INTRODUCTORY ISSUES (Chapter 1)

Void for Vagueness
- The average person must have fair warning that conduct is prohibited
- If statute does not give \( \Delta \) fair notice, he cannot be punished under it – Palmer
- If statute is void on its face, it cannot be applied to anyone – Stanko I
- Statute must be sufficiently specific to prevent arbitrary enforcement.

IMPUTABILITY (Chapter 6)

What Constitutes an Act
- All acts must be voluntary – result of conscious and volitional movement
\( \Delta \) must take the affirmative or positive action toward committing a crime – Taft
Possession - “Power and intent to control its disposition and use” not mere presence - Kimbrell
- Note distinction w/ MPC § 2.01(4)

Constructive possession
1. Power – \( \Delta \) could have hidden or destroyed drug
2. Intent to control - Kimbrell

Negative Acts (Omission)
1. Legal Duty to Act
   a. Status Relationship
      i. Parent to care for minor child
         1. Possibly amended by statute – Christian Scientist case.
      ii. Not child to parent – Davis
      iii. Employer over employee – duty to control – from chauffer case
   b. Provided by Statute
      i. Ex. \( \Delta \) had duty to provide child support, if he knew about the duty, and if he was finally able to provide such support. Teixera
   c. Contractual Duty
      i. By Enforceable Contract w/Consideration OR
      ii. By Implied Contract – Jones v. U.S.
   d. Voluntary Assumption of Care
      i. Billingslea case study – son left mother to die while living in her home??
      ii. This duty can also be enforced by statute
   e. \( \Delta \) put victim in situation of peril – Van Buskirk
2. Voluntary failure to fulfill such Duty

Note: Penalty for omission resulting in death will be criminal negligence – voluntary manslaughter, unless it is a malicious omission, then it will be murder.

RESPONSIBILITY (Chapter 7)

Criminal Liability, there must be an Actus Reus + Mens Rea

Criminal Negligence
Elements: - also State v. Howard
1. \( \Delta \) is unaware of the risk, but should have been aware of a substantial risk
2. Δ acts with gross incompetence

Notes:
- **Objective** reasonable professional standard Gian-Cursio, “chiropractor”
- Δ’s subjective state of mind, acting in good faith is irrelevant

**Specific Intent**
- Criminal attempted murder – must have specific intent to kill – Thacker, Δ’s intent to “shoot the lights out” not enough for attempted murder
- With purpose to violate a law or cause a particular, harmful result.

**Other States of Mind**

**Malice**
- Intent to do a wrongful act – Nastoff
- Common Law mental state required for murder – see 2nd degree murder

**Recklessness** – required for manslaughter in Peterson, drag racing

Elements:
1. Δ was aware of the risk that injury will result
2. Risk is substantial and unjustifiable
3. Gross deviation from the standard of care
4. Δ ignores the risk and participates in the activity

Notes:
- A subjective test
- With no social utility to action, necessary risk is lower
- Cannot “turn off” recklessness – unilateral determination to quit activity, or even notice to other participant is not enough

**Knowingly**
- Knowingly concealing stolen proper - Beale
  - Δ believed (subjective knowledge) that property was stolen OR - MAJORITY
  - Reasonable person would have known (objective) property was stolen - MINOR
  - Note: There is a split in the courts b/w subjective and objective standard
  - Circumstantial evidence may be sufficient to be prove subjective knowledge
- Actual positive knowledge – Jewell, drug smuggling case
  - Willful blindness or deliberate ignorance is not an excuse
  - *Conscious purpose to avoid the truth is actual knowledge
  - *Δ must be aware of a high probability of illegal activity

Knowingly – Liparota food stamp case
there is a Mens Rea requirement to this regulatory crime

**Willfulness**
- Deliberate and intentional conduct (not accidental, nor inadvertent)
  - Fields, failure to deliver docs to Congress
- Bad purpose is not required

Mistake of law – not generally a defense to willful conduct, EXCEPT:
- If Δ in good faith, subjectively, believed he had no duty to pay taxes, no matter how unreasonable, he did not act willfully.– Cheek v. U.S.
  - B/c Δ was told he must pay taxes, he did not hold “good faith belief” as to the law not requiring him to pay.
  - By challenging constitutionality of law, Δ submits that he knows what law is.

**Strict Liability** – Olshefski, weigh bill statute
If crime is in the administrative, regulatory, or morality area, and no other mental state is given, it is a strict liability crime.
- Malum prohibitum – evil by statute only
- Criminal liability without fault
  - For administrative convenience / necessity

**Unlawful Conduct**
- If Δ is committing a crime, malum in se, and an accidental homicide results, the Δ will be held for criminally negligent homicide. – Horton, kills landowner while hunting illegally
  - If first crime is malum prohibitum, there is not liability for accidental killing.

