1. COMPONENTS OF CRIME

Definitions

- Actus Reus: objective elements of a crime that legislature has chosen to punish; may be affirmative acts or omissions.
- Mens Rea: Subjective elements required to be liable for criminal sanctions; states of mind that makes act culpable.

I. Actus Reus – What constitutes an act

Æ Usually defined in the statute what acts are prohibited.
Æ Those acts/omissions render with the appropriate mental state render the defendant liable for the crime.

A. Constitutionality of Criminal Statute/Ordinance

Æ A criminal statute, is not unconstitutional if it is consistent with a legitimate legislative interest and is neither arbitrary nor discriminatory.

• Must know what conduct is prohibited  
  
  **Palmer v. City of Euclid** *(p.12)*
  
  **Facts:** Defendant dropped of female friend, parked in street, used CB, couldn’t say who the female friend was; charged with violating suspicious person ordinance.
  
  **Held:** Ordinance was unconstitutionally vague, so, unenforceable.
  
  **Note:** This ordinance, as applied to the defendant, was vague on its face. Could apply to almost anybody.

• Requirement of Notice  
  
  **Stanko I** *(p.HO#1)*
  
  **Facts:** Defendant drove car at 80 mph in a hilly, twisty area of road.
  
  **Held:** Unconstitutional to charge defendant with violation of the statute.
  
  **Note:** The speed at which the defendant would be deemed to be acting unreasonable was left to discretion of officer; officers couldn’t agree on a reasonable number, so reasonable member of public could not possibly be on notice as to what is unreasonable.

• Requirement of Notice  
  
  **Stanko II** *(p.HO#1)*
  
  **Facts:** Defendant drove car at 120 mph in a hilly, twisty area of road.
  
  **Held:** Liable for reckless driving.
  
  **Note:** Here, the defendant was so clearly unreasonable that, even though the statute may be unconstitutionally vague, this is not a case where it makes a difference. His conduct was willful and wanton i.e. conscious risk taking.

B. Sufficiency of the Act

• Requirement of intent plus action for liability  
  
  **State v. Taft** *(p.373)*
  
  **Facts:** Defendant was intoxicated, in car, accidentally released brake; car moved.
  
  **Held:** Not liable for driving while intoxicated; defendant was not “driving.”
  
  **Note:** Mere movement of the car is not enough to constitute driving as required under the statute. An affirmative act is required on the part of the operator to be
considered “driving” the vehicle. Also, require some intent to exercise control of the vehicle in order to make the car move. Such intent is lacking in this case.

- **Knowledge of adverse condition makes act criminal**  
  *People v. Decina* (p.375)

  **Facts:** Defendant has an epileptic seizure while driving his car; kills person.
  **Held:** Liable for criminal negligence since put the events in motion, leading to death.
  **Note:** He knew that a seizure may result and despite that fact got behind the wheel; set the events in motion leading to this avoidable consequence. However, the conviction was reversed based on incompetent testimony being admitted.

- **Power to control enough to establish control**  
  *State v. Kimbrell* (p.377)

  **Facts:** While defendant’s boyfriend was making a drug deal, she was asked to take care of drugs on the table, at which point there was a drug bust.
  **Held:** Defendant was in control of the controlled substance.
  **Note:** A case of constructive possession: she had intent to control as well as power to control. Physical possession is not required.

**Model Penal Code**

*Article 2. General Principles of Liability*

**Section 2.01 Requirement of Voluntary Act; (Omission as Basis of Liability;)**

**Possession as an Act.**

1. A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.
2. The following are not voluntary acts within the meaning of this Section:
   a. a reflex or convulsion;
   b. a bodily movement during unconsciousness or sleep;
   c. conduct during hypnosis or resulting from hypnotic suggestion;
   d. a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

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

**MPC Applied:**

People v. Decina: - maybe find liability; perhaps act was getting into the car, or omission of the act was to not have someone with him while he was driving.
- liability not solely predicated on act or omission; liability includes acts or omissions.

State v. Kimbrell: - Probably no difference in liability.

**C. Omissions – Failure to Act (Negative Acts)**

- **Require a duty imposed by the law**  
  *Biddle v. Commonwealth* (p.416)

  **Facts:** Mother did not clothe, bathe, feed or otherwise care for baby; baby died.
  **Held:** Mother not liable for murdering the child; not a malicious omission.
  **Note:** The child was not singled out; the entire family was equally neglected. Neighbors could not be held guilty as well if then knew, since there must be a breach of an obligation imposed by the law to care for the child. This could be a lesser crime than murder, however, there was no malicious omission.

- **Need to show all aspects of the crime**  
  *Commonwealth v. Texeira* (p.418)

  **Facts:** Defendant failed to send money to mother of illegitimate child.
Held: Not guilty without a showing that he had adequate financial means to support the child.

Note: Mere non-payment does not establish that it was willful or neglectful; must show had means to pay as well to establish this aspect of the crime.

- Must act as a reasonable parent to child  
  Walker v. Superior Ct. (p.420)

  Facts: Defendant tried to treat seriously ill child with spiritual healing; child died.
 
  Held: Guilty of failing to provide proper medical care for the child.

  Note: While spiritual treatment may have been an appropriate substitute for other remedical care, that is only for non-life-threatening conditions, and not a valid construction of the statute in this case. As well, balance between religious freedom and protecting children. However, question of fact whether a reasonable mother in that position would have made the same decision.

- Voluntary assumption of care establishes duty to act  
  Jones v. United States (p.428)

  Facts: Babysitter of Green’s other child, cared for newborn, newborn died from neglect; dispute as to how long Green was in the house as well.

  Held: Guilty of neglecting child, causing death.

  Note: Jones had voluntarily assumed care of the child; also arguably had a contractual duty for the care of the child.

- Vicarious liability due to failure to reprimand servant  
  Moreland v. State (p.435)

  Facts: Defendant didn’t tell chauffeur to slow down, or to drive more carefully.

  Held: Defendant criminally liable for the acts of the chauffeur.

  Note: Failure to tell the chauffeur to drive safely is an indicator that defendant implicitly approved of the chauffeur’s conduct. Legal duty to protest the way in which the vehicle was being operated arose out of the master-servant relationship.

- Duty to aid existed since defendant created the peril  
  Van Buskirk v. State (p.438)

  Facts: Defendant hit boyfriend with car; left him lying in the middle of the street; another motorist struck the boyfriend, killing him.

  Held: Defendant liable for manslaughter in the second degree (negligent homicide).

  Note: While defendant did not actually kill the victim, she set into motion the events that led to his death. She acted with a blatant disregard for the safety of the victim. She had a duty not to increase the victims peril, however she did so by leaving him in the roadway in a helpless condition. Duty to aid comes from the creation of the peril by the defendant. Liability does not arise from the defendant striking the defendant with the automobile, it arises out of leaving him in the street in a helpless condition.

- Must punish acts, not status  
  Robinson v. California (p.HO#2)

  Facts: Police thought defendant had marks on arm consistent with drug use, but, no other evidence to support that; charged with addiction to drugs.

  Held: Not liable to addiction absent showing that he actually used the drugs.

  Note: Punishing addiction would be analogous to punishing the status of illness; people of this status need help, not punishment, and there are other avenues to provide help other than this one. As well, addiction can come from legal sources, so, that is not prima facie sufficient to render defendant criminally liable.

  Dissent: Demonstrates dispute among justices whether addiction is an illness or not. Aim of this statute is deterrence of person from becoming a hard-core user. Problem with charging for use of drugs – jurisdictional problem in not knowing where he used the drugs, and from that fact, a venue problem arises as well.

II. Mens Rea – Culpable Mental States

- If not great danger, must show knew unlawful  
  Liparota v. United States (p.566)
Criminal Law

Facts: Defendant purchased food stamps from undercover agent for reduced price in backroom of restaurant on two separate occasions.

Held: Guilty of food stamp fraud; knowledge gleaned from acts of defendant.

Note: Inference of knowledge that the act was unlawful could be ascertained from the defendant’s conduct; there wasn’t a great social harm inherent to this crime, so that it is clearly subject to stringent regulation.

A. Criminal Negligence

• Gross deviation from standard treatment of illness. Gian-Cursio v. State (p.580)
  Facts: Defendant convinces mother of cancer patient to forego surgery and allow him to treat the daughter with drugless healing; the daughter died.
  Held: Guilty of criminal negligence despite healing community’s support of defendant, indicating he applied an appropriate standard of care.
  Note: Defendant held him out to be able to cure, despite not being medically qualified to do so. Thus, he is measured by the standard of other such medical personnel. Good faith/bad faith is irrelevant as this is measured purely from an objective perspective. This is a gross deviation from the general practice of treatment.

• Criminal liability cannot be unilaterally terminated. State v. Petersen (p.582)
  Facts: Defendant and others engaged in racing their cars in a residential area; defendant slowed down and stopped; opponent went into intersection, killed other motorist.
  Held: Despite attempt to end the race, still criminally negligent.
  Note: The events that the defendant helped set in motion were still continuing; defendant cannot unilaterally terminate his liability. Defendant undertook a substantial and unjustifiable risk with no social utility, with high risk of injury in gross deviation from standard of care of a reasonable person in the circumstances.

