Criminal Law Outline

General Principles of Criminal Law

- Statutes are void when they fail to give a person fair notice that conduct is forbidden – if factors are to be considered the statute must rank their offensiveness to give some guide to the D. Suspicious acts are not enough for an offense.
- Some subjectivity in a statute is acceptable if the state can still show mens and actus reus to prove the offense.

Acts and Omissions

- Jurisdictions differ on what it means to be in control of an automobile – some say that since a car can move on its own (brake fails) a D could be behind the wheel and not be “driving.”
- Prior awareness of an impaired condition (epilepsy) creates criminal liability for any accidents that happen b/c of the condition. This is criminal N as knowledge of the condition and a loss because of it gives you both the guilty mind and act.
- **MPC** – Possession exists if D knowingly procured or received the thing or was aware of his control long enough to have been able to terminate the possession. D will not be guilty of possession if it based on an involuntary act or if it is found in urine.
- At common law there is no duty to rescue or provide aid – a breach of this duty can only be created by statute or by voluntary assumption of the duty or special relationship.
- If a D could show an explanation for the withholding of food or care, then it is not murder but criminal N.
- If the statute criminalizes “willful omission”, and then the state must prove D’s willful absence/omission – the mere fact that it happened was not enough.
- Criminal N is evaluated objectively, so in case of prayer rather than medical care – D behavior might be N despite their beliefs.
- 4 situations exist where the failure to act may create a breach of a legal duty that a D can be criminally liable for 1. Statutory duty 2. Special relationship 3. Assumption of a K duty 4. Voluntarily assumed the car of another and isolated them from others.
- Duty must be proved before you can be convicted of failure to perform, but the failure to perform must be reasonable – a father is not guilty of failing to pay child support if he has no money with which to pay.
- D can be held liable for the actions of a servant when the behavior is egregious and D was present. D had a duty to control his car and the driver he hired to transport him.
- If D voluntarily places another in a position of peril, then that creates a duty to the endangered person. D will be liable if the person at risk is injured in a foreseeable manner. D would be guilty of criminal N.
- An act can not be proven by proof of state or condition – thus addiction can not be criminalized – too difficult to prove. The state can criminalize being under the influence b/c the state has an interest in curbing antisocial/destructive behavior.
- **MPC** - Acts must be voluntary and there will be no liability for omission w/o action unless the omission is barred by statute or a duty to perform is created by law.

**Criminal N**

- The standard for criminal N is an unreasonable risk of harm or deviation in standard of care that is so great. Beyond criminal N is reckless behavior.
- In civil law systems, the standard for criminal N is roughly equal to civil N standards.
- If a doctor’s actions are consistent with his beliefs and standards, he still could be guilty of if his treatment grossly errs in treatment to the detriment of the victim.

**Mens Rea**

- There is a strong preference for requiring mens rea for a conviction even when that makes a conviction more difficult.
- For mens rea to exist there must not be a factor that removes blame and there must be an intent to do the deed or a substitute (like criminal N).
- D can not absolve himself of liability having started a criminal N act – liability is not a light switch – all elements of the criminal act must cease to remove liability. (Drag Racing case).
- We use an objective standard for N, but a subjective standard for reckless conduct.
- If a risk is unjustifiable, then it is reckless.
- You can allow for transferred homicidal intent for manslaughter/criminally N homicide such that “intent follows the bullet.”
• D is reckless if 1. D is aware of risk 2. Consciously disregarded by D 3. It was substantial and unjustifiable

• Manslaughter requires an awareness, but conscious disregard of a substantial risk. Criminal N consists of being unaware of a substantial risk D should have been aware of. The death of another than the intended victim is no defense when the charge is criminal homicide. If D had the suitable mens rea, then he can be convicted of criminal N/manslaughter/murder no matter who gets hit.

