Naughten test.
    ⇒ Looking for a causal link between the mental impairment and the conduct, but didn’t say what the link would have to be or how substantial it would have to be.
    ⇒ This is not favored in any jurisdiction.

People v. Drew
  * Facts: D at a bar, drinking, leaves money to pay, goes to bathroom, when gets back it’s gone, argument, police come, d keeps going after the other guy, one of police officers hit, falls.
  • MPC / ALI test for insanity: A person is not liable for his criminal offenses if, at the time of committing the crime(s), he suffered from a mental disease or defect and thereby lacked the substantial capacity to appreciate the wrongfulness of his actions or to conform his actions to the requirements of law.
    ⇒ cognition – “appreciate the criminality of his conduct”
    ⇒ volition – “conform his actions to the requirements of law.”
    ⇒ Court finds problems with M’Naughten:
(1) Exclusive emphasis on cognition goes against medical opinion that one can be aware of his actions, but unable to control them
(2) Recognizes no degrees of incapacity
⇒ Both of these factors lead to limited psychiatric testimony.

State v. White
* Facts: charged with 2 murders. Instructions based on M’Naughten—d wanted instructions based on MPC. Court says M’Naughten rule better.
  • Because there is much uncertainty as to the capacity “to control one’s behavior,” the M’Naughten test is better because it serves best in preventing crime.
  • Rationale: Difference between the 2: instruction which was given didn’t allow for an acquittal based on insanity or mental irresponsibility if accused had cognition (ability to understand the nature and quality of his acts) with regard to what he did, even though his volition (capacity to conform his conduct to the requirements of the law) may have been substantially impaired by mental disease or defect. Rejects Durham test—almost all criminals could come under such a definition of insanity. Also says, if we’re talking about people with personality disorders, can be deterred—shouldn’t have defense of insanity.

U.S. v. Freeman
* Insanity Defense Reform Act
  • The definition of insanity may be restricted so that a valid defense only exists where the defendant can prove with clear and convincing evidence that he was unable to appreciate the nature and quality or the wrongfulness of his acts.
  • Insanity Defense Reform Act:
    (1) definition restricted to “unable to appreciate the nature and quality or the wrongfulness of his act” and “lacks substantial capacity”
      (a) This is MPC language but does not have the language for volition “requirements of law.”
    (2) shifted burden of proof to defendant
    (3) must prove by clear and convincing evidence.
    (4) prohibits expert testimony relating to the issue of insanity.
      (a) Psychiatrist can take the stand and testify to matters within there professional expertise (if they are psychotic, depressed, etc.) but they may not answer if the person is insane. It limits the role of the expert.
Definitions
Legal Duty to Act – There is a duty to act and assist another in danger when:
a statute provides, or
a contract stipulates, or
the parties have a special relationship, or
the actor voluntarily assumes care of the endangered person, or
the actor created the circumstances that placed the person in danger.