• Negligent with depraved indiff to human life = reckless. State v. Howard (p.589)
  Facts: After argument involving friends of defendant and victim, victim took issue to insult of victim’s friend by defendant, charged defendant, defendant shot at victim, but struck friend trying to intervene instead. Defendant then shot victim, thus causing two deaths.
  Held: Defendant not entitled to instruction of negligent homicide; this is clearly a case of at least manslaughter or murder. Thus, no error in instructions.
  Note: The defendant aimed the gun, and fired the gun, so, with respect to the second count, there is transferred intent from the attempt to shoot the victim to the unintended victim. As well, the shot was fired with depraved indifference to human life while aware of the risk, and in conscious disregard of the risk = reckless.

B. Specific Intent

• Specific intent to kill not evident. Thacker v. Commonwealth (p.602)
  Facts: Defendant, intending to shoot out light, fires into lighted tent, almost hitting occupants; charged with attempted murder.
  Held: Not guilty of attempted murder since no specific intent to kill.
  Note: We know from the words of the defendant that no intent to kill existed; he simply wanted to shoot out the light. Thus, no liability for attempted murder. However, could have other basis for liability such as criminal negligence, or recklessness.

• Maliciousness goes beyond mere intention. State v. Nastoff (p.612)
  Facts: Chainsaw, known to defendant to be illegally modified, emitted sparks which destroyed timber on state and private land.
  Held: Not guilty of malicious injury to property.
Note: Modification may have been intentional, but intention is not synonymous with maliciousness. The statute clearly requires a showing of a malicious state of mind (wish to vex, annoy, injure another person, or intent to do a wrongful act). Government failed to prove that defendant intended to start the fire, or which is the requisite intent for liability for maliciousness.

C. Knowledge (Scienter)

- Appropriate standard is subjective knowledge  
  \textit{State v. Beale} (p.617)
  
  \textbf{Facts:} True owner thinks that item in antique store was stolen from her before, tells police, defendant’s wife told not to sell it; defendant sells the item, thinking that he is rightful owner since he has a valid receipt for the item.

  \textbf{Held:} Not guilty of knowingly concealing stolen property.

  \textbf{Note:} Here, the defendant did not subjectively believe that the goods were stolen.

  Criminal liability requires intentional wrongdoing, and, if an objective standard were to be employed, this prong would be removed. The defendant must have subjectively believed that the goods were stolen to be criminally liable.

- Doctrine of Willful Blindness  
  \textit{United States v. Jewell} (p.623)
  
  \textbf{Facts:} Defendant paid $100 to drive car into U.S. from Mexico; thought something suspicious, but did not investigate.

  \textbf{Held:} Found requisite knowledge on part of defendant; liable for knowingly transporting drugs across the border.

  \textbf{Note:} A classic case of “willful blindness” – a conscious avoidance of learning that marijuana was in the car. Under the circumstances a reasonable person would have been suspicious. He was aware of a high probability that the fact exists and purposefully avoided confirmation of that fact.

  \textbf{Dissent:} Flaw: bias towards visual confirmation of the fact, however an innocent party may not know what drugs look like especially if it’s just a white powder. Also, could convict even if defendant actually believed that no drugs were in the car.

D. Willfulness

- Willful does not require a showing of bad faith  
  \textit{Fields v. United States} (p.630)
  
  \textbf{Facts:} Defendant failed to produce documents when subpoenaed by committee, but were produced during the trial.

  \textbf{Held:} Found guilty of contempt for willfully withholding the documents.

  \textbf{Note:} Willful does not require a showing of bad faith or ill will or evil purpose. However, a good faith attempt to find the documents may undercut the charge that the documents were willfully withheld.

- Measure reasonableness of willfulness by subj. std.  
  \textit{Cheek v. United States} (p.632)
  
  \textbf{Facts:} Stopped filing tax returns after taking classes which were by a person who did not believe that income tax is constitutional.

  \textbf{Held:} Not liable for willfully failing to pay income taxes.

  \textbf{Note:} Especially in a complicated field such as tax law, defendant must know what duty is before being able to willfully fail to perform that duty. Here, if defendant has an irrational belief that wages are not taxable; not willful failure to pay.

E. Strict Liability

- Vicarious liability for acts of employees  
  \textit{The Queen v. Stephens} (p.639)
  
  \textbf{Facts:} Elderly owner of business had children superintend; negligence by worker caused river to be dammed up; charged with public nuisance.

  \textbf{Held:} Found liable for public nuisance; vicariously liable for worker’s actions.

  \textbf{Note:} Defendant is strictly liable for the acts of the workers. The business was conducted on his behalf, in the scope of employment, therefore, he is vicariously...
liable for their acts in creating the public nuisance. Public nuisance is much like a civil liability. Also, note great social harm involved.

- **Malum prohibita - no showing of willful or knew**  
  **Commonwealth v. Olshefski (p.641)**  
  **Facts:** Defendant had weigh-bill showing the weight of trailer was within the prescribed limits; stopped by police, weighed, he was actually over the weight limit.  
  **Held:** Was guilty despite having weigh-bill showing that he was within the weight limit.  
  **Note:** This is malum prohibita; in such cases, defer to the law makers. If every time a person is to be fined, have to litigate to show willfulness or knowledge, this would be an undue burden, so, deference shown to the legislatures.

**F. Unlawful Conduct – General Criminal Intent (General Mens Rea)**

- **Criminal liability req. act inherently dangerous to human life**  
  **State v. Horton (p.664)**  
  **Facts:** Defendant, trespassing on victim’s land, intending to hunt, fired a shot, but struck the victim instead.  
  **Held:** Not liable for manslaughter, since didn’t intend to shoot victim.  
  **Note:** Here, the acts of the defendant are malum prohibitum, not malum in se. Death by misadventure, thus, not criminally liable, though may be civilly liable. Conduct of the defendant not inherently dangerous to human life, so excusable homicide.

- **Reasonable justification if didn’t know fed. agents**  
  **United States v. Rybicki (p.667)**  
  **Facts:** Threatened federal agents with a shotgun when they tried to tow his truck from his home.  
  **Held:** Found not liable of obstructing administration of internal revenue laws.  
  **Note:** If saw people removing car from house, could reasonably infer that they were criminals attempting to steal the vehicle. Issue of whether there is a requirement that the person know that the person being assaulted is a federal agent. Though the assault itself is unlawful, there is a question whether it was justified or not.

- **Don’t need doctrine of transferred intent**  
  **Gladden v. State of Maryland (p.HO#8)**  
  **Facts:** Defendant shot at someone on the street; missed intended victim, bullet entered house, killed child that defendant didn’t know was there.  
  **Held:** Liable for murder of the victim despite no intent to kill that particular victim.  
  **Note:** Doctrine of transferred intent is not needed to attach liability for murder to the defendant; the homicide statute simply calls for the intent to “kill another”; doesn’t require intent to kill the particular victim.

**Mens Rea Continuum:**

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   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
5. M = Maliciously: - intent to injure, vex, annoy, or do wrong.
6. S = Specific Intent: - intent to bring about the desired result.
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2. CRIMINAL HOMICIDE

A. Requirements

→ Death of a person with intent to kill the person.

• Person exists only after a live birth.  
  
  Facts: Defendant, while driving his automobile drunk, hit car of victim; victim was pregnant, fetus crushed against steering wheel; baby born, died shortly thereafter from head injuries due to the accident.

  Held: Defendant liable for the murder of the baby.

  Note: Death of the person does not have to be immediate from the trauma; there can be a lapse in time before death arises, however (especially in old common law), the death has to occur within a year and a day of the defendant’s conduct. Defendant argued that at the time of the conduct, the fetus was not yet a person; however, the fact that the baby was born alive defeats that argument; born alive = conclusive proof that the baby was a person; then subsequent death = death of person as required by the statute.

B. Differing States of Mind and Culpability

→ Differing states of mind leading up to the homicide changes the culpability.

i) Recklessness

• Murder if depraved heart or universal malice  
  
  Facts: While on highway, defendant tries to shoot out tires on victim’s car; hits victim instead, killing him.

  Held: Defendant liable for murder.

  Note: Defendant shot with criminal recklessness; extreme indifference to life, very high degree of risk, aware of the circumstances, without any social utility for the conduct. This is like depraved heart conduct: universal malice, not directed at any one person. There was a high degree of risk that someone would get injured by firing a gun on the highway; could hit someone else; the tires go out, the car could hit someone else causing injury, and so on.

ii) Felony-Murder

- state does not have to prove intent / mens rea
  → committing felony = presumption of malice

- Strictly liable for the death if committing felony, homicide occurs.

• If part of continuous transaction, still criminally liable.  
  
  Facts: Robbing store, had bomb. After in defendant was in custody, police officer tried to pull wires out of bomb, bomb exploded.

  Held: Defendant guilty of murder even despite claim he was no longer acting.