**Specific Intent**

• SI crimes require an intent to do some further act or cause some additional consequence beyond that that must have been done to satisfy the actus reus. Ex: burglary requires an intent to commit a felony in addition to the actus reus of breaking and entering. SI can not be inferred from the acts the way general intent can. Proof of SI is required – although circumstantial evidence can be used.

• Specific Intent crimes are solicitation, attempt, conspiracy, premeditated murder, assault, larceny, robbery, burglary, forgery, false pretenses, and embezzlement.

• You can not be held responsible for more than you can did/attempted to do – D could not be convicted of attempted murder when he shot at a light but almost hit a person.

**Special Mental States**

• Malice – is a state of mind meaning an intent to do the very harm done or harm of similar nature with a wanton, willful disregard of the obvious likelihood of causing such harm with no implied justification, excuse, or mitigation (no ill will or hatred).

• A D has malice if he has intent to do the crime w/o justification, legal excuse, or mitigation or he has a wanton and willful disregard of the plain and strong likelihood that harm will result from the acts.

• When a statute requires malice – this is literally a harmful state of mind – what would be civil N or a minor criminal violation is not enough to be malice.

• Knowingly -- There is a division on a subjective or objective approach when statutes criminalize selling something “knowing it to be stolen.” The majority uses a subjective approach to determine if D knew the goods were stolen.
• Willful blindness and positive knowledge have been found to be equally culpable – high probability can be knowingly. The state must show that if D was not aware it was b/c he was willfully blind.

• **MPC** defines knowledge, as D knows something if a high probability exists unless D actually believed that it did not exist.

• **Willful** -- willfulness denotes a voluntary, intentional violation of a known duty – no proof of motive. This is tried based on D’s beliefs – so we do not penalize mistakes.

• When something is done willfully – there is no attachment of good/bad will – anything but error or accident is willful.

• **MPC** – eliminates the distinctions of general and specific intent. MPC creates four categories that the mental components of offenses fall into. They are easier to use than general/specific intent.
  
  • **Purposely** – a person acts purposely when it is his conscious object to engage in certain conduct or cause a certain result
  
  • **Knowingly** – a person acts knowingly when he is aware that his conduct is of that nature or that certain circumstances exist “When conduct will necessarily or very likely cause such a result.” Knowingly satisfies willfulness for certain crimes.
  
  • **Recklessly** – a person is reckless when he consciously disregards a substantial or unjustifiable risk that circumstances exist or that a prohibited result will follow and this is a gross deviation from the standard of care that a reasonable person would use. Recklessness requires that the actor takes an unjustifiable risk and that he knows of and consciously disregards the risk. D must know that an injury might result, if he knew it would result then he acted knowingly. **Recklessness involves both objective (unjustifiable risk) and subjective (awareness) elements.**
  
  • **Negligence** – A D is negligent when he fails to be aware of a substantial and unjustifiable risk, and such failure is a substantial deviation from the standard of care that a reasonable person would use. To determine a D’s N, an objective standard is used. Criminal N is more than tort N – D must have acted very unreasonable in light of the usefulness of the conduct, D’s knowledge of the facts, and the nature and extent of the harm that may be caused.
Strict Liability

- Strict liability is applied to mala prohibitia – bad acts without any requirement of mens rea (mostly civil offenses). Mala in Se – are acts that are bad in themselves (murder) mens rea is attached to these offenses.

- To see if it is a strict liability crime you look at 1. Is it a civil offense or a true crime? 2. Does the statue create a mens rea component? 3. If it is a true crime, has the statute eliminated the mens rea requirement?

- Older cases hold that if an act is done with criminal intent then an unintended killing that results because of this act can be charged to the D. Ex: A D shoots at chickens to steal them, but he hits and kills another person, the D is guilty of murder. If a D shoots at a turkey for sport, then D is innocent of any crime. Minor offenses will not allow for this type of application. (The state is searching for a substitute for a culpable mental state.)

- D can sometimes inject knowledge/mens rea into strict liability crimes. Ex: D is charged with obstructing justice after preventing treasury agents from seizing his car. D did not know that they were agents and would have been allowed to prevent people from taking his car.” D’s knowledge was at issue despite the strict liability crime.

