Criminal Law Outline

A. Introductory Issues
Definition of crime: any social harm defined and made punishable by law
Vagueness of criminal statutes
*State v. Stanko I* (handout 1)
  - Void for vagueness doctrine (& due process clause); require penal statutes to have sufficient definiteness that ordinary people can understand what conduct is prohibited and does not encourage arbitrary/discriminatory enforcement. “Reasonable/proper” speed limit does not give drivers any guidelines on how to weigh factors in determining a reasonable speed.
*State v. Stanko II* (handout 1)
  - When Stanko was clocked at 117 MPH, he could have reasonably understood that his conduct was prohibited despite there being no express speed limit.
*Palmer v. City of Euclid* p.15
  - “Suspicious Person Ordinance” (prohibiting people to be outside late at night w/o visible business or satisfactory account) found to be unconstitutional b/c it gives insufficient notice to Δ’s that they are engaged in unlawful conduct.

Criminal Procedure
1. Arrest (compliant, witness, probable cause)
2. Formal charge (felony or misdemeanor)
3. For felonies, indictment before a grand jury (elements and facts of crime; subpoena power; criminal cases are brought by gov’t)
4. Motion to Dismiss
   a. Indictment doesn’t charge a crime
   b. Indictment fails to allege sufficient facts
   c. Given the allegations, no reasonable jury would convict
5. Plea Bargain
6. Trial (Reasonable doubt; MDV for acquittal if there’s not enough evidence to persuade jury)
7. Jury Instructions (elements, evidence, legal points)
8. If guilty, appeal.

B. Imputability
1. Necessity of an Act p.371
   - Mere thoughts alone never fall under judicial cognizance; there must be some overt act (actus reus requirement)
2. What Constitutes an Act
   *State v. Taft* p.373
   - Trial court erred in instructing jury that the mere motion of a vehicle constituted driving within the meaning of the DUI statute; the instruction had the effect of including accidental movement in the definition of driving.
   *People v. Decina* p.375
   - Δ was subject to sudden epileptic seizures; driving a car with knowledge of this condition, disregarding the consequences and being involved in an accident rendered Δ guilty of negligence.
Drug trafficking charge requires both power and intent to control; $\Delta$ was watching over her husband’s cocaine; she had the power to control, but no intent to control can be inferred from the evidence. Mere presence is insufficient to infer intent.

MPC on possession:
Knowing procurement, receipt, awareness of, or control of for sufficient period to be able to terminate possession.

MPC on Requirement of Voluntary Acts p.379
- A person is not guilty of an offense unless their liability is based on conduct that includes a voluntary act or omission to perform an act of which they are capable; reflexes, unconscious, or hypnotic, movements are not voluntary acts.

3. Negative Acts
The legal duty to act exists in 5 circumstances
1. By Statute
2. By Contract
3. Relationships between parties (parents, spouses, etc.)
4. $\Delta$ voluntarily assumes a duty of care and then fails to adequately perform.
5. $\Delta$’s conduct created the peril.

Biddle v. Commonwealth p.416
- Mother’s failure to consistently feed her baby was not sufficient for a murder one conviction, b/c the state could not prove beyond a reasonable doubt that $\Delta$ willfully or maliciously withheld food from the baby.

Commonwealth v. Teixera p.418
- $\Delta$ could not be convicted of failing to support an illegitimate child b/c the state could not prove that $\Delta$ had the financial ability to support the child. Statute imposes a duty but also requires that a failure to perform the duty was willful or possible; MPC does not require people to perform something they lack the capacity to do.

Walker v. Superior Court p.420
- Prayer treatment is an acceptable substitute for medical care of a sick child, BUT $\Delta$ can still be prosecuted for manslaughter, b/c prayer treatment is only acceptable if the child is not at serious health risk; modern medicine is such that failing to provide adequate medical care for a child is criminally negligent. $\Delta$ should have reasonably known of risk of failing to give proper medical treatment; $\Delta$’s right to give prayer treatment is not protected by 1st Amendment religious freedom.

Jones v. United States p.428
- It is necessary to establish that $\Delta$ caretaker has a legal duty to care for a victim in order to support a manslaughter charge. Mother had previously paid $\Delta$ to care for one child (but not the other), then stopped payments; mother still has legal duty to care for child, but caretaker w/o contract only has duty if they voluntarily assume care AND exclude others from rendering aid.

Davis v. Commonwealth p.430
- Implied contract (daughter living with sick elderly mother rent free) is sufficient to establish a legal duty to care; jury could reasonably conclude that victim starving to death was criminal negligence.
Moreland v. State p.435
• An automobile owner is liable for chauffeur’s reckless driving done in owner’s presence; owner has a duty to restrain the chauffeur and prevent him from violating the law w/ his own property; owner should have reasonably known the dangers of driving in the manner that the chauffeur was. Unlike a chauffeur, a taxi driver is an independent contractor and taxi passengers are not liable for reckless driving of taxi drivers’.

Van Buskirk v. State p.438
• Δ accidentally hit victim with a car, then drove away while victim was lying in the road. Being hit by another car was foreseeable, so Δ is liable for manslaughter. Duty to care for victim arises from peril created.

Robinson v. California (handout 1)
• Statute prohibited use of and addiction to narcotics; Δ showed evidence of recent use, but no withdrawal symptoms; it is unconstitutional to make status (addiction) alone a crime if not accompanied by an act (possession, sale, purchase of drugs).

C. Responsibility
No one is answerable to the criminal law for consequences not legally imputable to him.

Common Law Mental State Requirements:
A. Specific Intent: qualifies for additional defenses; prosecution must have independent evidence of intent and intent cannot be inferred from conduct.

Specific Intent Crimes: (BAFFLE PACK)

Burglary
Assault
False pretenses
Forgery
Larceny
Embezzlement

Premeditated (1st degree murder)
Attempt
Conspiracy/Solicitation
Kidnapping for ransom

B. Malice: only 2 crimes (murder & arson)
C. General Intent: huge catch-all category (i.e. rape & battery); unlike specific intent crimes, general intent can be inferred from conduct.
D. Strict Liability: no intent requirement; any defense negating intent does not work w/ strict liability offenses.
MPC Mental States
MPC drafters have shown two different examples of common law specific intent:
1a. Purposeful: Wanting a result and engaging in conduct that precedes the result no matter how unlikely.
1b. Knowingly: Not wanting a result, but engaging in conduct that is overwhelmingly likely to produce the result.
2. Recklessness
3. Negligence

(1) Mens Rea p.565-essential to criminal guilt; state of mind element; intent to do the deed which constitutes the actus reus of the offense charged, assuming no factors are found that are sufficient for exculpation.

Billingslea Case Study
- Δ’s omission of care to sick elderly mother most likely caused harm (broken are & jaw may have been a result of osteoporosis or falling down); Δ also prevented visits from other family members-possibly b/c of restraining order as opposed to criminal intent; Δ had no official legal duty or contract to care for victim, only an implied contract from living with victim rent free; Δ’s murder conviction reversed on appeal b/c there was not legal duty to care in statute. Legislature addressed this problem by covering disabled persons and imposing statutory duty of care when there is a reasonable conclusion that a person has accepted responsibility.

Liparota v. United States p.566
- Δ successfully made argument that ignorance of the law is an excuse b/c food stamp fraud is a regulatory crime that is morally neutral and not inherently evil. Supreme Court held that government must prove Δ’s specific intent to fraudulently use food stamps and that the district court erred by instructing jury that knowledge may be proven by Δ’s conduct.

(2) Criminal Negligence/Recklessness
Negligence: any conduct, except conduct intentionally harmful or recklessly disregarding of others, which falls below the standard established by law for the protection of others against unreasonable risk of harm.
Recklessness: gross deviation from ordinary/reasonable standard of care.

Gian-Cursio v. State p.580
- Δ was a chiropractor; victim died of TB; Δ assumed duty of care, despite not being licensed to treat TB or falsely representing a license; victim refused treatment from a true M.D., but Δ is still not absolved from criminal liability, b/c Δ’s “gross lack of competency” measured against an objective standard of criminal negligence. Despite disclosing that he had a non-M.D. specialty, Δ is still expected to provide the same treatment as an M.D. Δ should have realized the risk that his form of treatment posed to a TB patient. Regardless of what Δ believes is proper treatment, Δ is judged by a “reasonable person” standard. Consent is not a defense, b/c victim laced knowledge of reasonable treatment.

State v. Petersen (p.582 & handout #1)
- Δ challenged victim to a drag race; both cars raced through a residential neighborhood at a high speed; Δ stopped and turned of the road, while victim kept speeding and died in a
crash; Δ guilty of reckless criminal homicide b/c he knowingly took a substantial and unjustifiable risk that proximately cause victim’s death. Δ’s unilateral & uncommunicated termination of drag race is not a defense b/c Δ had recklessly set the drag race in motion and the risk to others’ lives had not yet ceased.