  Note: Parallel to Petersen (car racing case) – can’t turn off liability like a switch. As well, in this case, the defendant was acting with extreme recklessness (depraved heart/universal malice) which is in and of itself enough to convict for murder even in the absence of the felony-murder charge.

• Felony committed must be inherently dangerous.  
  
  Facts: Chiropractor convinces young girl’s parents to cancel surgery for cancer, and to leave child in his care; child dies.

  Held: Not liable for murder since the felony committed was not inherently dangerous.
Note: Don’t look at the felony and the results it brought about in the specific case; must look at the felony in the abstract and determine if it ordinarily has life-threatening implications.

- **Liable if in the Res Gestae of the felony**  
  **State v. Mayle** *(p. 90)*  
  **Facts:** Robbed a McDonalds, stole a car; while still “in the hills” with the loot, they were stopped by police, killed police officer.  
  **Held:** Defendant liable for murder, even though far removed from the scene of the original crime.  
  **Note:** They were still in the process of committing a crime; the escape is still a vital component to the robbery. They were still in possession of the loot and still had not reached a safe place or returned home, they had not split up the loot yet. The escape is still within the res gestae of the felony. Note, however, that conviction could probably be sustained even without the felony murder doctrine as intent seems to be obvious.

### iii) Intent-to-Kill

- **Felony must be independent from the homicide.**  
  **People v. Wilson** *(p.HO#4)*  
  **Facts:** Defendant broke into house to assault victim; during assault, defendant killed the victim.  
  **Held:** Burglary with intent to assault is not independent of the homicide, so the felony murder rule does not apply.  
  **Note:** Assault is an integral part of the homicide; to use theory of felony murder in this case would not meet the purpose of the rule of felony murder – deterrence.

- **No appreciable time required to form intent to kill.**  
  **People v. Schrader** *(p.HO#3)*  
  **Facts:** Dispute in store; victim known to carry a gun, reaching into pocket; defendant stabs victim 51 times.  
  **Held:** Even though no intent to kill, and acting in self-defense, held liable for murder.  
  **Note:** Court seems to say that so long as act is intentional, then the premeditation requirement is met. West Virginia court later said that require some small time before requisite intent is found.

- **Must show that homicide was premeditated, deliberate**  
  **Midgett v. State** *(p.HO#3)*  
  **Facts:** Father repeatedly beat child; defendant beat the child, child died.  
  **Held:** Not guilty of first degree murder; no showing of premeditation, deliberation or intention to kill.  
  **Note:** Intent of the father was to keep the child alive, so he can continue to abuse the child, thus the state did not prove the requisite premeditation, and intent to kill. However, could probably prosecute for acting recklessly with disregard for human life.

- **Moral justification is not adequate to reduce charges.**  
  **State v. Forrest** *(p.HO#3)*  
  **Facts:** Victim is defendant’s father who was terminally ill, in the hospital; defendant shot father to relieve him of suffering.  
  **Held:** Guilty of murder despite claim that no bad motive in killing father.  
  **Note:** Had malicious intent – intent to do a wrongful act without legal justification. As well, premeditation and deliberation evident. Motive is not a consideration in determining if malice existed; it might be significant in considering justification. However, moral justification is not a sufficient legal justification.

### iv) Voluntary Manslaughter

- There is never a justification for murder, however, this is a recognition by the legislatures and courts that sometimes people are human, and have such weaknesses.  
- Not saying that homicide was justifiable, but saying that it’s understandable.
• Sufficiency of provocation measured by purely obj. std.  *State v. Geubara* (p.113)
  
  **Facts:** Victim filed for divorce and minor criminal charges against defendant; defendant confronted her, shot her, and shot repeatedly as she tried to leave.
  
  **Held:** Guilty of murder; no legal justification (provocation) existed.
  
  **Note:** Measure adequacy of provocation by objective standard, so the testimony about the defendant’s psychological disorder is not considered. If provocation existed, then the charge could be reduced to manslaughter.

• Mental insanity should be considered to reduce charge  *State v. Dumlao* (p.125)
  
  **Facts:** Defendant has psychological disorder – insanely jealous. Kills mother-in-law as a result of this jealousy.
  
  **Held:** Not liable for murder; should have given instruction on manslaughter.
  
  **Note:** Here, there’s no real provocation as there was in *Geubara*, supra. However, look at the mental state of the actor in light of the objective standard required. Here, there was a reasonable explanation for the extreme mental or emotional disturbance: he was insanely jealous; this should be taken into account in finding liability for manslaughter.

• Look at reasonableness of belief of the defendant  *State v. Hardie* (p.HO#5)
  
  **Facts:** Thinking gun was inoperable after several unsuccessful attempts to discharge it, pointed it at victim and pulled trigger in attempt to frighten victim; gun discharged, killing the victim.
  
  **Held:** Guilty of murder despite claim that no bad motive in killing father.
  
  **Note:** This was a case of inadvertent risk taking; therefore, he was not acting recklessly, he was acting negligently. He thought the gun would not discharge and his belief was well grounded since he had attempted several times to discharge the gun. However, criminal responsibility since it isn’t something a person should do – point a loaded gun at someone.

Model Penal Code  
*Article 210. Criminal Homicide*

**Section 210.0 Definitions**

1. “human being” means a person who has been born and is alive;
2. “bodily injury” means physical pain, illness or any impairment of physical condition;
3. “serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent, or protracted loss or impairment of the function of any bodily member or organ;
4. “deadly weapon” means any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

**Section 210.1 Criminal Homicide**

1. A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being.
2. Criminal homicide is murder, manslaughter or negligent homicide.

**Section 210.2 Murder**

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

  “Recklessly” = actor consciously disregards a substantial and unjustifiable risk amounting to a “gross deviation” from due care.  
  MPC Section 2.02(2)(c)
  
  “Negligently“ = inadvertent criminal negligence.  
  MPC Section 2.02(2)(d)
(2) Murder is a felony of the first degree [but a person convicted of murder may be sentenced to death, as provided in Section 210.6].

Section 210.3 Manslaughter

(1) Criminal homicide constitutes manslaughter when:
   (a) it is committed recklessly; or
   (b) a homicide which would not otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor’s situation under the circumstances as he believes them to be.

(2) Manslaughter is a felony of the second degree.

Section 210.4 Negligent Homicide

(1) Criminal homicide constitutes negligent homicide when it is committed negligently.

(2) Negligent homicide is a felony of the third degree.

MPC Applied:

King v. State - Under 210.2(1)(b), King was acting recklessly, with extreme indifference to human life. Thus, liable for murder. Clearly not negligent, since it was a conscious disregard for the value of human life.

State v. Hokenson - Under 210.2(1)(b), Hokenson was participating in Robbery which is one of the enumerated felonies under the MPC felony murder doctrine. Thus, he is liable for murder.

People v. Phillips - Question as to degree of recklessness evident here dispositive as to liability for murder or for manslaughter. Clearly not one of the enumerated felonies under the MPC felony murder rules.

State v. Mayle - Under 210.2(1)(b), robbery is one of the enumerated felonies, so probably would be liable for felony murder.

People v. Wilson - Not sure if this falls under MPC’s definition of burglary; it does not say whether burglary with intent to assault is still excluded or not. Definition of burglary in MPC is simply break and enter with intent to commit crime.

People v. Schrader - Under 210.2(1)(a), purposeful and knowingly seem to be satisfied due to the duration of the attack (51 stabs).

Midgett v. State - Under 210.2, there doesn’t need to be a showing that the homicide was premeditated to render the defendant liable for murder; the conduct here seems to fall under the recklessness described under 210.2(1)(b).

State v. Forrest - Could argue 210.2(1)(a) applies since he deliberately carried the gun, obviously thought about the act and hence the homicide was with purpose, and the defendant acted knowingly.
   - Could also argue 210.3(1)(b) that it should be manslaughter because he was under extreme mental/emotional disturbance. This would not be available under common law; there would be no finding of adequate provocation.

State v. Hardie - Was not a case of conscious risk taking; rather, it was inadvertent risk taking, and therefore probably still negligent homicide.

C. Causation

- Felony-murder = strict liability doctrine
  
  Facts: Victim had history of heart problem; during robbery, victim has a heart attack and dies; defendants charged with murder.
Held: Liable for felony murder even if chance that heart attack was not induced by the robbery.

Note: Felony-murder does not require that the death be reasonably foreseeable; it is a strict liability doctrine rendering the felon liable for all deaths that he causes if he is a substantial factor contributing to the death. The victim appeared okay before the robbery, thus establishing a causal nexus.

- Poor medical treatment doesn’t break chain of causation  
  **State v. Sauter** (p.533)

  **Facts:** Defendant stabbed victim; doctor did not detect a laceration in the abdominal aorta; victim died from internal bleeding.

  **Held:** Defendant liable for murder even despite the doctor’s malpractice.

  **Note:** Victim relying on the doctor’s medical treatment only because of the defendant’s unlawful conduct. Defendant exposed victim to the risks associated with medical treatments.