Offenses

Homicide

- Homicide is divided into justifiable (commanded or authorized by law), excusable (where a defense to criminal liability existed), and criminal divisions.

- Common Law divides criminal homicide into three different offenses.

- Murder is the killing of a human being with malice aforethought. Malice can be express or implied. Malice aforethought exists when…
  - Intent to kill (express malice)
  - Intent to inflict great bodily injury
  - Reckless indifference to an unjustifiably high risk to human life (depraved heart)
  - Felony Murder – traditionally limited to arson, robbery, burglary, rape, and kidnapping.
• MPC - homicide is murder when it is committed purposefully or knowingly or committed recklessly under circumstances manifesting extreme indifference to human life – this is presumed if felony murder exists.

• **Voluntary Manslaughter** – is an intentional killing in the face of adequate provocation (a killing in the heat of passion). Unlawful homicide without malice aforethought. The elements of provocation are

  1. The provocation must be one that would arouse sudden and intense passion in the mind of an ordinary person.
  2. D must have been provoked
  3. A cooling off period that would have allowed an ordinary person to cool off must not have happened
  4. The D did not cool off between the killing and provocation.

• Traditionally, if a D found his spouse cheating or was subjected to serious battery or a threat of deadly force is enough for sufficient provocation. Traditionally, mere words were not enough for provocation.

• MPC – Homicide is manslaughter when it is committed recklessly or when it would be murder but it was committed under extreme mental/emotional distress for which there is a reasonable explanation or excuse. There is no cooling off period in MPC – the disturbance is examined from a subjective standpoint looking at things as a person in the D’s situation would from the D’s standpoint.

• **Involuntary Manslaughter** – the intentional death of another either in the commission of an unlawful inherently dangerous act, no a felony, or in the commission of a lawful act in a criminally N manner. This can only result from a gross deviation from a reasonable standard of care in similar circumstances. Another term is reckless. An example would be jesting with a loaded gun that causes death.

• The wanton or reckless nature of the act is determined by the conduct itself – not by what happened. A D can be careless which results in death but not necessarily be guilty of involuntary manslaughter. But, a gross deviation from a reasonable standard of care that results in death can suffice to uphold a conviction of N homicide/involuntary manslaughter.

• If a death is caused by criminal negligence, the killing is involuntary manslaughter. Again criminal N is greater than civil N

• Also, if the killing is caused by an unlawful act it is involuntary manslaughter.
- **MPC** – Criminal homicide is N homicide if it is committed N

- **Murder**
  - For a charge for an injury to a fetus, the baby must be born alive before charges can stay.
  - The manner of death (although unintended by D) can allow for a murder conviction – bombs. The use of a severely deadly weapon can create a presumption of malice.
  - Premeditation requires a cool mind capable of reflection, actual reflection, and can be instantaneous. To prove premeditation you must use circumstantial evidence.
  - Mercy killings most likely fall under first degree even though malice is lacking – there is often premeditation. Possibility for manslaughter – “heat of passion.”
  - No degrees of murder at common law – some states say 1st degree is felony murder and willful, deliberate and premeditated. 2nd degree is everything else.

- **Felony Murder**
  - Most courts limit felony murder to certain listed felonies.
  - When felony murder is combined with conspiracy, if a killing furthered the conspiracy and was foreseeable, then all felons are liable.
  - If a D is not guilty of the underlying felony, then he can not be convicted of the killing.
  - The felony can not be merged into the murder. Ex: If D wanted to stab the victim, and the victim died of the stab – no felony murder.
  - Any killings that happen after Ds reach a place of safety can not be prosecuted under felony murder.
  - Most courts find that felons can not be found liable for the deaths of co-felons by police.