State v. Howard p. 589
• Trial court did not err in refusing an instruction of negligent homicide when Δ fired gun at an intended victim and killed an unintended victim, because Δ knew that other people were in close proximity. Firing the gun with other people around is reckless as opposed to negligent.

(3) Specific Intent
Definition: The intent to accomplish the precise criminal act that one is later charged with. Unlike general intent, specific intent cannot be presumed from the act itself. MPC disregards general and specific intent and uses purpose, knowledge, recklessness and negligence.

Thacker v. Commonwealth p.602
• Δ was drunk and fired a gun into a tent w/ intent of shooting a lamp, and narrowly missed hitting people in the tent; attempted murder conviction was reversed b/c “to commit murder, one need not intend to take life, but to be guilty of an attempt to murder, he must so intend. It is not sufficient that his act, had it proved fatal, would have been murder.”
General versus specific intent: Not every intentional shooting is an attempted murder (i.e. firing a warning shot); Δ’s actual crime is assault or reckless endangerment.

(4) Other Particular States of Mind
4a. Malice
State v. Nastoff p.612
• Δ’s knowing usage of an illegally modified chainsaw led to a forest fire on private property; Δ not guilty of malicious property damage when the injury to the property was an unintended consequence of conduct that may have violated some other statute

4b. Knowledge (Scienter)
Definition: A person acts knowingly when he knows the nature of his conduct and he knows his conduct will cause a certain result.
MPC: When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.

State v. Beale p.617
• Issue of whether Δ knowingly concealed stolen property; jury was instructed on either “knowingly” (subjective) or “reasonably should have known.” (objective); Authorities are split; majority follows subjective requirement; minority follows objective requirement. Circumstantial evidence can blur the line between subjective and objective knowledge.

United States v. Jewell p.623
• Δ traveled across Mexican/U.S. border w/ 110 lbs. of tweed (aw shit, party over here) in a ‘secret’ compartment between trunk and rear seat of car; statute required “knowing” possession; Δ requested jury instruction was denied that knowingly = actual positive knowledge; actual jury instruction was knowing = actual or conscious purpose to avoid the truth (solely and entirely); objective standard applies b/c a reasonable person should know to inspect their baggage before traveling across a border; knowingly is equated with awareness of high probability a fact exists, deliberate ignorance or willful blindness;
Δ’s knowledge could be inferred from several facts of the case; if Δ thought he was carrying weed but actually was caught w/ illegal weapons, he is not chargeable w/ knowing transport of guns; if Δ suspects weed, checks thoroughly, finds nothing, then customs officials still find it, Δ has a better case, but still up to jury to decide whether Δ’s belief was reasonable. Dissent has problem w/ willful blindness b/c of its bias toward visual means of acquiring actual knowledge; also believes Δ was denied instruction on “actual belief” of there being no controlled substance in the car.

Billingslea Case Study
- If case were decided after statute was amended, Δ would have a duty to act, going beyond common law; Δ could be found to have reasonable awareness of risk/gross deviation from standard of care.

4c. Willfulness
Fields v. United States p.630
- Statute prohibiting “willfully” withholding documents requested by legislative committees; Issue of whether “willfully” implies evil or bad purpose; apparent meaning of the statute does not require evil or bad purpose, but merely an intentional act; if bad purpose were required, anyone not proven to have bad purpose could escape penalty for default.

Cheek v. United States p.632
- Δ claims to be indoctrinated with belief that income tax is unconstitutional; charged w/ failure to file/attempt to evade; if Δ’s subjective belief that he is not required to pay taxes is a defense, then Δ is not guilty but Δ’s credibility must be examined; prosecutor can argue that sporadic payment of taxes indicated Δ believed he should pay taxes; Δ has also attended criminal & civil trial, read cases, told that his arguments are frivolous, and consulted a lawyer; Δ cannot use attorney/client privilege as both a shield and a sword at the same time; if is challenging constitutionality of income taxes, Δ must still keep paying them unless constitution is amended; the more evidence of actions that Cheek took, the more likely Cheek is to be convicted; Cheek probably cannot make misunderstanding & unconstitutional arguments at the same time; Δ’s beliefs about validity of tax statutes are irrelevant to the issue of willfulness, but it was error for the court to instruct the jury about taxpayer’s beliefs that wages are not income and that he is not a taxpayer.

Bernice & Walter Williams Case Study
- Baby was sick, no treatment sought, baby died. Manslaughter charges: 1st degree due to recklessness, 2nd degree due to negligence; standard for recklessness is “reasonable man in same situation”; this poses problems b/c Δs were Shoshoni Indians with below average intelligence; Does “same situation” account for personal characteristics, sickness of child, fear of losing custody, etc? Even if withholding of medical care is done with good intentions, it can still be willful; also problems w/ “necessary medical attendance” b/c tribal groups may have different standards of “necessary.” Δs intent was purposeful but maybe not evil; Δs found guilty of 2nd degree manslaughter, but prison sentences were suspended.
5. Strict Liability
Definition: A strict liability offense requires no culpability or mens rea and tends to be regulatory in nature. State legislatures have the power to enact criminal statutes that do not require mens rea. Statutes do not indicate strict liability, but if statutes lack adverbs such as knowingly, willfully, or intentionally, they are strict liability offenses.

*Commonwealth v. Olshefski* p.641
- Malum prohibitum: nothing inherently evil, simply a regulatory offense determined by the legislature. Malum in se: inherently evil crime. Olshefski had no evil intent and even had a weigh bill stating that he was compliant with the weight limit; if Olshefski was speeding, state would not have to prove intent or awareness of a speed limit; for ease of administration, regulatory offenses are likely to be minor, courts are willing to impose strict liability and minor penalties; weight limit comes from legislature’s concern for preserving roads and bridges.

6. Unlawful Conduct
*State v. Horton* p.664
Δ was hunting illegally and killed somebody by accident. Unlawful Act doctrine: If Δ is engaged in an unlawful act and it leads to the death of another, possibly a manslaughter charge but not always. A malum prohibitum offense leading to the death of another is only manslaughter only if the act is negligent, reckless or dangerous, otherwise the act must be malum in se. If “No Hunting” signs were posted, there would be more likelihood that Δ knew of penalties, but hunting law had limited applicability and was a misdemeanor w/ minor penalties in only 3 counties. W/o evidence of negligence or danger, no support for conviction under manslaughter rule. Hunting wild turkeys could be a civil trespass or negligent tort claim, but not a crime. Two-thirds of states have abandoned *Horton* manslaughter liability.

3 intentional shooting leading to unintentional death scenarios:
  i. Δ hunting wild turkeys→no criminal negligence.
  ii. Δ wantonly shooting @ privately owned chickens→manslaughter
  iii. Δ shooting at chickens to steal them→murder
Intent to commit a crime that is malum prohibitum will not transfer to a crime that is malum in se.

*United States v. Rybicki* p.667
Δ threatened IRS officers w/ a gun as they were repossessing his car, not knowing they were IRS officers. Obstruction of justice charge was reversed on appeal.

D. Offenses Against the Person
1. Homicide
   - Common Law had no degrees of murder; murder listed w/o a degree always means common law murder or today’s equivalent of 2nd degree murder.
   i. Homicide = murder @ common law
   A. Intent to kill
   B. Intent to do serious bodily harm
   C. Abandonment/Recklessness/Depraved heart (i.e. Russian Roulette)
   D. Felony murder (killing while committing a felony)
   ii. Manslaughter
A. Voluntary Manslaughter: Provoked killing in the heat of passion w/ no cooling of period.
B. Involuntary Manslaughter
1. Killing from criminal negligence (falling asleep at the wheel)
2. Misdemeanor Manslaughter (killing someone while committing a misdemeanor or an un-enumerated felony)

iii. Degrees of murder are created by statute; USA has no uniform definition of 1st or 2nd degree murder.

MPC Article 210, p.152: Criminal homicide is murder, manslaughter, or negligent homicide.

A. Criminal homicide is murder when it is committed knowingly or purposefully; or is committed recklessly under circumstances manifesting extreme indifference to human life; this recklessness is presumed if the actor is engaged in or an accomplice in attempt, commission or flight from robbery, rape, arson, burglary, kidnapping or felonious escape.

B. Criminal homicide is manslaughter when it is committed recklessly or when homicide that would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse as determined from the viewpoint of a person in the actor’s circumstances as he believes them to be; manslaughter is a 2nd degree felony.