- A normal response by victim doesn’t break C of Caus.  
  **Letner v. State** (p.535)

  **Facts:** Defendant fired shots at a boat with 3 people in it. One person jumped overboard causing the boat to capsize, the other 2 people drowned.

  **Held:** Liable for involuntary manslaughter even though the jumping overboard caused the boat to capsize.

  **Note:** The person jumping overboard was a reasonable, normal response to being shot at while in a boat. Thus, this act will not break the chain of causation of the events the defendant set in motion.

- Felony-murder = strict liability doctrine  
  **Campbell v. State** (p.538)

  **Facts:** Trying to rob a taxi, police intervened; co-felon hit by both the robbery victim and a policeman; don’t know who fired the lethal shot; robber charged with robbery, assault, and felony murder.

  **Held:** Not liable for felony murder under the agency theory.

  **Note:** Competing views for liability under felony murder doctrine: agency theory and proximate cause theory. Proximate cause theory: the defendant, by participating in the felony, set in motion the events leading up to the death of the co-felon, and should thus be liable. Agency theory: liable for deaths caused which are in furtherance of the common goal. Proximate cause theory is rejected by this court in favor of agency theory. Proximate cause theory is too broad for criminal liability and doesn’t serve to deterrence function of the felony murder doctrine.

3. **ATTEMPT**

→ Criminal intent plus a direct, ineffectual act towards the commission of the intended crime.

→ Some dispute about legal impossibility or factual impossibility and effect establishment of liability for criminal attempt.

→ Also, distinction between perpetration and preparation and liability for attempt.

- Must be perpetrating to be criminally liable for attempt  
  **Moffett v. State** (p.380)

  **Facts:** Defendant tied up potential victim, threatened at knifepoint to write a “suicide note,” the defendant had necessary pills and alcohol to kill victim; victim struggled, managed to get away.

  **Held:** Liable for attempted murder of the intended victim.

  **Note:** The defendants were no longer merely preparing for the crime; they were now perpetrating the crime itself. If it weren’t for the fortuitous escape of the intended victim, the crime would have been competed. There is no issue as to the criminal intent.

- If caught in the preparatory phase, not liable for attempt  
  **People v. Rizzo** (p.382)

Agency theory and Proximate Cause theory as applied to felony-murder liability.

Human Shield Cases: Clearly a case of murder as it is a reckless act with extreme indifference to human life.
Facts: Defendants driving around, looking for person with the payroll to rob him; couldn’t find the payroll person; seen by police driving, arrested.
Held: Not attempted robbery.
Note: They were still in preparation of the robbery. The bare minimum for liability for attempted robbery is that the person be in sight. However, more may be required. Act must be in “dangerous proximity” to the crime. Unless there is some intervention, the crime is sure to be perpetrated.

Must be perpetrating to be criminally liable for attempt  

Young v. State (p.384)
Facts: Defendant walked to the door of a closed bank in a suspicious manner, tried to open door with his right hand in his jacket pocket; realizing the bank was closed, retraced his steps, and ran past the windows, all the while covering his face; bank called the police.
Held: Liable for attempted robbery of the bank.
Note: Examine conduct with the substantial step test of the Model Penal Code: whether his acts constitute a substantial step in a course of conduct planned to culminate in the commission of a crime. It’s not relevant how distant the crime is, as long as the conduct is a substantial step. The substantial step must be strongly corroborative of the defendant’s criminal purpose.

Liable for attempt despite mistake that he’d be there  

State v. Mitchell (p.392)
Facts: Defendant shot into living room thinking that victim would be there; victim was upstairs, so, not killed.
Held: Liable for attempted murder despite victim not even being there.
Note: Mr. Mitchell did all he could do, and all that he intended to do to kill the intended victim.

A. Impossibility

Police intervention did not destroy criminality of attempt  

People v. Rojas (p.393)
Facts: Police arrested thieves; monitored their phone calls; thieves told person where stolen goods were; when the receivers went to pick up goods, arrested.
Held: LIABLE FOR ATTEMPTED RECEIPT OF STOLEN PROPERTY.
Note: Although the property was no longer stolen after it was recovered by the police, the receivers of the stolen property are still liable for the attempt to purchase; they didn’t know that the property was not stolen; they received the goods with the belief that they were stolen goods. The criminality of the attempt was not destroyed by the intervention by the police. However, just attempt now. No longer have actual receipt of stolen goods.

Must be perpetrating to be criminally liable for attempt  

Booth v. State (p.395)
Facts: Police recovered stolen property; allowed the thieves to deliver to intended buyers; these buyers were charged with attempt to receive stolen property.
Held: Goods no longer stolen; not guilty for attempt to receive stolen property.
Note: If they had received the goods, would not be liable for receipt of stolen goods because the goods were no longer stolen. Thus, stopping short of actually receiving not stolen goods is not an attempt.

Hybrid legal/factual impossibility  

United States v. Oviedo (p.398)
Facts: Sold white powder to federal agents, claiming it was heroin; passed field test that it was heroin; really, it was non-controlled substance; in his house, he had the powder hidden in his TV set.
Held: Not guilty of attempted distribution of a controlled substance.
Note: The requisite mens rea was lacking in Ovieda’s case. He claims that he knew it wasn’t heroin and that he was merely trying to rip off the agents. In this case, objective acts that would corroborate the necessary mens rea is missing. However, it would seem that if we had everything that the court required here, then we would not have an attempt, we would have a completed crime. In
order for the defendant to be convicted of a criminal attempt, the objective acts performed must, without any reliance on accompanying mens rea, mark defendant’s conduct as criminal in nature.

B. Intent

→ Generally, for a defendant to be convicted of attempting a substantive crime, he must have had the intent to do acts which, if they had been carried out, would have resulted in the commission of that crime.

→ Such is true even though mental states other than intent might suffice for a conviction of committing the particular crime, e.g. recklessness.

→ Defendant must not only have the intent to commit a criminal act, but he also must have the intent to commit an act which would constitute the same crime as he is charged with attempting. i.e. intent to bring about the desired result.

→ Evidence of intent is usually inferred or circumstantial.

• Intent must be specific to the crime attempted  
  
  People v. Guerra (p.405)  
  
  Facts:  
  Killed someone during robbery; convicted of attempted murder; jury was given instructions under intent derived from express malice (intent to kill), implied malice (depraved indifference to human life; universal malice) or felony murder.
  
  Held:  
  Error to allow jury to consider all such intents; should require specific intent.
  
  Note:  
  Jury was left with impression that if death would have been murder, shooting without death would necessarily be attempt. A showing of specific intent is required.

• Liable for attempt despite mistake that he’d be there  
  
  People v. Czahara (p.H/O#6)  
  
  Facts:  
  Defendant reached into window, shot twice at victim who was on opposite side of car; convicted for attempted murder under a transferred intent theory.
  
  Held:  
  Not liable for the second shooting.
  
  Note:  
  All the intent was used up when shot the intended victim. There was no intent to transfer to the other person. Only had intent to shoot one person. One intent, one victim, one crime.

• Liable for attempt despite mistake that he’d be there  
  
  State v. Mitchell (p.392)  
  
  Facts:  
  Defendant shot into living room thinking that victim would be there; victim was upstairs, so, not killed.
  
  Held:  
  Liable for attempted murder despite victim not even being there.
  
  Note:  
  Mr. Mitchell did all he could do, and all that he intended to do to kill the intended victim.

Model Penal Code  
Article 5. Inchoate Crimes  

Section 5.01 Criminal Attempt

(1) Definition of Attempt. A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

(a) purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believed them to be; or

(b) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or

(c) purposely does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

(2) Conduct Which May Be Held Substantial Step Under Subsection (1)(c). Conduct shall not be held to constitute a substantial step under Subsection (1)(c) of this Section unless it is strongly corroborative of the actor’s criminal purpose. Without negating the
sufficiency of other conduct, the following, if strongly corroborative of the actor’s criminal purpose, shall not be held insufficient as a matter of law:

(a) lying in wait, searching for or following the contemplated victim of the crime;
(b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;
(c) reconnoitering the place contemplated for the commission of the crime;
(d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;
(e) possession of materials to be employed in the commission of the crime which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances;
(f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, where such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances.

(3) Conduct Designed to Aid Another in Commission of a Crime. A person who engages in conduct designed to aid another to commit a crime which would establish his complicity under Section 2.06 if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

(4) Renunciation of Criminal Purpose. When the actor’s conduct would otherwise constitute an attempt under Subsection (10 (b) or (1)(c) of this Section, it is an affirmative defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

Within the meaning of this Article, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor’s course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective.

4. SOLICITATION

- Requires the act of counsel, request or demand that another person engages in a crime.
- Intent that other person engages in the crime.
- Liability does not cease simply because person being incited refuses to commit the act.
- If the person being solicited actually commits the crime, than liability ripens into that of the substantive crime. The solicitor is vicariously liable for that substantive crime. Accessory liability.