- **Causation**
  - There tends to be a split on agency v. causation theory when trying to determine liability stemming from felony murder. Agency theory only holds the felons responsible for deaths caused by the Ds. Causation casts a much broader net creating strict liability for all deaths stemming from the felony.
  - When causation is an issue, the D must be the cause in fact and proximate cause of loss.
• A D is responsible for all results that occur as a “natural and probable” consequence of conduct – D proximately causes all results. Only a superseding factor can break the chain of liability.

• D takes his victim as he finds him but an intervening act outside the foreseeable sphere of risk created by D absolves D of liability. D is responsible for death if he shoots at a boat and a person jumps out of the boat and drowns.

• When analyzing a homicide case you must look at…
  1. Did the D have a state of mind sufficient to be malice aforethought?
  2. If D did have malice aforethought, can D to be charged with first-degree murder?
  3. Does evidence exist that would reduce the charges to manslaughter
  4. If the answer to 1 is no, is there evidence to show the crime is involuntary manslaughter?
  5. Is there adequate causation between the D’s acts and the victim’s death – was D’s act the factual cause of death? Did anything break the chain of proximate causation?

**Attempt**

• To prove an attempt the state must show 1. Intent to commit the crime 2. Performance of some act towards the commission and 3. Failure to consummate that act

• Attempt is comprised of the specific intent to commit the crime and a direct, but ineffectual done towards its commission. You can not attempt a crime of negligence. Also you must have intent to attempt to commit a strict liability crime.

• At common law, felonious intent is not enough to convict someone of an attempt (robbers arrested in a car outside a bank can not be convicted). Common law looks if the Ds were in
  1. Dangerous proximity – D must have come dangerously close to success for attempt or
  2. Probable Desistance -- the state must demonstrate D had no other choice to commit or
  3. Last proximate act – nothing else to do (poisoning Tylenol and putting them in the bottle.)

• Attempt allows for D to be convicted of the attempted crime and the crime.

• At common law, abandonment is never a defense.

• **MPC** – A person is guilty of attempt to do a crime if with a guilty mind he (a) purposely does something that would be a crime if the circumstances were as he thought (b) when he tries to cause a result that is criminal (c) does or omits to do an act that is a substantial step towards a
crime – substantial step can be unlawful entry to commit a crime, possession of the materials to commit a crime, etc.

- A person who aids or tries to aid another to commit a crime is guilty of an attempt even if the crime is never committed.

- **MPC** – If a D would be guilty of an attempt, it is an affirmative defense that he abandon his efforts or prevent the crime from being committed, to show a complete renouncement of his criminal purpose. Renunciation is not voluntary if it is motivated by facts that did not exist at the crime’s inception, which increase the probability of arrest/punishment. Renunciation is also not complete if the actors agree to postpone the crime until later. **One actor’s renunciation does not affect accomplices.**

- Unforeseen circumstances (victim not being there, bank is locked) can still allow for a conviction for an attempt.

### Conspiracy

- Conspiracy is separate from whatever crime is being committed and originates in fears that groups pose a greater threat to society than individuals do. Conspiracy lives somewhere between solicitation and attempt. Conspiracy is a combination or agreement between two or more persons to accomplish some criminal or unlawful purpose, or to accomplish a lawful purpose by unlawful means.

- **Wharton’s Rule** – When a substantive offense necessarily requires the participation of two people and when no more than two people are involved in the crime, then conspiracy will not be charged. Thus, if one member of a two-person conspiracy can not be convicted, then no conspiracy can be charged.

- Conspiracy is a specific intent crime – intent to agree and intent to commit the offense

- A person can conspire and aid and abet the offense without a problem

- **Pinkerton Rule** – If the substantive act of a co-conspirator furthered the conspiracy, then it is chargeable against all co-conspirators. Not recognized by the MPC

- To make a supplier of goods guilty of conspiracy the state must prove knowledge and intent. This can be done by 1. Showing what the supplier knew 2. If there were no legitimate use for the goods or services 3. Ds stake in the criminal venture
• There can be two types of conspiracies the “chain” where each member is linked by a common goal or purpose (drug deals) and the “wheel and hub” where there is a connector to many separate conspiracies. Only in the chain type conspiracies can all members of the conspiracy be held liable for the actions of the other members.