C. Criminal homicide is negligent homicide when it is committed negligently and is a 3rd degree felony.

Five Defenses to Felony Murder:
A. Δ has a defense to the underlying felony (i.e. Δ1 is drunk during a robbery in which Δ2 commits a felony murder; Δ1 lacks specific intent)
B. Felony is independent of killing.
C. Death is not foreseeable (not in California and other jurisdictions, i.e. People v. Stamp, where victim dying of heart attack during robbery is felony murder.)
D. Death caused by fleeing from a felony is a felony murder, but once Δ has reached a point of temporary safety, it is not a felony murder.
E. Redline view (majority rule): Δ is not liable for the death of a co-felon as a result of resistance by the victim or police, but Δ is liable for the death of someone besides a co-felon.

1a. Murder

Gladden v. State (handout #2)
- Doctrine of transferred intent: Intent follows the bullet; inability to aim a gun has no effect on culpability of one’s acts; killing an unintended victim is still homicide if one intended to kill somebody else; killing with intent to only frighten is either negligent homicide/reckless manslaughter/2nd degree depraved indifference; cannot use murder 1 as a deterrent for frightening others w/ a gun.

Cuellar v. State (handout #2)
- Intoxication manslaughter occurs when one causes the death of another by accident or mistake; drunk driving accident w/ pregnant woman led to emergency c-section, baby died 2 days later; does unborn child count as another person; a civil cause of action exists for injuries sustained in the womb; it is not necessary for all elements of a criminal
offense to be satisfied at same time of \( \Delta \)'s unlawful conduct; if live birth occurs, the cause of death is still not certain, but it does prove that fetus was alive at the time of contact; w/o live birth, fetus could potentially have been dead at time of crime; common law had a live birth requirement, but there were far lower childbirth survival rates at that time; actual time of injury is irrelevant as long as child is born alive or in the process of being born alive; since baby died from car crash and was born and alive for a period of time, \( \Delta \) is guilty of manslaughter.

*King v. State* p.74 (reckless murder)
- \( \Delta \) fired pistol @ victim’s moving vehicle w/o excuse or provocation, claimed to be shooting a tire out, actually killed decedent → evidence of common law “depraved heart” or statutory “extreme indifference to human life,” murder conviction affirmed.

*State v. Hokenson* p.79 (felony murder bootstrapping)
- Robber set bomb, was arrested, bomb exploded, killing police officer; Idaho defines murder as purposeful/knowingly or reckless/extreme indifference or flight after committing a dangerous felony; \( \Delta \) contended he no longer had control @ time of explosion, was already under arrest so the felony was over; court disagrees b/c of the continuous chain of events; reckless/extreme indifference are presumed if \( \Delta \) is engaged in commission of inherently dangerous felonies; legal presumption of reckless mental state; a person is criminally liable for nat’l & probable consequences of his unlawful acts as well as unlawful forces set in motion during the commission of an unlawful act; murder one conviction affirmed.

*People v. Phillips* (handout #3; felony murder)
- Cali. creates degrees of murder; prosecution sought to create new felony of “grand theft medical fraud” to invoke the felony murder doctrine and get a 2nd degree murder conviction; court holds that felony murder instruction should not have been given b/c grand theft is not an inherently dangerous crime; grand theft causing a victim’s death is not the sort of event the law is intended to prevent; if \( \Delta \)’s “course of conduct” is fragmented so that felony murder applies to any segment of the conduct that could be dangerous would widen the rule beyond calculation (felony drug possession & fatal auto accident is not felony murder); dissent finds no miscarriage of justice, so why overturn?

*State v. Mayle* p.90 (felony murder)
- Felony murder based on commission of a robbery; irrelevant who actually does the killing; court holds that a person can be convicted of murder by being involved in a felony causing a death; \( \Delta \)s were not at the scene of the original crime, but the incident was not yet complete; \( \Delta \)s were not yet at a point of safety, loot had not been distributed, escape was in progress and activities were part of “one continuous transaction.”

*People v. Wilson* (handout #3; no bootstrapping onto assault w/ deadly weapon)
- Felony murder rule does not apply to assault w/ a deadly weapon; if the intended felony of the burglar is an assault w/ a deadly weapon, the likelihood of homicide from the lethal weapon is not significantly increased by the site of the assault; if \( \Delta \) is already engaged in an assault w/ a deadly weapon, felony murder rule is not a deterrent; murder 1 & 2 convictions reversed, but assault w/ deadly weapon conviction affirmed.

*State v. Schrader* (handout #3; premeditation)
- Issue of premeditation; \( \Delta \) got into a dispute w/ victim and stabbed victim 51 times w/ a hunting knife; at what point did killing switch from heat of passion to premeditation? Hard to tell in this case b/c the amount of time to premeditate is uncertain; given the 51
stab wounds, there is not question of \( \Delta \)’s intent to kill, but it does not look like it was thought out before the first stabbing occurred; any interval of time between forming intent and killing is sufficient duration if \( \Delta \) was fully conscious of what they intended; WV courts have recognized that the mental process necessary to constitute a willful, deliberate and premeditated murder can be accomplished very quickly or even in the proverbial twinking of an eye; \( \Delta \)’s murder 1 conviction affirmed.

*Midgett v. State* (handout #3; 2nd degree murder)
- Sustained child abuse leads to death; evidence is insufficient to find premeditation or deliberation to affirm murder 1 conviction; conviction reduced to murder 2 on appeal; repeated serious beating w/o killing is not premeditation; evidence did not support intent to kill b/c \( \Delta \) took the victim to the hospital. Could \( \Delta \) form intent while beating the child? Or could \( \Delta \) form intent to kill while drunk w/o having “cool-minded” pre-meditation? What if \( \Delta \) knew he could beat his son to death while drunk but decided to drink anyway? Intentional or reckless? Beating is intentional, drinking while disregarding a risk is reckless/depraved indifference.
- Some states (Illinois) allow felony murder bootstrapping for aggravated battery, but Arkansas does not.

1b. Voluntary Manslaughter
Definition: An act of murder reduced to manslaughter because of extenuating circumstances such as adequate provocation or diminished capacity.

*4 part test for provocation defense @ common law*
- Actual provocation
- Legally adequate provocation (assault, battery, illegal arrest, adultery (only in TX), injury to a 3rd person, certain kinds of words).
- Time between provocation and killing for a reasonable man to cool down?
- If answer to iii is no, did \( \Delta \) in fact cool down?

At common law, provocation must come from the victim, killing the bearer of bad news in not VM.

*State v. Forrest* (handout #3; provocation)
- \( \Delta \) killed terminally ill and untreatable father by shooting 4 times w/ a pistol; premeditation requires prior thought (actual reflection); deliberation requires intent to kill w/o provocation or being overcome w/ emotion (cool mind capable of reflection); murder one conviction upheld, arguing no provocation, victim lay helpless, \( \Delta \) had to cock pistol each time before it could be fired, and \( \Delta \) stated that he had thought about killing the victim; dissent believes the law should recognize a difference between killing to end a loved one’s physical pain and killing b/c of unmitigated spite, hatred or ill will. Could \( \Delta \)’s stress/agitation from having a terminally ill father sufficient to argue heat of passion/provocation element to reduce to voluntary manslaughter? If victim had in fact consented to be killed is his illness became incurable, it would be hard to prove.

*State v. Guebara* p.113
- \( \Delta \) shot & killed wife; murder one conviction affirmed; \( \Delta \) was not entitled to voluntary manslaughter instruction; wife’s insistence on divorce and county attorney’s refusal to drop charges was not considered sufficient provocation from an objective standpoint; VM rule is that \( \Delta \) had not cooled down and a reasonable man on those circumstances would not have cooled down; \( \Delta \) had the necessary mental state for heat of passion, but
insufficient provocation to get VM instruction or reduce the charge to VM; Δ also told sheriff that he would kill (premeditation)

**State v. Dumlao** p.125

- Δ has jealousy/hypersensitivity problems, shot his mother-in-law and brother-in-law, convicted of murder; Hawaii court applies different standards (1. Subjective emotional/mental disturbance. 2. Objectively reasonable explanation or excuse. 3. Reasonableness from subjective viewpoint of Δ); MPC recognizes “human frailty” w/o excusing it by taking into account any innate characteristics of Δ; MPC allows much more leeway w/ VM instruction than common law; ambiguous standard allows judgments to be made by juries as opposed to rigid common law provocation rules; Δ could not get VM instruction in a common law jurisdiction b/c there was not sufficient provocation.

**State v. Hardie** (handout #4)

- Δ fired loaded gun at victim as a prank, had good reason to believe the gun didn’t work, killed victim; Δ was found guilty of manslaughter b/c of criminal carelessness; Is knowledge of gun being loaded mitigated by “knowledge” that it doesn’t work? Does lack of social utility have correlation with risk? Δ argued no carelessness to render his act criminal, so it was “excusable homicide by misadventure; court rejects this contention, finding Δ’s conduct reckless, reprehensible & unexcusable; even if Δ had good reason to believe the gun would not cause injury, “human life is not to be sported with by the use of firearms;” people should be liable for the consequences of their acts when they engage in reckless sport.