- The target offense need not be carried into effect

  **State v. Blechman (p.410)**
  - **Facts:** Defendant counseled a third party to burn a house down. The house never was burned down.
  - **Held:** Still liable for solicitation, even though the target offense was never committed.
  - **Note:** If the solicitation is increasingly “off the cuff” then it will be less like solicitation; if it is trying to incite someone to do something, then it will seem more like a solicitation. Even if the person being incited refuses, can still be held liable for solicitation. Solicitation is a crime unto itself. Once the third party is counseled with the intent to incite them, the crime is complete, and liability has ripened.

**Model Penal Code**

*Article 5. Inchoate Crimes*
Section 5.02 Criminal Solicitation

(1) Definition of Solicitation. A person is guilty of solicitation to commit a crime if with the purpose of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct which would constitute such crime or an attempt to commit such crime or which would establish his complicity in its commission or attempted commission.

(2) Uncommunicated Solicitation. It is immaterial under Subsection (1) of this Section that the actor fails to communicate with the person he solicits to commit a crime if his conduct was designed to effect such communication.

(3) Renunciation of Criminal Purpose. It is an affirmative defense that the actor, after soliciting another person to commit a crime, persuaded him not to do so or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

5. ABANDONMENT

Æ Renunciation of criminal purpose.
Æ For abandonment to be a defense, it must be a voluntary renunciation.

• Once crime committed, too late to abandon
  
  **Stewart v. State** (p.412)
  
  **Facts:** The defendant entered a store, produced a gun, demanded money; when police arrived, put down gun, bought some oil and left.
  
  **Held:** Liable for attempted robbery.
  
  **Note:** The attempt had already been committed. It was a completed crime, so it was too late to invoke abandonment as a defense.

• Timely, unequivocal communication of withdrawal
  
  **State v. Peterson** (p.413)
  
  **Facts:** Defendant and accomplice wanted to burn down defendant’s house. She had to go into hospital, but phoned defendant, and told him not to burn down the house; accomplice still burned down the house.
  
  **Held:** Defendant was not liable for the arson.
  
  **Note:** One who has procured or counseled or commanded another to commit a crime can withdraw before the act is done and avoid criminal responsibility by communicating the fact of his withdrawal to the party who is to commit the act. Here, the means of contacting the defendant were the best possible under the circumstances, and it was timely, unequivocal. As well, the withdrawal was completely voluntary, and she called the police – an affirmative act towards the prevention of the crime.

• If still contemplating, can abandon
  
  **Commonwealth v. McCloskie** (p.H/O#6)
  
  **Facts:** Defendant cut first fence to escape, but before he got to the outer fence, changed mind and returned to cell.
  
  **Held:** Not liable for attempted escape.
  
  **Note:** If a defendant is merely contemplating the commission of a criminal act, and because of the absence of an overt act, has not yet made an attempt, he is still in a position whereby he may abandon his attempt. He was still within the prison, and the court contends he was still merely contemplating his escape. Even though the alarm did go off, the defendant didn’t know that it had been triggered, so it still amounted to a voluntary withdrawal. Reward a person for a change of heart for moral reasons, not merely due to the fear of being caught.

6. CONSPIRACY

Æ Conspiracy is an agreement between two or more persons to do either an unlawful act or a lawful act by unlawful means.
Æ “Unlawful” includes situations in which the purpose of the plan or the proposed means of accomplishing that plan, even if not criminal, involve an evil intent to injure the public.
Criminal Law

- The required mens rea is a culpable intent on the part of the defendant.
- Conspiracy is an inchoate crime and is found often in cases in which no substantive crime is committed. It’s punishable on its own, like solicitation, as it’s a separate offense, distinct from the substantive crime.
- Requirements: (1) 2 or more people (2) agree to a (3) criminal objective. There are two intents required here: the intent to agree, and the intent to bring about the desired criminal objective.
- Can have only one person liable for the conspiracy: e.g. if A asks B to break C’s leg; B says “no”, then A can be liable for conspiracy, and B not.

- Wharton’s rule
  
  **United States v. Payan** (p.444)
  
  **Facts:** Defendant was going to take his female companion across state lines; stopped by feds in violation of the federal Mann Act prohibiting the transportation of females across state lines for immoral purposes.
  
  **Held:** Not in violation of the Mann Act.
  
  **Note:** Invoked Wharton’s rule: where a substantive offense requires the participation of more than one person, a prosecution for the substantive offense must be brought, rather than a prosecution for the conspiracy, unless more than the necessary number of persons for the commission of that crime are involved, i.e. adultery, bigamy, incest, dueling. In cases such as these, the actual agreement itself doesn’t add anything to the culpability for the crime. In considering whether a crime qualifies or not, must look at the crime in the abstract, not at the specific facts of the case. It is a presumption that the legislature did not intend to have a person liable for both the substantive crime and the conspiracy to commit the substantive crime.

- If actions not punishable, not liable for conspiracy **Gebardi v. United States** (p.448)
  
  **Facts:** Man agreed with woman to go across state lines and have sex. This was in violation of the Mann Act, however, under said act, the female could not be prosecuted, only the male. Try to convict female on theory of conspiracy to violate the Mann Act.
  
  **Held:** Not liable for the conspiracy to violate the Mann Act.
  
  **Note:** A conspiracy conviction cannot be obtained against a person who cannot be convicted of the substantive offense because her actions are not punishable. By statute, the defendant could not be liable of the crime, so, the intent of the legislatures was not to punish the female. It would be inappropriate therefore, to extend liability under this theory to the female. Note as well, that contrary to the MPC, the conviction of the male was overturned due to lack of plurality of participants in the conspiracy. The MPC embraces a unilateral theory of liability for conspiracy.

A. Intent

- Intent to commit underlying target offence required. **People v. Swain** (p.451)
  
  **Facts:** Charged with conspiracy to commit murder. Jury instruction allowed conviction on the conspiracy through theories of express malice, implied malice, or felony murder.
  
  **Held:** To give these jury instructions was reversible error.
  
  **Note:** Implied malice is a test involving hindsight after the fact, not a prospective intent at the time of the agreement to commit an act. It is impossible to infer intent to do something unintentionally. Similarly, felony murder is an unacceptable theory under which to convict him; however, can convict of a conspiracy to commit the underlying felony. The required intent of a conspiracy is the intent to agree and the intent to commit the underlying target offense. This should require the express malice requisite of murder.

- Requires knowing, affirmative participation **United States v. Loscalzo** (p.457)
Facts: Defendants charged with fraud; hired companies that were listed as having a minority as president, even though they were really operated by white people to maintain minority quotas.

Held: Found liable for conspiracy.

Note: Submitted two theories of liability: conspiracy as well as aiding & abetting. Difference with respect to proof required: knowingly do something to aid the venture – conspiracy even if not a party to the venture. Aiding and abetting – must be a party to the venture. Deliberately concealing – this is a knowing affirmative participant.

- Mere knowledge of illicit use not enough

  People v. Lauria (p. H/O#7)

  Facts: Lauria ran an answering service. Knew that the service was being used by prostitutes to conduct business. Issue if knowledge that being used for illicit purposes is sufficient for conspiracy liability.

  Held: Not liable for the conspiracy to violate the Mann Act.

  Note: Defendant admitted to knowledge, and even maintained special books recording the transactions of the prostitutes, however, this knowledge of illicit use is not enough. An intent to further the service for which they are using the defendant’s phone service is required. The government has to show evidence such as discounted rates or such to demonstrate the intent to further the prostitutes’ business. Defendant has no financial stake in the prostitutes’ ventures, nor does he treat them differently from any other customer. In some instances, knowledge may be enough in and of itself (e.g. selling gasoline to someone knowing that they’re going to make Molotov Cocktails out of it).

B. Acts

- Don’t require overt act for every conspiracy member  

  Pinkerton v. U.S. (p.459)

  Facts: Only the third member of the conspiracy committed an act in furtherance of the conspiracy. The two defendants were convicted of conspiracy, as well as the substantive crime; they argue that they agreed to conspire but the did not do anything, and thus should not be guilty of the substantive crime, since they did not participate.

  Held: Liable for the conspiracy.

  Note: Even though the third member is the only one that performed an overt act, since the acts of the third member were reasonably foreseeable (objective standard) and in furtherance of the general criminal purpose, the acts of the one co-conspirator is attributable to all members of the conspiracy.

C. Withdrawal

- Withdrawal only a partial defence, not complete.  

  People v. Sconce (p. ??)

  Facts: Sconce asked Garcia to make arrangements to have wife killed; Garcia contacted Dutton who was then arrested for a parole violation. Sconce, not knowing of arrest, told Garcia to call the murder off.

  Held: Liable for the conspiracy to murder; withdrawal not effective.

  Note: Overt actions had already been taken towards the commission of the target offense. Arrangements had been made to hire a hit man, the method of killing had been determined, and the instrumentalities had been acquired. These overt acts were sufficient to show the conspiracy at work. Thus the conspiracy had already come to be. Withdrawal ineffective. However, the calling off has some significance – withdrawal is a partial defense, limiting liability to the conspiracy, however, terminating vicarious liability for the acts of the co-conspirators. No rule exists that a co-conspirator must know the identity of all co-conspirators, or even the number of co-conspirators; as long as the conspirator knows of the general contours and criminal objective, this is enough to render him liable.
• Conspiracy can’t req. more than subst. crime  
  **United States v. Feola** (p. H/O#7)

  **Facts:** Charged with conspiracy to assault a federal officer; statute doesn’t require a showing of knowledge that the officer is indeed a federal officer.