**Transferred Intent** – intent follows the bullet – Gladden
- Intention to kill A, B is killed – Δ equally liable to killing B
- Intent to kill an animal cannot transfer to a person – Horton
- If only intent to kill one person, the intent will not carry if a second person is killed.

Defenses to killing of intended victim will transfer with intend to actual victim – Howard

**OFFENSES AGAINST THE PERSON – HOMICIDE (Chapter 2)**
All elements of the crime need not occur at the time of the wrongdoing - Cuellar
- The death and other elements may be delayed

**1st Degree Murder** – from Hokenson

*Premeditation* (willful and deliberate – Mayle)
  - Intent to kill, cool mind, and actual reflection
  - Purposely, Knowingly (language from MPC)

Factors in premeditation (Forrest):
  1. Want of provocation on part of Δ
  2. Conduct and statements of Δ before and after murder
  3. Threats and declarations of Δ before and during murder
  4. Ill-will or previous difficulty b/w parties
  5. Dealing of lethal blows after victim is helpless
  6. Evidence that killing was done in a brutal manner

Notes:
  - Premeditation may be made in an instant – Schrader
  - Premeditation can be proven by circumstantial evidence – Forrest

**Felony Murder**
- Strict liability for any deaths as a consequence of certain felonies - Stamp
  - Δ is presumed to be acting recklessly – Hokenson
- Felony must be “inherently dangerous to human life” not fraud– Phillips
- Felony and death must be part of one continuous transaction. - Hokenson
- Killing must be independent of the felony – Wilson
  - Felony cannot be something inherent in fact in homicide, like assault

W/o this exception, even manslaughter and 2nd degree murder would automatically be elevated to felony murder, 1st degree

**Causation of Felony Murder**

Agency theory - Campbell
  - Killing must be by one of the felons
  - Δ is culpable if killing occurs in furtherance of felony
  - Some say the victim cannot be a felon
Proximate Cause - Campbell
  o Δ is culpable for any death, even that of co-felon as a result of policemen during
    the murder.
  o Any but-for cause will be proximate cause of death

Court looks at “provocative acts” that demonstrate a conscious disregard for human life,
with a high probability of death – if exist, Δs will be liable for murder of co-felon –
Caldwell

MPC §210.2 (only one degree of murder)
  1. Purposely or Knowingly
  2. Recklessly & Extreme indifference to human life (depraved heart)
  3. Felony murder – with enumerated felonies

2nd Degree Murder
By state statute only – generally as common law “murder”
Murder without premeditation.
  1. Intent to kill
  2. Intent to inflict serious bodily injury- Midgett
  3. Killing with depraved indifference to human life

Common law “murder” – killing of another with malice aforethought
- Intent to kill, to commit grievous bodily injury, depraved indifference to human heart, universal
malice, felony murder – Forrest

Voluntary Manslaughter
- Murder committed recklessly (as defined above) OR
Homicide in the heat of passion (at common law)– Guebara
  1. Δ must be severely provoked (subjectively)
  2. Provocation must be legally adequate (objectively)
    a. Provocation must be from victim at common law
    b. MPC – extreme mental or emotional disturbance for which there was a reasonable
       explanation under Δ’s circumstances (subjective/objective standard) – Dumlao
       i. Provocation from non-victim may still be mitigating
  3. No time for reasonable person to cool down (objective) – heat of passion
  4. Δ must not have cooled down (subjective)
  5. Killing resulted

MPC §210.3
  1. Extreme Mental or emotional Disturbance AND
    Reasonable Explanation of excuse from Δ’s situation
    a. Objective/ Subjective Test – more so than above
  2. OR Recklessly – conscious risk taking, of a gross deviation from standard care.