1c. Involuntary Manslaughter

**People v. Rodriguez** p.135

- Δ left her four young children at home alone for a few hours; one of them died in a fire; criminal negligence requires a high degree of risk; there was no foreseeability of harm occurring and no evidence of Δ causing fire; it is always possible for unforeseeable accidents to occur; court says that the mere realm of possibility is not enough to impute criminal negligence on parents part b/c there has to be a high degree of risk and the nature must imperil the life and limb of another person; simply being inattentive to young children is not always criminal; amount of time absent from young children is a factor and the degree of risk increases w/ time; Δ’s involuntary manslaughter charge reversed on appeal.

1d. Negligent homicide

**State v. Bier** p.137

- Δ allegedly gave his wife a loaded, cocked gun, challenging her to shoot him; wife was very drunk at the time and shot herself with the gun before Δ could wrestle it away from her; uncertain from evidence who was holding the gun when it was fired; statute defines negligence as “consciously disregarding” a risk that a result will occur or “disregarding a risk of which one should be aware.” The risk must be a “gross deviation from a reasonable standard of care,” meaning “considerably greater than lack of ordinary care;” Court held that the risk created by Δ’s conduct under the circumstances (giving gun to a highly intoxicated wife could lead to her shooting Δ or herself) was a foreseeable risk and affirmed Δ’s negligent homicide conviction.
1e. Causation

**People v. Stamp** p.530

- 3 Δs committed armed robbery at a business place; victim was obese, 60 yrs. old, had history of heart disease, had advanced atherosclerosis that would eventually be fatal, was under a great deal of pressure at work and did not take good care of his heart; victim died of a heart attack 40 minutes after the robbery; Cali. Statute considers a killing committed in the perpetration of or an attempted robbery is murder one, regardless of whether the murder is willful/premeditated, accidental/unintentional, or planned/not planned as part of the robbery; felony murder doctrine presumes malice aforethought on the basis of committing an inherently dangerous felony; no intentional act is necessary other than the attempt or commission of the robbery itself; no need to commit homicide to perpetrate the felony and completion/abandonment are irrelevant; Cali adopts strict liability for all killings committed in the course of the felony; if life is shortened as a result of the felony, it is irrelevant that the victim would have died soon; the robber takes his victim as he finds him; all 3 Δs found guilty of murder 1 & robbery and given life sentences.

**State v. Sauter** p.533

- Issue of whether medical malpractice was an intervening cause; med mal only becomes a defense when it is the sole cause of death; Δ stabbed victim during a drunk altercation; victim was taken to hospital & received surgery for the stabbing wounds; surgeon repaired lacerations to stomach walls & other arteries & tissues, but did not notice abdominal bleeding; autopsy later revealed that victim died from blood loss through a 1’ unrepaired laceration in the abdominal aorta; established AZ rule that med mal will break the chain of causation and become the proximate cause of death only if it becomes the sole cause of death; b/c victim’s death was originally induced by the stabbing, Δ’s voluntary manslaughter conviction was upheld.

**Letner v. State** p. 535

- Δ fired gunshots from cliff toward boat that was carrying 3 people across a choppy river; 2 bullets hit the water within 6 ft of boat; driver of boat jumped out; boat capsized, 2 of the 3 passengers drowned; Δ guilty of involuntary manslaughter b/c regardless of whether he was shooting to kill or frighten, his act was unlawful b/c every person will be held to contemplate and be responsible for the natural consequences of his own act-bullets could have struck the passengers or the boat.

**Campbell v. State** p.538

- Issue of whether killing of a co-felon by a police officer or victim during an armed robbery constitutes murder one on the part of the surviving felon under the felony murder doctrine; “agency” theory of felony murder would exculpate the surviving felon b/c a police officer killing a co-felon is intended to thwart the felony rather than to further it; “proximate cause” theory of felony murder makes surviving felons liable for killing of co-felons by police officers or victims; present trend is to use the agency theory b/c the purpose of deterring felons from killing is not effectuated by punishing them for killings committed by persons not acting in continuance of the felony; also, the tort liability concept of proximate cause has no proper place in criminal homicide prosecutions, b/c torts deal w/ loss & criminal law deal w/ punishment; because criminal culpability should not be imposed for lethal acts of nonfelons that are not committed in furtherance of a common design, the surviving felon was not guilty of murder.
Agency theory protects felons, but possibly takes away rights of police & bystanders; most courts don’t impose a foreseeability requirement w/ felony murder causation if there is a causal link; most courts allow proximate cause theory but keep limits on it; w/o agency limit, proximate cause lets in too many situations.

**People v. Caldwell** p.545
- 3 felons are escaping from a robbery; police shoot a felon; issue of whether the other 2 felons are guilty of murder since the other felons were resisting arrest; was resisting arrest a provocative act/substantial factor in co-felon’s death? Do provocative acts of Δs demonstrate a conscious disregard for human life? Are the risk of a high speed chase, hiding behind door and pointing guns at police a factor? Not enough that acts are dangerous; must have conscious disregard for life w/ a high probability of death. In *Caldwell*, a reasonable trier of fact could have concluded that the officers’ lethal response was provoked by violent confrontation on the part of the co-felons; co-felons conduct reflected a common determination not to surrender (but/for causation of gun battle & co-felon’s death)

In an agency jurisdiction like *Caldwell*, provocative acts are still a way around agency to impute murder liability to co-felons participating in highly dangerous conduct.

**Lewis v. State** p.558
- Did Russian Roulette game victim kill himself w/ free will, or was Δ’s prior conduct a proximate cause? Δ and victim were both playing Russian Roulette; gun belonged to Δ; Δ showed victim how to play Russian roulette; Δ watched victim playing game, then put gun away and left the room.

Δ’s negligent homicide conviction reversed b/c “causal link between Δ’s conduct and victim’s death was severed when victim exercised his own free will.” Are victim’s girlfriend problems an issue? Δ’s conduct a substantial factor?

**Joseph B. Wood Case Study**
- Victim fatally shot by 2 different Δs; question of who should be liable; after 1st fatal wound is inflicted, is second wound that accelerated death that was already looming and could be fatal on its own also a cause of death?

### E. Attempt and Kindred Problems

1. **Attempt**

   Key elements of attempt:
   i. Present specific intent to commit a certain crime in a certain way;
   ii. Overt act done in furtherance of the intent, beyond mere preparation.

   Common law rule: Δ’s act must be sufficiently proximate to the intended crime; ‘proximity’ is open to interpretation it can mean Δ did everything he believed to be necessary, physical proximity or procurement of an indispensable element.

   Alternative Common Law Rule (equivocality test): Δ must have committed an act that could not reasonable have any other purpose.

   MPC rule (substantial step test): Δ must have performed an act which strongly corroborates his criminal purpose.
(MPC Section 5.01 p.414-415): A person engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or when causing a particular result in an element, does or omits to do anything with the belief that it will cause such result without further conduct on his part, or engages in a substantial step. Substantial step includes (lying in wait, searching for or following the contemplated victim, enticing the victim to go to the contemplated place for commission of crime, reconnoitering the contemplated place for commission of the crime, unlawful entry, possession, collection or fabrication of materials with no lawful use or designed for unlawful use or solicitation of an agent.

@ Common law, factual impossibility was never a defense to attempt, but legal impossibility was (i.e. receiving “stolen” property that is not actually stolen or “forging” a prescription for an over-the-counter drug)

Under MPC, if the facts could have been as Δ believed them, Δ is guilty of attempt; the distinction between legal and factual impossibility has become blurry. MPC punishes people who have intent and belief, despite legal or factual impossibility. This rule does not necessarily punish too many people because probable cause is still needed.

1a. In General

*Moffett v. State* p.380
- Δs had already begun to tie up victim; one Δ held a knife to victim’s throat; the other Δ told victim to write a note and take sleeping pills; Δs were guilty of attempted murder & burglary b/c Δs clearly took sufficient steps beyond mere preparation.
  Rule of attempt has 3 elements: (1) intent, (2) act toward crime (perpetration), (3) failure; issue of what is the difference between preparation and perpetration;
  Preparation = acquiring materials, drafting note (possibly conspiracy, but not attempt)
  Perpetration = entering home, threatening victim

1b. Perpetrating Act

*People v. Rizzo* p.382
- Δs went looking for victim while armed w/ guns with intent of robbing him; Δs were stopped by police and arrested outside building where Δs thought victim(s) were; victims were not actually in bldg., nor had any victim been identified by Δ; court applauded police efforts in stopping would-be robbers, but held that Δs were not guilty of attempted robbery b/c they had not found or reached the presence of their victim (proximity test).