• Conspiracy to commit a “strict L” crime requires intent.

• Impossibility is no defense to a charge of conspiracy.

• **Rule of Consistency** – If co-conspirators are tried together then enough of them must be convicted for a conspiracy charge to hold. If they are tried separately then there are no problems with the rule of consistency. MPC does not follow

• Common law says that withdrawal from a conspiracy is not a defense b/c the conspiracy is complete as soon as the agreement is made and an overt act is committed. A communicated withdrawal or removed assistance would stop D’s liability for any further acts of the conspiracy members.

• **MPC** – As long as a person knows that a co-conspirator has conspired with others, he is guilty of conspiring with them even if he does not know their identity. But, conspiring to commit multiple crimes is only one charge of conspiracy as long as the crimes are the object of the first conspiracy.

• It is a defense to conspiracy that an actor thwarted the success of the conspiracy with a complete renunciation of his criminal purpose.

• **MPC** – Some statutes and the MPC allow for a unilateral conspiracy to allow for convictions of a guilty party and an undercover agent etc. This allows for convictions without dangerous acts being performed by the criminal mind.

• Conspiracy is a course of conduct that is only ended when the crime is committed or when the parties abandon the agreement. This is presumed if no overt act is taken during the applicable period. If only one member of the conspiracy abandons the agreement, then his liability is only cut off if he tell the authorities or his co-conspirators of his withdrawal.

• A person can not be convicted of more than one offense of solicitation, conspiracy, or attempt stemming from the same crime.
Solicitation

- Solicitation consists of getting another to commit a felony with the specific intent that the person solicited commits the crime. No agreement is necessary, the person solicited committed the crime then the solicitor is guilty of whatever acts he started.
- Attempt is not solicitation.
- Impossibility, withdrawal/renunciation, and exemption from the crime are no defense to solicitation.
- **MPC** – A D is still guilty of solicitation if the request is never communicated. It is an affirmative defense to solicitation that after the communication the D persuaded or prevented the crime while renouncing his criminal purpose. It is a further defense that if the crime were committed, the actor would not be guilty of the crime as a principal or accomplice.
- A person may not be convicted of more than one offense of attempt, conspiracy, or solicitation from one criminal purpose.

Aiding and Abetting

- **Principal** – someone who actually engages in the act or omission with the requisite mental state.
- **Accomplice** – one who aids, counsels, or encourages the principal before or during the crime.
- **Accessory After the Fact** – Someone who helps another knowing that he has committed a felony – the crime must have been completed by the time the aid is rendered. Most jurisdictions have eliminated the distinctions between principals and accomplices.
- In the absence of a statute, mere knowledge that a crime would result from the aid given is not enough to convict. If the aider gained some benefit or the aid given was illegal, then the aider is criminally liable.
- To convict and aider and abettor they must 1. act with the knowledge of the criminal purpose of the perpetrator and 2. with the intent or purpose of committing, encouraging, or facilitating the offense.
- There is no need to identify, apprehend, or convict the principal; if a D can not be convicted as a principal then she could easily be charged as an accomplice.
- Mere presence or moral support at the scene of the crime is not enough to convict as an aider and abettor.
• Accessory liability does not require a D to act with a conscious objective – the D must have the appropriate mental state. Requisite mental state and aid to another create the substantive offense of aiding and abetting.

• Not all jurisdictions recognize that accomplices are liable for reasonable, foreseeable consequence of the criminal act so long as they aider/abettor has the same culpability as a principal. The problem is that foreseeable consequences allow for D to be convicted with no analysis of his subjective mental state.

• Another view, when D raises a lack of mens rea for certain crimes is to have the state prove that D intended to promote the conduct, disregarded the victim’s objections, and D aided and abetted the principal – it is possible for D to promote conduct but lack the mental state.