  **Held:** Liable for the conspiracy.

  **Note:** The fact of whether or not he’s a federal officer merely chooses the judicial forum: either state or federal court. There is no vested interest in knowing which forum defendant will be tried in. In this crime, the status of the person is unrelated to the wrongness of the act. A requirement exists in the statute, however, that the agent is engaged in the course of duty.

• Rule of Consistency doesn’t apply if 2 sep. trials  
  **Marquiz v. People** (p. 467)

  **Facts:** 3 defendants killed a person. In two previous trials, the defendants were acquitted of conspiracy to commit murder. The present defendant was convicted of conspiracy, but claims that there was no one to conspire with since the other 2 were found not guilty and thus rule of conspiracy requires that he is also not guilty.

  **Held:** Liable for the conspiracy.

  **Note:** Rule of Consistency only applies if the multiple defendants are tried in one trial. Here, there were multiple trials. There are many reasons why the courts may hold differently. The different lawyers may submit different defenses, argue the cases differently, the juries may have different dispositions with respect to the facts of the case, different theories, different prosecutors. Rule of Consistency ensures that a single jury reaches consistent results and they adhere to the rule that 2 people are required to conspire and that the jury applies the same evidence to each of the defendants. Rule of Consistency only applies if ALL co-conspirators are tried at the same trial, and if the other co-conspirators are found not guilty (i.e. verdict rendered on the merits). Even if one co-conspirator is absent, the rule does not apply. No rule of consistency exists in federal court.

• Liable though other party doesn’t intend to commit  
  **People v. Foster** (p. H/O#7)

  **Facts:** Defendant approached Ragsdale to help commit a robbery. Ragsdale agreed with intent to not commit robbery and would call police instead.

  **Held:** Liable for the conspiracy.

  **Note:** Since conspiracy under common law is defined in terms of an agreement, most state statutes require two or more persons. Such is the plurality requirement or bilateral theory. Even though Ragsdale didn’t want to commit the robbery, defendant is still liable for the conspiracy.

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**Model Penal Code**

*Article 5. Inchoate Crimes*

**Section 5.03 Criminal Conspiracy**

1. **Definition of Conspiracy.** A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:

   a. agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

   b. agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

2. **Scope of Conspiratorial Relationship.** If a person guilty of conspiracy, as defined by Subsection (1) of this Section, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such crime.
(3) Conspiracy with Multiple Criminal Objectives. If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(4) Joinder and Venue in Conspiracy Prosecutions.
   (a) Subject to the provisions of paragraph (b) of this Subsection, two or more persons charged with criminal conspiracy may be prosecuted jointly if:
      (i) they are charged with conspiring with one another; or
      (ii) the conspiracies alleged, whether they have the same or different parties, are so related that they constitute different aspects of a scheme of organized criminal conduct.
   (b) In any joint prosecution under paragraph (a) of this Subsection:
      (i) no defendant shall be charged with a conspiracy in any county, parish or district other than one in which he entered into such conspiracy or in which an overt act pursuant to such conspiracy was done by him or by a person with whom he conspired; and
      (ii) neither the liability of any defendant nor the admissibility against him of evidence of acts or declarations of another shall be enlarged by such joinder; and
      (iii) the court shall order a severance or take a special verdict as to any defendant who so requests, if it deems it necessary or appropriate to promote the fair determination of his guilt or innocence, and shall take any other proper measures to protect the fairness of the trial.

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

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

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

7. PARTIES TO CRIME

- Principal in 1st degree: - one who actually commits the crime, either by his own hand or by an agent
- Principal in 2nd degree: - one who is present at the crime’s commission and who aids, counsels, commands or encourages the commission without actually performing the actus reus; either actual presence, or constructive presence by being a lookout, or keeps watch to avoid detection during perpetration of the act.
- Accessory before the fact: - same as principal in the 2nd degree except that this person is not present when the crime is committed.
- Accessory after the fact: - one who, with knowledge of other’s guilt, renders assistance to a felon in the effort to hinder his detection, arrest, trial or punishment.

Current distinction abolishes the categories above, and has a two-fold distinction:
- Accomplice: - one assisting the crime but does not commit the actus reus.
- Principal: - one committing the actus reus.
To be liable for aiding and abetting, 3 elements must be established:
- underlying crime was committed by defendant or some other person
- defendant performed acts or gave encouragement which aided or assisted in the commission of the crime
- defendant intended the commission of the crime or had knowledge that principal intended to commit crime at time of giving aid/encouragement.

Accessory liability is method for making one who renders aid liable for the substantive crime. Aiding/Abetting is not a distinct crime like conspiracy. Liability is merely derivative.

Generally, a conviction of the principal is required for accessory liability to ripen.

- The principal must possess the culpable mental state  

  **People v. Genoa** (p.H/O#8)
  
  **Facts:** Defendant unknowingly aided an undercover agent in selling drugs.
  
  **Held:** Cannot be held liable as an accessory.
  
  **Note:** There was no criminal act, and the principal never intended to go through with the sale. It was a legal impossibility for the defendant to be an accomplice to an offense that was never intended on being committed. Aiding and abetting is a derivative crime. Here, there was no crime to derive liability from.

- **A. Intent**
  
  - Requisite intent is to promote the criminal purpose  

    **People v. Beeman** (p.491)
    
    **Facts:** Defendant was in on a conspiracy to rob a jewelry store; phoned friends and told him that he no longer wanted to be part of it, but would not say anything if they went through with it.
    
    **Held:** Not liable under aider and abettor liability.
    
    **Note:** Aid and abet are such arcane words, the original meanings are lost to the average juror. There is a critical element missing which is the intent to encourage. The standard jury instruction substitutes knowledge of the criminal purpose for intent; the court says that intent to promote the criminal purpose is required. Aiding and abetting can occur unintentionally.

  - Accessory must share intent of the principal  

    **State v. Hoselton** (p.H/O#8)
    
    **Facts:** Defendant was unaware, while trespassing on a barge he frequented to fish, that his friends were breaking into the barge with the intent to steal stuff. He was told and he agreed to act as lookout in case the police came. Even after he became aware, he sat in the car, but did not offer any assistance to load car.
    
    **Held:** Not liable as an accessory.
    
    **Note:** He could not be convicted as an accessory because he did not have the requisite intent to be liable. The intent necessary is the intent to commit robbery. There was no evidence to support the fact that he was part of the robbery. The criminal intent and knowledge of it is measured at the time of the overt act; knowledge after the fact is not sufficient to make the act criminal.

  - Dual intent required  

    **State v. Foster** (p.H/O#8)
    
    **Facts:** Defendant helped to capture the victim; defendant’s friend then killed the victim.
    
    **Held:** Liable for as an accessory to the murder.
    
    **Note:** The defendant must have the intent to aid/encourage another’s criminal act and must, by rendering such aid, have the requisite culpable mental state for the commission of the substantive offense. This is the dual intent requirement for accessory liability. Defendant was convicted of the substantive crime through accomplice liability because he possessed both the intent to aid and the intent to commit the substantive crime actually committed by his friend, the principal.

  - Natural and Probable Consequences Doctrine  

    **State v. Linscott** (p.H/O#8)
    
    **Facts:** Defendant aided principal in commission of robbery; during the course of the robbery, the principal killed the victim.
    
    **Held:** Liable as an accessory to the murder.
Note: Accessory may be liable for any crime that occurs during the commission of another crime if the actor intended to promote the primary crime, and commission of the secondary crime was a foreseeable consequence of the conduct that defendant intended to assist. Here, murder was a foreseeable consequence of the robbery.

• Intent to promote or facilitate the target offence  
  \textit{Bowell v. State} (p.H/O#8)  
  \textbf{Facts:} Charged with being an accessory to sexual assault.  
  \textbf{Held:} Liable as an accessory.  
  \textbf{Note:} All that’s required is purpose to promote or facilitate commission of the offense, and must have the conscious objective in bringing about the criminal result. Defendant had the purpose with regards to the proscribed conduct and the proscribed result. There was a reckless disregard of the lack of consent.

\section*{B. Act Requirement for Accomplice Liability}

• Mere presence is not enough for liability  
  \textit{State v. Vaillancourt} (p.H/O#8)  
  \textbf{Facts:} Defendant was present and conversing with friend when friend was robbing house, and later fled with friend when police arrived.  
  \textbf{Held:} Not liable as an accessory.  
  \textbf{Note:} Mere presence is not enough to convict as an accomplice. Even the fact that the defendant fled with the principal is not enough. There must be some acts that tend to promote the criminal intent of the principal. This element is lacking when the purported accomplice is merely present.