*Young v. State* p.384
- Application of MPC “substantial step” rule; Δ was behaving suspiciously, appeared to be casing a bank; when Δ learned bank was closed, he hurried back to his car, removed his hat, shades, eyepatch & gloves; police found illegal loaded handgun and police scanner in Δ’s possession; Δ was trying to take off his jacket when apprehended and asked police “how much time could he get?” Court held that Δ performed the necessary overt act towards the commission of armed robbery that was more than mere preparation.

1c. Impossibility

Common Law Impossibility Rules:
Factual Impossibility: But for a circumstance unknown to Δ, crime would have occurred. (no defense)
Legal Impossibility: Actions carried out as Δ desired would nor be a crime. (defense)

*State v. Mitchell* p.392
- Δ went to window of room where he thought his intended victim was sleeping and fired his pistol at the window; b/c Δ had **intent** evidenced by his shooting accompanied by a **present capacity** to murder the victim, and failed to do so only b/c the victim was sleeping somewhere else, Δ is guilty of attempted murder.

*People v. Rojas* p.393
- Δ received stolen property that had already been recovered by the police; this was arranged as a setup by police in conjunction w/ another man who had been arrested for possession of stolen property; court holds that the criminality of the attempt is not destroyed by the fact that the goods had lost their ‘stolen’ status unknown to the Δ; the consequences of intent and acts such as those of Δs here should be more serious than pleased amazement that b/c of police timeliness, the projected criminality was both detected and wiped out.

*Booth v. State* p.395
- Similar facts as *Rojas*; Δ had intent to buy stolen coat from a thief; thief was arrested & confessed, then participated in a setup w/ police to bust the Δ; court overrules *Rojas* on legal impossibility grounds; despite obvious moral guilt of Δ, his act was not forbidden by criminal law, Δ not guilty of attempt to receive stolen property.

*United States v. Oviedo* p.398
- Δ sold fake heroin; passed reagent test, later failed chemical analysis; issue of intent; blurry line between legal or factual impossibility; case could be decided either way depending on jurisdiction; Δ had accompanying mens rea; subjective acts are sufficient to indicate criminal purpose, but the attempt to distribute an illicit substance requires the substance itself; court holds that objective acts performed, regardless of mens rea, are required for Δ to be guilty of criminal attempt; it would be a dangerous precedent to allow punishment of criminal thoughts & desires.

Roger Thomas Case Study (MPC 213.1 p.167, 250.10 p.175)
- Δs have sex w/ a dead woman they believe to be unconscious; they are guilty of attempted rape under MPC, b/c she is unconscious, they have culpability and factual impossibility is no defense; alternatively, they are guilty of ‘abuse of corpse’ which is a misdemeanor.

1d. Intent
*People v. Guerra* p.405
- In process of kidnapping, Δs gun accidentally discharged, killing one victim while another escaped after a bloody fight; Δ convicted w/ kidnapping, murder & attempted murder (on the dude who escaped); attempted murder charge was reversed, b/c it could not be proven that Δ had requisite specific intent for attempted murder.

1e. Solicitation
(MPC 5.02 p.415): A person is guilty of solicitation if with the purpose of promoting or facilitating its commission, he commands, encourages, or requests another person to engage in specific conduct that would constitute a crime or an attempted crime; it is an affirmative defense to solicitation if the solicitor persuaded the actor not to do so or otherwise prevented
the commission of the crime under circumstances manifesting a complete & voluntary renunciation.

Common Law Solicitation has 3 elements:
i. Enticing, advising, encouraging or ordering another to commit:
ii. A felony or misdemeanor against the public welfare
iii. With specific intent that the one solicited commit the crime (specific intent defenses apply)

*State v. Blechman* p.410
- Δ encouraged someone to set a house on fire; regardless of whether arson was committed, Δ is still guilty of solicitation; bare intent is not indictable, but solicitation is an act done toward the execution of the evil intent and is indictable.

2. Abandonment
(MPC 5.01(4) p.415): It is an affirmative defense to attempt if Δ abandons his effort to commit the crime or otherwise prevented its commission under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. This defense does not affect the liability of an accomplice who did not join in the abandonment or prevention.

2 key elements to abandonment:
i. Completely voluntary (not made due to problems in completing the crime or getting caught).
ii. Represents a full renunciation of criminal purpose and not just a decision to delay.

Renunciation is not voluntary if Δ is confronted with new facts that increase the probability of apprehension; it’s a question for the jury as to what was really going on in Δ’s mind.

*Stewart v. State* p.412
- Δ was in the process of robbing a gas station at gunpoint; 2 officers arrived, one saw the pistol, Δ ‘abandoned’ the robbery and began to act as though he was purchasing gas; Δ argued that attempted robbery was not proved b/c of abandonment; court still found Δ guilty of attempted robbery b/c the attempt was complete when Δ produced the pistol and demanded the $; once an intent is formed and an overt act is performed, Δ is guilty of attempt when they abandon b/c of approaching persons or change of heart.

*Commonwealth v. McClosky* (handout #5)
- Δ attempted to break out of prison, cut part of barbed wire fence, alarm went off, Δ began to escape, then voluntarily turned around; nobody was found missing after the alarm went off; Δ confessed what had happened to a prison guard supervisor a few hours later; Δ was convicted of attempted prison breach; issue on appeal of whether Δ acted in mere preparation or made a sufficiently proximate attempt; although Δ went over a fence, he was still in the prison yard when he turned around, only contemplating a breach; Δ found not guilty of attempted prison breach on appeal.

Concurrence: tough to distinguish between preparation & perpetration, but voluntary abandonment is a defense to a criminal charge, b/c a criminal cannot be considered dangerous if they voluntarily abandon and it provides incentive for criminals to desist.
Dissent disagrees b/c Δ went over a forbidden fence & cut wire that tripped an alarm, which are more than preparation. If Δ is caught before they would have abandoned, it strongly corroborates criminal purpose; if Δ hears the alarm go off, then its not voluntary abandonment.

F. Conspiracy
   i. pursuit of an unlawful objective.
   ii. Agreement
   iii. Intent to Agree
   iv. Intent to pursue unlawful objective.
   v. Each conspirator is liable for all crimes of co-conspirators if crimes committed were committed in furtherance of the conspiracy and were foreseeable.
   vi. Conspiracy agreement does not have to be express-no written or spoken words of agreement-various people can be in a conspiracy despite not knowing each other.
   vii. Impossibility is no defense to conspiracy.
   viii. **Solicitation of a 3rd person in a conspiracy is an overt act.**

MPC on Conspiracy p.473 (majority rule): A person is guilty of conspiracy if they agree to engage in or aid in planning the commission, attempt or solicitation of a crime and an overt act in pursuance of the conspiracy is alleged an proven to have been done by a member of the conspiracy. If the person who committed the overt act is acquitted, all other conspirators must be acquitted too. Abandonment of conspiracy is presumed if no overt act occurs during the applicable period of limitation. An individual abandons a conspiracy only if he advises the co-conspirators of his abandonment or if he informs law enforcement authorities. MPC rejects the notion of cumulative sentences for both conspiracy and its object offense. Under MPC, renunciation is a complete defense if the crime is successfully prevented. MPC requires subjective as opposed to objective belief of agreement.
Reason for MPC unilateral requirement is that a bogus agreement by undercover cop may encourage the Δ and conspirators are more dangerous than solo criminals. MPC: no overt act required for the most serious crimes; overt act required for less serious crimes.

Common Law Conspiracy (minority rule): @ Common law, there had to be at least two conspirators, and undercover cops did not count. Common law position has been rejected almost universally. MPC holds Δs liable for conspiring with an undercover cop (unilateral theory). Common law does not require an overt act, only an agreement. Withdrawal, even if adequate, could not absolve Δ from conspiracy itself, only liability for other conspirators’ subsequent crimes.

**Wharton’s Rule:** Where a crime requires more than one participant (i.e. bribery or adultery), a finding of conspiracy requires that at least one more than the minimum number of participants required for the act are joined in the agreement.