• It is impossible to aid and abet a crime that never happened because it never happened. Ex: a police sting

• A D can escape liability as an aider and abettor if he removes or renounces whatever aid he gave the principal. He can also notify the authorities to prevent the commission of the offense. Withdrawal must occur before the chain of events leading to the crime becomes unstoppable – If D stops in the middle of the criminal act but before it is completed, the common law will convict him of attempt. Under the MPC if a D prevents the substantive crime by telling police or hindering the principal, then he is innocent of charges stemming from the event.

• For accessory after the fact liability, the state must prove 1 the principal committed the crime 2. The D knew that the felony had been committed 3. The accused provided help to the principal. Again, the principal need not be convicted or able to be convicted for accessory after the fact to be charged.

• You can not be an accessory after the fact until a felony has been completed and willful blindness can be used to convict an accessory.

• MPC departs from the three-part test for accessory after the fact liability and imposes felony liability on a D if they were aware of the felony and a misdemeanor if not.

Defenses to Charges
Mistake of Law/Fact

- **Mistake of fact** can destroy the “intent” element of specific intent crimes. (Ex: A shoots at a deer but hits B. A’s shot at the deer shows no intent so no murder charge.)
- If the mistake or ignorance is offered to negate the existence of general intent or malice, it must be a reasonable mistake or ignorance. Mistake of Fact is no defense to strict L crimes.
- **MPC** – charges the person with the crime they thought they were committing in fact mistake
- Mistake of Fact disproves a charge if (a) the belief is honestly entertained (b) based on reasonable grounds and (c) if the facts were as D thought they were D actions are legal.
- **Mistake of Law** -- It is no defense that the D was unaware that the law prohibited her acts or she was mistaken in her belief that her acts were not prohibited.
- A mistake of law can be a defense if the crime requires a certain belief concerning a collateral aspect of the law. In this case, the mistake of law will negate the requisite state of mind needed for conviction – this requires ignorance of some aspect of the law other than the criminalization of the offense. (Ex: A sell a gun to B who has been convicted of assault. There is a law preventing the sale of weapons to felons and B is a felon, but A thinks assault is a misdemeanor.)
- A D will have a mistake of law defense is the statute was not available prior to the arrest, D acted in reliance of a statute or judicial decision (highest court is best). At common law, it was no defense that D relied on a false statement of the law, but the current view provides a defense if the statement is obtained from someone who is responsible for interpreting or administering the law. If a statute criminalizes knowingly violating the law, then advice from an attorney might be a defense.
- Due Process prevents the criminalization of mere existence – the state must inform citizens of their obligations under the laws. Everyone is assumed to know the law but if people must have notice of laws that require action rather than prevent it. (Laws that require felons to register are unconstitutional without notice provisions – an exception to ignorance is no excuse.)
- **MPC** gives a defense stemming from a legal opinion of a court or the statement of a public official
- When presented with evidence of mistake of fact, courts might read intent into a strict liability offense to prevent penalizing a D.
• **Gengeles Rule** – mistake of age is no defense in statutory rap cases. Minority View allows an examination of the guilty mind and allows mistake of fact defense.

• **MPC** – for statutory rape, no defense if the child is below 10, if above 10, then evidence going towards the mistake can be presented.

• **MPC** – for bigamy, it is a defense is D thinks he is free to remarry due to a reasonable belief that the former spouse has died or that he was free to remarry, five year separation and belief of death, or invalid judgement.

• **MPC** – Mistake of fact must negate the mental state that the statute requires – if this is not true, then no instruction on mistake of fact.

### Impossibility

• Traditionally, the law distinguished between factual and legal impossibility – the modern view shared by the MPC is that impossibility is not a defense when D intends a criminal act.

• **Legal Impossibility** – when the actions which D performs/causes even if fully carried out would not constitute a crime (D thinks that fishing in the lake is illegal, he does it anyway, but it is perfectly legal)

• **Factual Impossibility** – when the objective of D is criminal but unforeseen circumstances prevent the realization of the criminal act (D robs B by asking for money at gunpoint, B has no money, it is factual impossible for D to complete the crime).