Involuntary Manslaughter (Negligent Homicide in MPC)
Criminally Negligent mental state
  1. Δ failed to foresee a substantial and unjustifiable risk
  2. Action was a substantial deviation from the reasonable standard of care.
  3. Causation – Δ’s actions caused the death
    a. Harm must be foreseeable based on Δ’s actions
  4. Must be knowledge (actual or imputed)

Δ not culpable if intervening cause (the sole cause of death) breaks the chain of causation –
Lewis, Δ leaves loaded gun used by V to kill himself.
Criminal Negligence must be the “proximate cause of death”
- Rodriguez, mother leaves children home along – no liability
Any action that is a substantial factor in V’s death will result in culpability.
MPC §210.4 – inadvertent risk taking

ATTEMPT AND KINDRED PROBLEMS (Chapter 6)

Attempt Elements:
1. Intent- Oviedo
   a. There must be “independent objective facts” of requisite mental state, to convict on attempt
   b. Aside from subjective intent
2. Act – Commission of offense, beyond mere preparation
   a. Δ’s direct actions must tend toward commission of crime – Moffet
   b. Δ must be within dangerous proximity of success – Rizzo
      i. May include physical proximity, but need not
   c. Δ committed the last proximate act – hypo, poison in Tylenol bottle
      i. There is nothing left for Δ to do to complete crime
   d. MPC §5.01(1)(c)– Δ completed a substantial step toward commission of the crime. – List of acts to be a substantial step §5.01(2)(a-g) - Young
3. Failure to complete the crime

Impossibility
Factual Impossibility - Mitchell
- Some unknown factual circumstance prevents Δ from carrying out criminal objective
  o Δ is criminally culpable (Not a defense)
Legal Impossibility - Booth
- Δ carries out everything he intended to do, objective isn’t criminal
  o No culpability (Complete Defense)
MPC §5.01, and in every state -
- Δ culpable, if facts could have been as the Δ believed them to be(subjective test)
  o no distinction between legal and factual impossibility – too difficult
- Δ culpable if where a result is part of the crime he has acted to “cause such result without further conduct on his part.” (MPC §5.01(1)(b) only)

Solicitation
Act - Encouraging, commanding another to commit a crime – Blechman
Intent – Δ must intend for another to carry out the action solicited – Blechman
Is complete when Δ tells another to commit the crime.
MPC §5.02
- The solicitation need not be received
- May escape liability if Δ renounces completely and voluntarily
  o By persuading the solicitee not to act or preventing the commission of the crime

Abandonment
- Will have no effect once the attempt (act toward commission) is completed – Stewart
- Withdrawal will also not be a defense, once attempt is made – Brown, attempted burglary
MPC §5.01(4)
- Renunciation will be a defense to Subsections 1(b) or 1(c), if:
  o It is voluntary – cannot be based on new circumstances, not present at outset
It is complete

CONSPIRACY (Chapter 6)

When a solicitation is accepted, it becomes a conspiracy

**Wharton’s Rule - Payan**
- Cannot be convicted of conspiracy and the substantive crime, if the crime itself necessitates the agreement of 2 or more people.
- Typically applied in cases of adultery, dueling
- Prevents double penalty

Conspiracy statute cannot hold culpable the party the law is meant to protect
- Ex. Mann Act, and statutory rape – the woman/child cannot be liable for conspiracy

**Elements:**
1. **Knowledge of agreement**
2. **Specific Intent** – Swain
   a. Intent to enter agreement
   b. Intent to Commit the target crime (if murder, 1st degree specific intent to kill)
      Note: Cannot have “conspiracy to commit felony murder” b/c murder not intended
3. **Overt Act** (in some jurisdictions)
   a. A second meeting
   b. Or any action in furtherance of the conspiracy
   c. If no overt act within one year of agreement, there is no conspiracy.

**Implied intent from knowledge: - Lauria**
1. Stake in venture – Δ’s economic interest in furthering conspiracy
2. No legitimate use
3. Volume

**Pinkerton Liability**
Each conspirator is criminally liable for the acts of all conspirators in furtherance, and within the scope of the conspiracy – Pinkerton, brothers convicted on conspiracy both liable for fraud of one
- Same idea as ‘Agency Theory” of liability under Felony Murder
- This is strict liability… as long as act is in furtherance of the conspiracy
- Liability under Pinkerton is only prospective – not liable for past acts

**Withdrawal:** - Sconce
1. Must occur before the commission of an overt act
2. Must stop all coconspirators OR go to police
3. Such withdrawal only negates Pinkerton liability, Δ is still liable for the conspiracy
   - To renounce the conspiracy, the Δ must thwart the crime

**Rule of Consistency: - Marquiz**
- Where all but one conspirator are acquitted, the final one may not be held guilty of conspiracy
- Only applies when coconspirators are tried together

**Unilateral Conspiracy - MPC**
- One person solicits another, who “agrees”, but does not intend to commit the target crime.

**MPC §5.03**
- Overt act must be committed for conspiracy of less than a 2nd degree felony
- Renunciation can be a complete defense, if \( \Delta \) “completely and voluntarily” renounces criminal purpose and thwarts the crime

**PARTIES TO CRIMES**

**Aiding and Abetting** - Loscalzo

Any person who knowingly aids, abets, counsels, commands, induces or procures the commission of a crime is guilty of that crime.