Insanity/Immaturity/Infancy are defenses to conspiracy; even if one co-conspirator is acquitted on these defenses, they can still factually conspire and the other co-conspirators can be liable.
**United States v. Payan** p.444

- ♂ was arrested attempting to import 2 stolen tractors into Mexico; ♂ was in possession of fraudulent invoices for tractors made out to Δ as purchaser; Δ claims he cannot be guilty of conspiracy b/c Wharton’s Rule stipulates that both the substantive & conspiracy convictions cannot stand b/c a conviction to aid/abet or conspire requires the involvement of at least 2 people; Δ wrong for several reasons: (1) well recognized that Δ can be guilty of both conspiracy and the substantive crime; (2) Wharton’s rule only applies to crimes that are impossible to commit w/o cooperation; (3) Wharton inquiries focus on statutory elements of a substantive offense, not the evidence used to prove those elements; (4) Wharton defenses only apply when the danger of conspiracy is not increased by having multiple actors; (5) Wharton’s rule is only to be applied in absence of legislative intent to the contrary.

**Gebardi v. United States** p.448

- Mann Act prohibits interstate transport of ♀ for immoral purposes; the Act does not punish a ♀ for transporting herself; issue of whether a woman can be convicted of conspiracy for a concurrence which is not in violation of the Mann Act; if it is impossible under any circumstance to commit the substantive offense w/o cooperative action, the preliminary agreement btw the same parties to commit the offense is not an indictable conspiracy either at common law or under federal statute.; it would be contradictory if the passage of the Mann Act effected a withdrawal by the conspiracy statute of the immunity conferred by the Mann Act itself; in some cases a ♀ could violate the Mann Act if they are instrumental in transporting themselves and not merely consenting to be transported or if a madam is transporting a hooker.

**People v. Swain** p. 451

- Doubt from facts of case over whether shooting was an intent to kill or a retribution for stealing run amok; Issue of whether specific intent to kill (proof of express malice) is a required element of the crime of conspiracy to commit murder, or whether one can conspire to commit implied malice murder; MPC provides that conspiracy is a specific intent crime, and in order to sustain a conviction for conspiracy to commit a particular offense, prosecution must show intent to agree and intent to commit the elements of that offense; b/c it can only be shown that Δ killed victim w/ implied malice, it would be illogical to conclude that one can be found guilty of conspiring to commit murder where the requisite element of malice is implied; conspiracy to commit murder requires intent to kill and cannot be based on a theory of implied malice.

**United States v. Loscalzo** p.456

- Δs were convicted of mail fraud & conspiracy to defraud the U.S.; Δ Stumpf argues that her role in the conspiracy was insignificant and her duties were merely clerical, so her participation could not be knowing & affirmative; Stumpf’s “clerical” role included filing annual reports such that a jury could have found that Stumpf’s actions were designed to deliberately conceal the fact that no minority was involved w/ the fraudulent corporation; court holds that knowingly furthering the aims of a conspiracy without actually being a member is still the crime of conspiracy; aiding & abetting need not be specifically pleaded and an aider & abettor may still be convicted of the substantive offense as long as no unfair surprise exists.

**People v. Lauria** (handout #5)

- Δ had a telephone answering service business; undercover agent bought Δ’s services while acting like a prostitute and Δ did not object; there was strong evidence of Δ’s knowledge that
some clients were prostitutes; not enough to convict Δ of conspiracy b/c it requires knowledge and intent to further the illegal activity; harder to prove intent; it requires (1) stake in the venture, (2) no legitimate use, (3) abnormally high volume of sales, (4) serious crimes involved (more so than prostitution); 2 precedent cases discussed and the regulation of products involved is a major factor; in *Falcone*, sale of sugar, yeast and aluminum cans to an illegal distillery is differentiated from *Direct Sales* where a doctor was selling abnormally large amounts of morphine to drug dealers; knowledge is not enough-one could still be completely indifferent if selling sugar to an illegal distiller or selling phone service to prostitutes.

*Pinkerton v. United States* p.459

- Δs (2 brothers) convicted of conspiracy to defraud and substantive tax fraud; Δ argues that there is insufficient evidence to implicate him in the conspiracy; although there was no evidence to show that Δ participated directly in the substantive offenses on which his conspiracy conviction is sustained, there was evidence to show that they were committed by Δ’s brother in furtherance of the conspiracy between them; because there was no evidence on affirmative action on Δs part to withdraw, Δ is guilty of conspiracy.

Agency law applies: once there is a continuous relationship and until withdrawal, each member of the conspiracy acts as an agent of the others (similar to felony murder doctrine).

*People v. Sconce* (handout #5)

- Δ offered $$ to Garcia to kill Estaphan; Garcia then found somebody else to do the killing for a share of the $$; after 3 weeks, Δ called it off; Cali. law requires an agreement and an overt act; after the agreement and overt act, withdrawal is not a defense to conspiracy, but a withdrawn party is no longer responsible for crimes subsequent to withdrawal; Δ is guilty of conspiracy; an overt act must be contemporaneous with or after the agreement; Garcia contacting Dutton was both an overt act and Dutton becoming a co-conspirator; once Dutton joins, he has no retroactive liability, only liability for acts subsequent to joining; Hypo: Δ called it off by telling Garcia, Garcia did nothing, then Dutton kills the victim; passage of time between calling off and killing may play a role; the best way to ensure one has called off is to call the police.

*Feola v. United States* (handout #5)

- Issue of whether knowledge that the intended victim is a federal official is requisite for the statutory conspiracy crime in question; Δs planned to rip off alleged heroin buyers w/ sugar and brought guns along to rob them of cash if the drug rip-off failed; Δs were charged w/ assault & conspiracy to assault feds; Δ contends that gov’t must show he was aware that his victims were feds in order to successfully prosecute Δ for conspiring to assault feds; court held that for the purpose of individual guilt or innocence, awareness of the official identity of the assault victim is irrelevant; unless the imposition of an “antifederal” knowledge requirement serves social purposes external to the law of conspiracy, the imposition here would only make it more difficult to obtain conspiracy charges; conspiracy laws identify the agreement to engage in a criminal venture as a sufficient threat to social order to permit the imposition of criminal sanctions for the agreement alone plus an overt act to further it regardless of the statutory crime agree upon is actually committed; Δs not knowing which body of law they are violating make them no less dangerous to society.

- The fact that a victim is a federal official is only a jurisdictional requirement to make a crime federal.
Marquiz v. People p.464
- 3 co-conspirators all have varying jury verdicts for conspiracy and murder; Δ (guilty of both) argues on appeal that conspiracy requires multiple parties, so since other Δs were not guilty of conspiracy, Δ should not be either; the rule of consistency os that where all alleged co-conspirators but one are acquitted of conspiracy, the remaining alleged co-conspirator may not be convicted, but a majority of courts hold that this rule is inapplicable when the alleged co-conspirators are tried in different trials; the reason for this is that different juries return different verdicts in different trials for a number of reasons; the evidence and the manner in which it is presented were viewed by juries will never be identical in 2 trials; the rule of consistency has its origins in a time when all alleged co-conspirators were routinely charged in the same proceeding; since the policies sought to be furthered by the rule of consistency are not served when co-conspirators are not tried in the same proceeding, Δ’s conspiracy conviction was affirmed on appeal.

People v. Foster (handout #5)
- Δ conspired with Ragsdale to rob the residence of an elderly man; Δ did not know Ragsdale was reporting him to the police; issue of whether unilateral or bilateral conspiracy theory applies to the statute; court holds that statute still encompasses bilateral theory despite changed the language from “two or more persons” to “a person;” the statute also provides it is no defense that the co-conspirators lacked the capacity to commit the offense-this part is encompassed by unilateral theory; court finds that legislature still intends requirement that 2 people actually intend to commit crime to be a conspiracy; IL has a solicitation statute that covers situations in which one could be convicted for conspiracy under the unilateral theory; IL Supreme Court affirms appellate court’s reversal of Δ’s conspiracy conviction.

G. Parties to Crime
Accomplice liability: accomplices are liable for the crime itself and all other foreseeable crimes; never impute accomplice liability from mere presence; b/c of foreseeability requirement, accomplices must be actively in on the crime.

4 Common law parties to a felony:
i. 1st degree principal: Criminal actor who causes a criminal result through an act or omission or causes an incapable agent to so act.
ii. 2nd degree principal: Is present at the scene of the crime helping the 1st degree principle carry out his act.
iii. Accessory before the fact: Procurks, counsels or commands the commission of a felony but is not present at the commission of the criminal act.
iv. Accessory after the fact: Knowledge of the felony, personal assistance to the felon and assistance to hinder detection arrest, trial or punishment; separate crime from the other parties a.k.a. harboring a felon/fugitive or obstructing justice.
-At common law, a principal had to be convicted before an accessory; in most jurisdictions this is no longer true;
-The distinction between 1st degree principal, 2nd degree principal & accessory before the fact have been abolished by many states and all three receive the same punishment; now 2nd degree principals and accessories before the fact are both considered accomplices.
People v. Beeman p.491

- Δ was not present during commission of robbery et. al.; issue of whether Δ had intent to be convicted as an aider & abettor; on day of robbery, Δ told principals on the phone that he wanted nothing to do with the robbery but that he would not say anything if the others went ahead; Δ’s conviction of aiding and abetting was reversed, b/c his involvement did not meet required elements of knowledge and intent to further the commission of the crime; only evidence of Δ’s intent is not calling the police; the facts from which a mental state can be inferred must not be confused with the mental state that the prosecution is required to prove.