\section*{C. Liability for Other Crimes of the Principal}

• The principal must possess the culpable mental state  
  \textit{People v. Brown} (p.H/O#8)  
  \textbf{Facts:} Defendant and 2 others went to rob store; defendant tried to kick in door; then defendant got scared and made friends leave.  
  \textbf{Held:} Withdrawal was effective at removing liability as an accessory.  
  \textbf{Note:} An accomplice may withdraw and avoid accomplice liability if before the commission of the crime, he terminates his effort to promote or facilitate the commission of the crime, and deprives his prior efforts of their effectiveness, or warns the police. Here, removed liability for accomplice liability, however still could be liable as accomplice to attempt.

\section*{D. Accessory After the Fact}

→ 3 general requirements for conviction as accessory after the fact:  
  i) principal felon committed the felony  
  ii) accessory knew such felony had been committed by the principal felon  
  iii) accused received, relieved, comforted or assisted the principal felon in some way to escape or hinder arrest.  
→ Felony must be completed in fact before liability ripens.

• Felony must be completed  
  \textit{State v. Williams} (p.505)  
  \textbf{Facts:} Principal shoots someone; defendant hides the principal, provides false alibi; the victim dies sometime later.  
  \textbf{Held:} Cannot be held liable as an accessory after the fact.  
  \textbf{Note:} The victim had not yet died at the time that the defendant rendered assistance to the principal. Thus, it is impossible for there to be accessory liability after the fact. The felony must have been completed.

• Felony must be completed  
  \textit{State v. Truesdell} (p.507)  
  \textbf{Facts:} Defendant’s 12 year old son kills father but could not be convicted because of his age; defendant lies to police to protect child.
Held: Liable as an accessory after the fact.

Note: The crime of accessory after the fact is a separate crime and therefore does not require that the principal be convicted in order to convict an accessory after the fact.

Model Penal Code

Section 2.06 Liability for the Conduct of Another; Complicity.

(1) A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

(2) A person is legally accountable for the conduct of another person when:
   (a) acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct.
   (b) he is made accountable for the conduct of such other person by the Code or by the law defining the offense; or
   (c) he is an accomplice of such other person in the commission of the offense.

(3) A person is an accomplice of another person in the commission of an offense if:
   (a) with the purpose of promoting or facilitating the commission of the offense, he
      (i) solicits such other person to commit it; or
      (ii) aids or agrees or attempts to aid such other person in planning or committing it; or
      (iii) having a legal duty to prevent the commission of the offense, fails to make proper effort so to do; or
   (b) his conduct is expressly declared by law to establish his complicity.

(4) When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

(5) A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.

(6) Unless otherwise provided by the Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:
   (a) he is a victim of that offense; or
   (b) the offense is so defined that his conduct is inevitably incident to its commission; or
   (c) he terminates his complicity prior to the commission of the offense and
      (i) wholly deprives it of effectiveness in the commission of the offense; or
      (ii) gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

(7) An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

Section 242.3 Hindering Apprehension or Prosecution

A person commits an offense if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for crime, he:
(1) harbors or conceals another; or
(2) provides or aids in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape; or
(3) conceals or destroys evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence; or
(4) warns the other of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with the law; or
(5) volunteers false information to a law enforcement officer.

The offense is a felony of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a felony of the first or second degree. Otherwise, it is a misdemeanor.

Section 242.4 Aiding Consummation of Crime

A person commits an offense if he purposely aids another to accomplish an unlawful object of a crime, as by safeguarding the proceeds thereof or converting the proceeds into negotiable funds. The offense is a felony of the third degree if the principal offense was a felony of the first or second degree. Otherwise it is a misdemeanor.

Section 242.5 Compounding

A person commits a misdemeanor if he accepts or agrees to accept any pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense. It is an affirmative defense to prosecution under this Section that the pecuniary benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for harm caused by the offense.

8. RESPONSIBILITY: MODIFYING CIRCUMSTANCES

A. Ignorance or Mistake of the Law

Most of the time, ignorance of the law will not be an excuse because every person is presumed to know the law, although there are a small number of exceptions to this rule.

• Excuse if mistake negatives specific intent  
  
  **State v. Cude** (p.807)

  **Facts:** Defendant, unable to pay car repair bill, picked up car after garage was closed and took it because he honestly thought he had a right to do so with the intent to sell the car for enough money to pay off the bill.

  **Held:** Mistake negatives his liability for theft.

  **Note:** Defendant had an honest belief that he could not steal his own car. This mistake of law negated the specific intent required for the conviction of stealing the car.

• Misreading of a statute is not a defence  
  
  **People v. Marrero** (p.809)

  **Facts:** Defendant was convicted of illegally carrying a gun; he thought that statute allowed him to carry the firearm.

  **Held:** Mistake will not negative liability.

  **Note:** The defendant based his belief on what he deemed a reasonable interpretation of the law; however, this mistake is irrelevant; such is not a valid, exculpatory mistake of law. Misrepresentation of statute is not a valid, exculpatory defense to a crime which does not require specific intent. This is malum prohibitum; the only intent needed is that to carry a gun; no intent to violate statute specifically is needed.

• Good faith standard if belief that under authority of law  
  
  **People v. Weiss** (p.815)

  **Facts:** Defendant thought he had authority to arrest suspect in Lindbergh case, when, in reality, no such authority existed.

  **Held:** Incorrectly withheld evidence to that effect.

  **Note:** In a case charging illegal arrest, a good faith standard should apply. If the person was arrested, though illegally, in good faith, then should be free of culpability for kidnapping.
• Require notice of req. to act by statute  
  **Lambert v. California** (p.820)
  **Facts:** Los Angeles required that a person convicted of a felony must register with the city before entering; defendant failed to do so; didn’t know that such a statute existed.
  **Held:** Cannot be held liable for violation of the statute.
  **Note:** Defendant was not aware of statute, and therefore failure to comply was not punishable. This is especially forgivable because the requirement to register would not be contemplated by anyone even current residents of Los Angeles. The act of living in a city does not put a person on notice that they have to register.

• Felony must be completed  
  **Long v. State** (p.505)
  **Facts:** Defendant got divorce out of state; acting in good faith on representations by his attorney, got remarried; convicted of bigamy.
  **Held:** Not liable for bigamy.
  **Note:** Defendant made an honest mistake of the law, and had no mens rea to render him culpable. Good faith reliance on advice of lawyer negates the general criminal intent. Actual reliance must exist; there must be reason to believe that the lawyer is generally competent and the advice is accurate. Mistake of law will be recognized as a defense where before engaging in a conduct, the defendant made a good-faith diligent effort to ascertain and abide by the law and defendant erroneously concludes that his conduct is not unlawful.

• Felony must be completed  
  **State v. Striggles** (p.826)
  **Facts:** Gumball machines were not deemed gambling devices by municipal court, got decree, letter from mayor, county attorney. Installed in restaurant, charged with operating a gambling device.
  **Held:** Found liable for operation of a gambling device.
  **Note:** No decisions of inferior courts invalidating a law may be relied upon for a mistake of law device; only those of the highest court in that jurisdiction may be used. At the lower court level, there may be inconsistent decisions between courts; if the highest court decides, then uniform throughout the entire state. Municipal court law can be overturned and is not precedential. Note that the mayor and attorney weren’t sufficient; their positions were not to interpret the law, so their opinions have no validity to the interpretation of the law.

• Felony must be completed  
  **State v. Williams** (p.505)
  **Facts:** Principal shoots someone; defendant hides the principal, provides false alibi; the victim dies sometime later.
  **Held:** Cannot be held liable as an accessory after the fact.
  **Note:** The victim had not yet died at the time that the defendant rendered assistance to the principal. Thus, it is impossible for there to be accessory liability after the fact. The felony must have been completed.

**Model Penal Code**

**Section 2.04 Ignorance or Mistake**

1. Ignorance or mistake as to a matter of fact or law is a defense if:
   a. the ignorance or mistake negatives the purpose, knowledge, belief or recklessness or negligence required to establish a material element of the offense; or
   b. the law provides that the state of mind established by such ignorance or mistake constitutes a defense.

2. Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the
situation been as he supposed. In such case, however, the offense of which he may be convicted to those of the offense of which he may be convicted to those of the offense of which he would be guilty had the situation been as he supposed.

(3) A belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense based upon such conduct when:

(a) the statute or other enactment defining the offense is not known to the actor and has not been published or otherwise reasonably made available prior to the conduct alleged; or

(b) he acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in (i) a statute or other enactment; (ii) a judicial decision, opinion or judgment; (iii) an administrative order or grant of permission; or (iv) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense.

(4) The defendant must prove a defense arising under Subsection (3) of this Section by a preponderance of the evidence.

Section 2.02 Culpability as to Illegality of Conduct.

(9) Neither knowledge nor recklessness or negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such an offense, unless the definition of the offense or the code so provides.

B. Ignorance or Mistake of Fact

A mistake of fact will disprove a criminal charge if the mistake belief is (i) honestly entertained, (ii) based upon reasonable grounds, and (iii) of such a nature that conduct would have been lawful had the facts been as they were reasonably supposed to be.

Such rule applies to offenses which require general mens rea.

If specific intent is required, some courts hold that mistake of fact does not even have to be reasonable, only genuine and honestly entertained.