- mere presence is insufficient – \( \Delta \) must “encourage” - Vaillancourt
  - \( \Delta \) must do something (encourages) to further the crime to be an aider or abettor.
  - \( \Delta \) must have both intent and participation Hoselton
  - \( \Delta \) must have the mental state required for the substantive crime – Foster

An aider and abettor is punishable as a principle, for the principle crime

**Accomplice liability for the principle crime**- Linscott

1. Principle committed the primary crime (robbery).
2. \( \Delta \) intended to promote (aid and abet) the primary crime (intentionally aids).
   a. \( \Delta \) must act with the requisite mental state of the primary crime – Bowell
   b. \( \Delta \)’s mental state left vague by MPC
3. Principle committed the secondary crime
   a. There can be no accomplice liability without primary crime – Genoa, uncover cop
4. The secondary crime was a natural and probably consequence of the first
   a. Ex. Lookout not liable for principle’s rape of bank teller during robbery.
5. \( \Delta \) is liable under accomplice theory for murder.

Under Agency Theory of felony murder, if \( \Delta \) was a co-felon in the primary crime, he is liable for any murder that results

Under Pinkerton –\( \Delta \) is liable for any crime by co-conspirator in furtherance of the crime.

**Accessory after the fact**

1. Principle committed the crime
   a. Crime must be complete at time of act by accessory to be accessory after the fact.
      - Williams
   b. If principle cannot be tried (infancy) – accessory after the fact still can be. - Truesdell
      i. Accessory after the fact is a separate crime – aider and abettor liability is not, so an aider and abettor cannot be tried without a primary crime.
2. \( \Delta \) knew that principle had committed the crime
3. \( \Delta \) assisted principle in escaping or evading arrest

MPC §2.06

**IGNORANCE OR MISTAKE**

- Generally, ignorance or mistake as to law or fact is not a defense to a criminal act.

**Ignorance or Mistake of Law**

Mistake of law is a perfect defense ONLY:

1. If the mistake negates a required element of specific intent – Cude AND
   The mistake is to a law distinct from the punishing law
   - Ex. \( \Delta \) believes to be rightful possessor of car, takes back from mechanic, and then charged with theft. Possessory rights are distinct from theft.
2. OR if there was a mistake in the law itself – Marrero
   - No defense to misreading a law, even if statute is ambiguous
• Δ must rely on an official statement of the law, and advice from a lawyer
  • Can only rely on statement from highest court - Striggles
3. OR if statute does not put Δ and others on proper notice – Lambert, CA regist.
4. OR if Δ was aware of the crime and made a reasonable effort to learn the law –
  • if Δ is unaware of the law (crime) or aware of law, but mistaken –
    generally no defense – Long - MINORITY RULE (#5)

Ignorance of Mistake of Fact ???
Mistake of Fact is not a defense, EXCEPT:
  1. If a Δ’s mistake of fact is bona fide and reasonable – Vogel – MINORITY RULE
  2. For reasonable belief as to victim’s age in statutory rape case – SPLIT RULE
     a. Δ, here, is liable for statutory rape regardless of his belief - Cash
Note: Court must admit evidence as to mistake of fact, if it would lower charge - Crane
MPC §2.04

RESPONSIBILITY: LIMITATIONS ON CRIMINAL CAPACITY

Infancy
Children under 7 have no criminal liability
Children under 14 have a rebuttable presumption of no liability

Intoxication
Voluntary - can be used to negate specific intent of crime committed - Graves
  - Δ will satisfy negligence / recklessness if he knew or consciously disregarded a
    substantial and unjustifiable risk
  - Δ can be culpable under intent, if he became intoxicated with will to carry out plan
  - MPC §2.08 – voluntary drunk is reckless if he would have been aware of the risk sober
Is complete defense under M’Naghten if Δ is permanently insane as a result of past drug use – Cooper

Involuntary – will be a defense under M’Naghten standard for insanity IF – Burrows
  1. Δ was mistaken as to the intoxicating nature of drink (partial defense) - Brown
  2. Δ was forced to drink under duress – Burrows
  3. Δ drank under Fraud, pathology, or by medication.