State v. Hoselton (handout #6)

- Δ stood outside a barge while his friends broke in and stole equipment; Δ had no prior knowledge of other Δs conduct, did not receive stolen property, did not assist with moving stolen property or take any of it; Δ made a single statement: “you could say” he was a lookout; this statement alone cannot establish that Δ was aiding & abetting a larceny.

State v. Foster (handout #6)

- Δ’s girlfriend was raped; Δ sought revenge, found the suspected rapist, beat him up, then told a friend to keep him at bay with a knife; while waiting for Δ to return, rapist charged toward Δ’s friend (rapist had a razor in his pocket) and Δ’s friend fatally stabbed the rapist; issue of whether Δ was an accessory to criminally negligent homicide; Δ claims no accessorial liability b/c he did not intend for the principal to commit the crime with which he is charged; court rejects this argument b/c accessory liability is different from specific intent crimes like attempt/conspiracy-it is not a crime itself only an alternative means for a substantive crime to be committed; accessorial liability does not require a Δ to act with a conscious objective to cause the result described by a statute; Δ met elements of being an accessory to criminally negligent homicide b/c he had the culpable mental state for the crime and he intentionally aided his friend in the commission; no self defense argument b/c victim was kidnapped and citizen’s arrest is rarely allowed. (Felony murder could have also applied)

State v. Linscott (handout #6)

- Δ charged w/ robbery & murder; Δ intended to promote & assist in commission of robbery but not murder; court upholds murder conviction under the foreseeable consequence rule of accomplice liability; Δ intended to commit or promote robbery, robbery was committed, murder was a natural & probable consequence of the robbery; this could have also been a felony murder prosecution as well as accomplice/accessory to murder-felony murder theory would encompass a broader range of homicides than accomplice liability theory; this could only be prosecuted as a conspiracy to commit robbery, not for murder.

Bowell v. State (handout #6)

- In order to convict Δ as an accomplice to 1st degree sexual assault, court must show Δ’s knowledge of sexual assaulter’s intent, Δ aiding or abetting sexual assault and Δ’s reckless disregard of victim’s lack of consent.

State v. Vallaincourt (handout #6)

- Mere presence (Δ was hanging out w/ his buddy & talking to him intermittently while he tried to break into a house) is not enough to aid/abet even with knowledge b/c one must promote the crime; actus reus requirement not satisfied, even if mens rea is satisfied. Dissent thinks that furnishing moral support and encouragement is enough to aid and abet.
**People v. Genoa** (handout #6)

- Crime of aiding and abetting possession of cocaine could not be committed by an undercover police setup because Michigan law requires actual commission of crime, Δ’s aiding & assisting and Δ’s intent to commit crime or knowledge that the principal intended its commission; w/o actual commission, Δ cannot be convicted; court blames this on a gap in the legislation.

**People v. Brown** (handout #6)

- Δ and 2 friends plan to steal car and wreck it; Δ kicked the door twice and it didn’t open; Δ’s friend kicked down the door, while the other friend waited in front of bldg; after kicking down the door, all 3 left w/ completing the burglary; Δ charged w/ attempted burglary; Δ argued no substantial step (rejected) and abandonment (rejected b/c termination occurred after commission of crime); court affirms attempted burglary charge b/c the offense had occurred prior to Δ’s withdrawal.

**State v. Williams** p.505

- In order to be an accessory after the fact, three elements are necessary: (1) principal committed the crime, (2) Δ knew, (3) Δ assisted; until felony is complete (victim dying), a person cannot be an accessory after the fact; at the moment of shooting, some crimes had already been committed (assault w/ intent to kill & attempted murder); prosecution was flawed-prosecutor could have gone for accessory to another crime; this depends on timing of victim’s death and filing of indictment; since victim had not died, Δ could not be an accessory to felony murder.

**State v. Truesdell** p.507

- Issue of whether principal’s immunity from criminal liability (12 yrs old) is a bar to Δ’s liability for being an accessory after the fact; court holds that Δ can still be liable; kid’s immunity does not change factual or legal status of the Δ; Δ could have come clean by calling the police immediately; parent may have a statutory or common law relationship duty to prevent their child from killing with a handgun.

**MPC on Liability for Conduct of Another; Complicity** p.509:

- A person is legally accountable for the conduct of another person when acting with the kind of culpability sufficient for commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or is made accountable by the Code or is an accomplice of another person in the commission of an offense.

- A person is an accomplice if he solicits, aids, agrees or attempts to aid, fails to exercise legal duty to prevent, or conduct is expressly declared by law to establish complicity.

- A person is not an accomplice if they are a victim of the offense, the offense is defined so the person’s conduct is inevitably incident to its commission or he terminates his complicity prior to commission of the offense or wholly deprives it of effectiveness in commission of the offense or warns law enforcement authorities.

- It is an offense to purposefully hinder apprehension, prosecution, conviction or punishment of another by harboring or concealing the other, provides means of avoiding apprehension or effecting escape, conceals or destroys evidence, tampers with a witness, informant, document or other source of evidence regardless of its admissibility, warns the other of impending discovery or apprehension, or volunteers false information to authorities.
H. Responsibility: Modifying Circumstances
   1. Ignorance or Mistake
      1a. Ignorance or Mistake of Law p.805

State v. Cude p. 807
   - Mistake of law is a defense in this case; repair bill on Δ’s car exceeded the estimate and Δ believed that he had the right to his car (so he could sell it to pay the bill); Δ lacked the requisite mental state for larceny (intent to deprive); the mistake was actually a property issue (bailor/bailee rights); mechanic has a limited possessory interest until the owner pays the bill; if Δ did not think the mechanic had the possessory interest, then there could be no intent to deprive; lack of intent to deprive is a defense to larceny.

People v. Marrero p. 809, Robinson p.35
   - Δ (federal prison guard) violated law by carrying a handgun w/o a permit into a NYC nightclub; Δ’s defense was that he misunderstood the law, a gun dealer told him he could carry the gun and he read the statute to mean that he was a peace officer (included state prison guards, excluded federal guards); if there is a legitimate error in the statute that is contradictory to legislative intent, it’s a valid defense; but a misunderstanding of what the law is and should be is not a defense b/c of slippery slope problems; if a person responsible for issuing gun permits told Δ he didn’t need a permit, then it is a valid defense of being misled by an official statement of the law, even in malum prohibitum situations; a gun dealer is not an official statement of the law; Δ’s case went through several dismissals, appeals and reversals; Δ ended up with 3 yrs. in prison, $500 fine, lost his job as prison guard; is it telling that so many judges disagreed?
   - What about the fact that Δ endangered everyone by carrying a gun into a nightclub?

People v. Weiss p.815
   - Δ’s confined a victim without lawful authority; issue of whether they believed in good faith they were acting within the law; if yes, there could be no intent to act without authority of the law-reversed and remanded
   - Dissent: mistake is no defense to kidnapping w/o lawful authority (actually it is a specific intent crime with a mistake of fact defense).

Lambert v. California p.820
   - Status oriented law; Δ’s status as felon and failure to register violates the law; if law is uncommon (as this one was at the time), actual knowledge is required, otherwise there is no notice (lack of due process); if Δ had been given actual notice or if circumstances had given Δ notice, no defense; for wholly passive conduct, not customarily subject to regulation, lack of notice is a defense.

The Case of Linda Ruschioni, Robinson p.62
   - Δ finds winning lottery ticket on the ground ($4 face value) and cashes it in; this violates a new law (unknown to Δ) requiring finders of anything worth more than $3 to turn it over to the police; is no notice of statute a defense or is this malum in se wrongful conversion? Lottery commissioner gave official statement of law to Δ that she could cash in the ticket? Is the lotto official qualified to give notice about finders laws? Δ was never criminally charged b/c police and local prosecutor had never heard of the law.
Long v. State p.823
- Issue of whether Δ has a valid mistake of law defense to his violation of the bigamy statute; Δ claims to have consulted with a lawyer to ensure he was in compliance with the law; reliance on a lawyer is a defense if: (1) lawyer is licensed and competent, (2) relied upon in good faith, (3) Δ fully disclosed all facts to the lawyer, (4) lawyer was consulted before the illegal conduct; not a defense if Δ shops around for a lawyer that tells him what he wants to hear; Δ must show he did everything by the books and be held to a very high standard; case remanded with legal consultation defense instruction;
  - General intent issue: remarrying in general is not a social harm; bigamy prosecutions are not often instigated b/c bigamy is not a serious social problem; bigamy does not require a culpable mental state, only an intent to marry.