When no mens rea requirement exists (strict liability offenses), a mistake of fact is not a defense, and the actor is guilty regardless of his good or bad faith.

• If unlawful act, presumption of unlawful intent People v. Vogel (p.832)
  Facts: Defendant’s wife told him she was getting a divorce and then married another man and took his name; defendant believing this to be true got remarried.
  Held: Not guilty of bigamy.
  Note: The defendant’s knowledge of the crime is an essential element of bigamy and such was not present here. Statute took out the mental state requirement as a means of reallocating burden. MPC does not differentiate between legal and factual mistake, so Long and Vogel are exceptions to the general rule.

• Reasonable, good faith belief is a defense People v. Hernandez (p.835)
  Facts: Defendant charged with statutory rape and asserted that he had a good faith reasonable belief that the girl was over 18 years old.
  Held: Defendant found not guilty of statutory rape.
  Note: In cases of statutory rape, an honest and reasonable belief in the existence of circumstances which, if true, would make defendant’s action an innocent one, is a good defence.

• Mistake of age is not a defence People v. Cash (p.505)
  Facts: Defendant had sex with a 17 year old; he asserted that he had reasonable belief that she was not under age.
  Held: Liable for statutory rape.
  Note: A reasonable mistake as to age is no defense to statutory rape as it is a strict liability crime which requires no intent to ripen liability.
• Felony must be completed

  **State v. Williams (p.505)**

  **Facts:** Principal shoots someone; defendant hides the principal, provides false alibi; the victim dies sometime later.
  **Held:** Cannot be held liable as an accessory after the fact.
  **Note:** The victim had not yet died at the time that the defendant rendered assistance to the principal. Thus, it is impossible for there to be accessory liability after the fact. The felony must have been completed.

Model Penal Code

**Section 213.6 Provisions Generally Applicable to Article 213. [Sexual Offenses]**

(1) Mistake as to Age. Whenever in this Article the criminality of conduct depends on a child’s being below the age of 10, it is no defense that the actor did not know the child’s age, or reasonably believed the child to be older than 10. When criminality depends on the child’s being below a critical age other than 10, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the child to be above the critical age.

**Section 230.1 Bigamy and Polygamy.**

(1) Bigamy. A married person is guilty of bigamy, a misdemeanor, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage:
  (a) the actor believes that the prior spouse is dead; or
  (b) the actor and the prior spouse have been living apart for five consecutive years throughout which the prior spouse was not known by the actor to be alive; or
  (c) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the actor does not know that judgment to be invalid; or
  (d) the actor reasonably believes that he is legally eligible to remarry.

(2) Polygamy. A person is guilty of polygamy, a felony of the third degree, if he marries or cohabits with more than one spouse at a time in purported exercise of the right of plural marriage. The offense is a continuing one until all cohabitation and claim of marriage with more than one spouse terminates. This section does not apply to parties to a polygamous marriage, lawful in the country of which they are residents or nationals, while they are in transit through or temporarily visiting this State.

(3) Other Party to Bigamous or Polygamous Marriage. A person is guilty of bigamy or polygamy, as the case may be, if he contracts or purports to contract marriage with another knowing that the other is thereby committing bigamy or polygamy.

9. **JUSTIFIABLE USE OF FORCE**

→ There is a general right to defend oneself vs. the use of unlawful force.

→ Five requirements must be met at common law: (a) defendant must have been resisting imminent use of force; (b) force defendant used must not be more than is reasonably necessary to defend against the threatened harm; (c) defendant cannot use deadly force unless the danger being resisted was also deadly force; (d) must not have been the aggressor unless he was a non deadly aggressor confronted with the use of deadly force or he withdrew after initial aggression and the other party continued to attack; (e) defendant must not have been in position of being able to retreat with complete safety if he’s in a retreat jurisdiction.

• Reasonably believed for purpose of protecting

  **State v. Realina (p.934)**

  **Facts:** Alleged victim threatened to kidnap and kill the defendant, so defendant pulled out a knife and threatened the alleged victim with it.
  **Held:** Justified in using the force.
  **Note:** A person will not be held criminally responsible for using force on another if he reasonably believed that such was necessary for the purpose of protecting himself against the use of unlawful force.
• Reasonably believed for purpose of protecting  
  **People v. La Voie** (p.938)
  **Facts:** Car following was bumping and ramming defendant’s car; finally pulled over; aggressors approached; defendant shot the aggressors.
  **Held:** Justified in using the force.
  **Note:** A person will not be held criminally responsible for using force on another if he reasonably believed that such was necessary for the purpose of protecting himself against the use of unlawful force. In the attending circumstances such fear was warranted to use life-threatening force.

• Take into account surrounding circumstances and history  
  **People v. Goetz** (p.940)
  **Facts:** Defendant was riding in subway in NY; two people flanked him, asked him for some change; defendant shot the two; returned to shoot his friends a couple of times.
  **Held:** Force was not justifiable.
  **Note:** There was no provocation; there was circumstances under which a reasonable person would have felt sufficiently threatened to be justified in using life-threatening force. Further, he returned to shoot one victim a second time and fired in a set pattern, which is more than just a reaction, but seems to show an intent to harm the victims.

• Battered wife syndrome  
  **Public v. Humphrey** (p.948)
  **Facts:** Wife with history of having been beaten by husband; was shot at previous night in argument; shot her husband.
  **Held:** Justified in using the force.
  **Note:** Expert testimony regarding battered wife syndrome – this goes to show the reasonableness of that belief. The statute explicitly allows admission of this evidence. This is merely a factor to be considered by the jury.

• Duty to retreat  
  **People v. Ligouri** (p.955)
  **Facts:** Defendant stood ground and killed victim who drew his gun and pointed it at defendant.
  **Held:** Justified in using the force.
  **Note:** Whether there is a duty to retreat often depends on such circumstances as the nature of the weapon, i.e. if a felony is being committed against the defendant by another with a gun, defendant is justified in standing his ground if necessary, to defend against the person making the felonious attack.

• Castle Doctrine applied  
  **Cooper v. United States** (p.963)
  **Facts:** Defendant, being hit by his brother, shot his brother in their home.
  **Held:** Not justified in using the force.
  **Note:** People in own home have a heightened interest in tolerating each other’s presence. Castle Doctrine does not apply: each brother has an equal right to be in the house; it’s not like a stranger entering where the trespasser has no right to be in the home. Duty to retreat still existed for the brother.

• Recklessness inconsistent with self-defense  
  **State v. Hanton** (p.968)
  **Facts:** Dispute between car drivers; stopped at traffic light; one reached into car to pull the defendant out; defendant shot the victim.
  **Held:** Justification defense existed.
  **Note:** A claim of recklessness and a claim of self-defense are mutually inconsistent. He was convicted of manslaughter which requires a showing of a mental state of recklessness. Requirement is to prove beyond a reasonable doubt that self-defense did not exist. This charge of recklessness so inserts a reasonable doubt.
Withdrawal from assault was not reasonably justified. *State v. Broadhurst* (p.971)

**Facts:** Defendant hits victim over head 3 times with wrench then stops, and heads back to turn; victim got up, started running towards defendant; defendant retrieved gun and shot the victim.

**Held:** Not justified in using the force.

**Note:** The withdrawal was not reasonable. A person in the victim’s circumstances could reasonably believe that the assault was being continued, and that the defendant was returning to the car to retrieve other instruments to assault him with. The withdrawal was not effectively communicated to the victim, so, the assault was still occurring at the time of the shooting, and the defendant was in fact acting in the capacity of aggressor, not victim.

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Model Penal Code

**Section 3.04 Use of Force in Self-Protection**

(1) Use of Force justifiable for Protection of the Person. Subject to the provisions of this Section and of Section 3.09, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

(2) Limitations on Justifying Necessity for Use of Force

(a) The use of force is not justifiable under this Section:

(i) to resist an arrest which the actor knows is being made by a peace officer, although the arrest is unlawful; or

(ii) to resist force used by the occupier or possessor of property or by another person on his behalf where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:

(1) the actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest; or

(2) the actor has been unlawfully dispossessed of the property and is making a re-entry or recaption justified by Section 3.06; or

(3) the actor believes that such force is necessary to protect himself against death or serious bodily harm.

(b) The use of deadly force is not justifiable under this Section unless the actor believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping or sexual intercourse compelled by force or threat; nor is it justifiable if:

(i) the actor, with the purpose of causing death or serious bodily harm, provoked the use of force against himself in the same encounter; or

(ii) the actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstain from any action which he has no duty to take except that:

(1) the actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be, and

(2) a public officer justified in using force in the performance of his duties or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape is not obliged to desist from efforts to perform such duty, effect such arrest or prevent such escape because of resistance or threatened resistance.
by or on behalf of the person against whom such action is directed.

(c) Except as required by paragraphs (a) and (b) of this Subsection, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used, without retreating, surrendering possession, doing any other act which he has no legal duty to do or abstaining from any lawful action.

(3) Use of Confinement as Protective Force. The justification afforded by this Section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.