AFFIRMATIVE DEFENSES

Self Defense
Non-Deadly Force
- Δ may use non-deadly force anytime the Δ reasonably believes non-deadly force is going to be
  used against him
Deadly Force
  1. Belief
     a. Δ must have subjectively believed deadly force was necessary to protect himself
        i. (Δ subjectively believed deadly force was about to be used against him)
     b. Reasonable person must believe that deadly force was necessary to protect oneself
        – Realina, Goetz – objective test necessary
        i. (reasonable grounds to believe deadly force was about to be used against
           Δ) – LaVoie
        ii. Factors in determining reasonableness of belief: prior experiences, # of
            assailants, location of crime, possible enclosure, place of Δ in isolation,
type of force employed by \( \Delta \), weapons on victim, statements of intent, time of crime, posture of victims – Goetz

iii. Testimony on battered women’s syndrome OK, to go toward reasonableness of \( \Delta \)’s belief - Humphrey

Note: Justification will follow the bullet – if \( \Delta \) fulfills both requirements, he will be justified against all assailants – Goetz

If \( \Delta \)’s belief was “sincere”, but unreasonable – imperfect defense - Humphrey

MPC §3.04: Need only subjective belief that force was immediately necessary for the purposes of protecting himself against the use of unlawful force by such other person, unless belief was wrong and reckless or negligent.

2. Retreat –
   a. \( \Delta \) has a right to stand ground, while resisting an attack MAJORITY- Ligiouri D in immediate danger has no duty to retreat – Brown, Justice Holmes
      - Detached reflection cannot be demanded.
   b. \( \Delta \) must retreat to the wall before using deadly force - MINORITY
      - SOME, if you fail to retreat, you lose entire defense
      - OTHERS only a factor
   c. Castle doctrine – Jurisdictional Split
      - \( \Delta \) can stand ground in his own home (American Rule)
      - Retreat to the wall rule still applies (Common Law Rule)
      - Co-occupant – another Split, some require some do not
   d. MPC §3.04(2)(b)(ii)– retreat rule w/ modified castle doctrine

Defense of Others
Use of Deadly Force - Jurisdictional Split
1. \( \Delta \) is alter ego of the person on whose behalf you intervene - Saunders
   - “stand in the shoes of the victim”
   - \( \Delta \) will be culpable for crime, if victim did not have privilege to defend self
2. If \( \Delta \) reasonably believes the other is in danger of death and holds privilege of self defense, the \( \Delta \) may act in defense of other.
   - \( \Delta \) will only be culpable for crime, if his belief that other was in danger and held privilege was not reasonable.
3. MPC §3.05– if \( \Delta \) subjectively believed intervention is necessary, look to other factors

Defense of Habitation
Deadly Force is permitted if:
1. \( \Delta \) must reasonably believe force was necessary
2. to prevent an unlawful attack upon his habitation - Mitcheson
   a. habitation extends to any home or property (even another’s) where one is residing
3. Colorado statute goes beyond self-defense, to give homeowner absolute privilege - McNeese

Defense of Property
Deadly force is never permitted
   Exception: German case study, if \( \Delta \) had “no other means” to defend property
   - contrary to MPC and Common Law

Use of non-deadly force:
   - Reasonable force is permitted, question for the jury – Donahue
   - MPC §3.06
MENTAL DISEASE OR DEFECT

Insanity is a complete defense to any crime:
Under First 3 tests, Burden of Proof is on Prosecution to prove sanity beyond a reasonable doubt.

M’Naghten rule: - Fethers
Δ who suffered from mental disease or defect is criminally insane if:
1. Lacks capacity to know the nature and quality of the acts OR
   o (Δ did not know what he was doing?)
2. Lacks capacity to know right from wrong

Diminished Capacity – State v. Smith
- not a complete defense, Δ’s culpability will be reduced if:
- Δ would not meet the requisite mental state for the elevated crime
- Δ who is “insanely jealous” may have crime reduced – Davis

Durham Test: - modified, then overruled in 1972.
Δ whose acts are a product of his mental disease or defect is criminally insane.
- Even if Δ can see act as wrong, not guilty if act product of disease.
- Even if Δ did not know quality of his act, not guilty if act product of disease
- Jury to determine if Δ suffered from mental disease and if act was a product of mental disease

ALI/ MPC Test – MPC §4.01
Δ who suffers from mental disease of defect is criminally insane if:
1. Lacks substantial capacity to appreciate the criminality [wrongfulness] of his conduct OR
2. Lacks substantial capacity to conform his conduct to the requirements of law.
   o Irresistible impulse rule
   o Δ lacks volitional control

Congressional Act
1. Δ must appreciate nature and quality and wrongfulness – no volitional element
   o because psychiatric community cannot agree as to irresistible impulse
2. Burden of proof on Δ to prove insanity by clear and convincing evidence
3. Expert testimony cannot testify to the ultimate issue of insanity.