MPC on Ignorance or Mistake p.828
Ignorance or mistake of fact or law is a defense if the ignorance or mistake negatives the mental state or the law provides that the state of mind established by such ignorance constitutes a defense.
The defense is not available if the defendant would be guilty of another offense had the situation been as he supposed, but in this situation the grade and degree of the offense is reduced to what the defendant would have been guilty of if the situation had been as he supposed.
A belief that conduct does not legally constitute an offense is a defense if the actor is unaware of the statute and has not been made reasonably aware of the statute prior to the conduct alleged or if the actor acts in reasonable reliance upon an official statement of the law (statute, judicial opinion, administrative order or grant of permission, or an official interpretation by a public officer charged by law to interpret) that is afterward determined to be erroneous.

1b. Ignorance or Mistake of Fact p.829
People v. Vogel p.832
- Different from Long b/c Δ made a mistake of fact instead of mistake of law; in this case, Δ’s wife claimed to be remarried and Δ relied on these facts w/o consultation; Δ’s bigamy conviction still reversed, b/c the same evidence that would tend to prove an actual marriage could reasonably for the basis for Δ’s honest belief that there was such legally entered marriage and therefore he was free to remarry.

People v. Cash p.839
- Δ’s (age 30) statutory rape conviction was affirmed, despite mistake of fact about victim’s age; victim told her she was 17 when she was actually 15; statutory rape is a strict liability offense where the actual and not the apparent age of the victim governs; the statute is intended to protect children below a certain age b/c of their presumed mental immaturity; also reasonable mistake is not a defense b/c an adolescent’s apparent age can change dramatically between commission of statutory rape and time of trial. (also in this case, victim may have consented to sex w/ Δ out of fear of being harmed if she did not).

People v. Crane p.844
- Δ beat victim in self defense and thought the victim was dead; then burned the body while victim was still alive to get rid of the evidence; trial convicted of murder, then appellate ct. reversed remanded and IL Supreme Court affirmed, holding that the trial
court erred in denying the Δ an instruction on mistake of fact b/c whenever there is some foundation for the instruction in the evidence, it is an abuse of discretion for the court to refuse to instruct the jury on mistake of fact.

I. Responsibility: Limitations on Criminal Capacity

1. Immaturity (Infancy) p.703

At common law, no criminal liability for anyone under 7 and a rebuttable presumption of criminal liability for anyone under 14.

2. Drunkenness (Intoxication) p.774

i. Voluntary intoxication-only a defense for specific intent crimes, but no other crimes.

ii. Involuntary intoxication is a form of insanity and is a defense to all crimes including strict liability offenses.

State v. Cooper p.777

Δ took amphetamines for several days, was driving recklessly, shot & wounded cop during pursuit and kidnapped a man at gunpoint; Δ plead intoxication defense of insanity; court affirmed conviction of kidnapping & assault w/ deadly weapon b/c voluntary intoxication is not a defense to a crime, only admissible to show lack of specific intent; Δ’s burden to overcome presumption of sanity was not met.

State v. Brown p.784

Issue of whether a person may be guilty of public drunkenness when they did not knowingly get drunk.

Burrows v. State p.786

Issue of whether Δ’s intoxication was voluntary or involuntary, nature of Δ’s duress (contributing or controlling); do Δ’s acts after killing the victim (hiding body, stealing $, going to Denver) bode well for an intoxication defense?

MPC on Intoxication p.800: Intoxication is not a defense unless it negates an element of the offense; if intoxication causes unawareness of risk when recklessness establishes an element of the offense, the unawareness is immaterial; intoxication does not constitute mental disease; involuntary or pathological intoxication is an affirmative defense if the actor at the time of his conduct lacks substantial capacity to appreciate the conduct’s wrongfulness or conform his conduct to the requirements of the law.

Commonwealth v. Graves (handout #7)

Robbery & burglary are specific intent crimes where intoxication defense applies; does this specific intent requirement serve as an incentive for criminals to get drunk before committing their crimes? Does preconceived plan play a role? Was reckless since he took drugs and got drunk? Court held that trial court erred in refusing to allow the jury to decide the possible effect of wine & LSD on Δ’s capacity to form specific intent; murder one overturned b/c jury was given the option to consider felony murder; Dissent believes that an individual who places himself in a position to have not control over his actions must be held to intend the consequences.

J. Defenses

- Defense of Duress & Necessity: defense to allcrimes except homicide.
- Mistake of Fact: Only when it negates intent; the mistake must be reasonable for malice or a general intent crime.

i. Mistake is always a defense for a specific intent crime.

ii. Mistake is never a defense for a strict liability crime.
Mental State of Crime | Application of mistake of fact defense
--- | ---
Specific Intent | Any mistake, reasonable or not
Malice & General Intent | Reasonable Mistakes Only
Strict liability | Never

- Consent of victim is almost never a defense. (adult consenting to sex is a rape defense, adult consenting to travel is kidnapping defense, medical patient consents to “battery” by doctor)
- Entrapment is almost never a defense because pre-disposition on the part of Δ to commit the crime negates the entrapment.
- Voluntary intoxication or mistake of fact (no matter how silly) can reduce murder one to murder two or common law malice murder.

1. **Self-Defense** p.930
   i. Non-Deadly: A victim may use non-deadly force anytime the victim reasonably believes that force is about to be used on them.
   ii. Deadly majority rule: A victim may use deadly force if they have a reasonable belief that deadly force is about to be used on them.
   iii. Deadly minority rule: same as majority, but requires effort to make a retreat w/ 3 exceptions: (1) in the home, (2) if a victim of rape or robbery, (3) police officers.
   iv. Original aggressors never have the defense of self defense unless the original victim dramatically escalates the amount of force being used.

 State v. Realina p.934
 People v. LaVoie p.938
 People v. Goetz p.940
 People v. Humphrey p.948
 People v. Ligouri p.955
 Brown v. United States p.957
 Cooper v. United States p.963
 State v. Broadhurst p.971

MPC on Self-Defense p.973:
- Use of force 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.
- Force is not justified to resist an arrest made by a peace officer, even if unlawful or to resist force or to resist force used by the occupier or possessor of property or by another person on his behalf when the person using the force is exercising their right to protect property (with a few exceptions)
- Deadly force is not justifiable unless the actor believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping or forcible rape.
- Deadly force is not justifiable if the actor provoked the use of force against himself in the same encounter; if the actor knows he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a chattel or by complying with a demand that he abstain from any action that he has no duty to take (unless in their dwelling or workplace or a they are police officer).

2. **Defense of Others**
   Δ must reasonably believe that a person needed help when Δ jumped into the fight.
MPC on Defense of Others p.986: The use of force is justifiable to protect a third person when the actor would be justified in using such force to protect himself, the person he seeks to protect would be justified in using such protective force and the actor believes his intervention is necessary. Unlike in self-defense, an actor is not obliged to retreat, surrender possession of a thing or comply with a demand before using force for the protection of another person.

3. Defense of the Habitation p.987

State v. Mitcheson p.987

People v. McNeese p. 990

4. Defense of Property p.997

Deadly force may never be used solely to defend property (no spring guns)

Commonwealth v. Donahue p.1000

People v. Ceballos p.925,1002

MPC on Defense of Property p.1003

- Force is justifiable when the actor believes it is necessary to prevent or terminate unlawful entry or unlawful carrying away of movable property, to effect re-entry onto land or retake movable property when the actor believes the person against whom he uses the force has no claim of right to possession of the property and believes the circumstances are of such urgency that it would be exceptional hardship to postpone entry or re-entry until a court order is obtained.
- The use of force is only justifiable if the actor first requests that the person against whom force is being used desist from interference with the property unless the actor believes such request would be useless, it would be dangerous to make the request or substantial harm will be done to the property before the request can effectively be made.
- The use of force to prevent a trespasser is not justified if the actor knows that exclusion of a trespasser will expose him to substantial danger of serious bodily harm.

The Case of Johann Schlict, Robinson p.102

K. Responsibility: Limitations on Criminal Capacity

1. Mental Disease or Defect (Insanity)

4 Insanity Defenses:

i. M’Naughten rule: If at time of crime, Δ lacked ability to know wrongfulness of actions or understand the nature & quality of his/her acts.

ii. Irresistible Impulse: Δ lacked capacity for self control/free choice

iii. Durham rule: Δ’s conduct was a product of mental illness.

iv. MPC rule: Δ lacked ability to conform conduct to requirements of law.

**Strict liability crimes did not qualify for intent defenses, but they do qualify for insanity defense**

State v. Fetters p.741

State v. Smith p.745