• One approach to impossibility is to look at objective acts without a reliance on the criminal mind.

• There is a split when stolen goods fall into police possession some say that legal impossibility would prevent a conviction for receiving stolen property, others just say that this a factual impossibility and is not a bar to conviction.

• **MPC** – impossibility is not a defense when D intends a criminal act. Allows for more convictions

### Immaturity

• If D < 7, then no criminal capacity

• If 7<D>14, then the presumption of no criminal capacity weakens and evidence is put on.
If D>14, then capacity is assumed without mitigation

Most states have abolished the common law’s presumptions in favor of a strict age limit of 13 or 14. Below these ages the D is sent to juvenile court.

**MPC** – a person is not responsible if mental disease or defect prevented the formation of a criminal mind.

**Intoxication**

- Evidence of intoxication may be raised whenever the intoxication negates the existence of an element of a crime.
- Voluntary intoxication (self-induced) may entitle D to acquittal if he can show that it removed the mens rea.
- Voluntary intoxication is no defense to crimes requiring malice, recklessness, or negligence or crimes of strict liability or common law murder (it requires malice aforethought.)
- If D was normal before voluntary intoxication, some say that his later conduct is not excused by his decision to become intoxicated.
- Fraud or duress or coercion must be proven for involuntary intoxication.
- Self defense and involuntary intoxication are mutually exclusive
- A D that is unaware of what he is taking or the qualities – should get a mistake of fact defense for involuntary intoxication.
- Involuntary intoxication may be treated as mental illness so we would apply the jurisdiction’s tests for insanity.
- **M’Naughten Rule** – For Insanity, Did D know right from wrong and did D know the nature and quality of his acts?
- **MPC** – Intoxication is a defense if it removes the required state of mind, so a person is insane if he lacks the criminal capacity to appreciate his conduct or conform his conduct to the requirements of the law.
**Self-Defense**

- An individual who is without fault may use reasonably necessary force to protect herself from the imminent use of unlawful force upon her. There is no duty to retreat before using non-deadly force.

- **MPC – Non deadly force** – A D can use force if D believes that such force is necessary to protect himself against the use of unlawful force by another. This is not true if D is resisting arrest or is trying to prevent someone from regaining his own property.

- A person may use deadly force in self-defense if (a) she is without fault (b) she is confronted with unlawful force and (c) she is threatened with death or great bodily harm (must be reasonable). There is no right to defend if the victim only threatened or lacks the ability to harm the D.

- The majority rule is that a person has no duty to retreat before using deadly force if they did not start the conflict. Minority courts only require retreat when it can be done safely. Retreat is never necessary when the attack happens in the victim’s home, where the attack occurs while the victim is making a lawful arrest and when the assailant is robbing the victim.

- When a D starts a fight can only regain the ability to lawfully defend herself by renouncing the fight and removing herself from the fight or if the fight that the D started was minor and the person responded with deadly force.

- **MPC – Deadly Force** – only allowed when D believes it is necessary to protect against death, serious bodily harm, kidnapping, or forced sexual intercourse unless D provoked the use of force against him or D knows he can retreat in complete safety or surrender the thing demanded unless D is at his place of work or residence.

- **Defense of Others** – Most jurisdictions hold that there does not have to be a relationship between the victim of attack and the intervenor. A D can only use the defense of defense of others if she reasonably believed that the person being assisted had the right to use force in their own defense. Some jurisdictions limit an intervenor’s use of force to what the victim would have been allowed as you “step into the shoes of the person” you defend. Most courts say you just need the reasonable appearance of the right to use force.

- **MPC – Defense of Others** – D will be allowed to protect a third party if (a) D would be allowed to use self-defense in the same situation and (b) the victim would be justified in using self-defense and (c) the D believes it is necessary to protect the victim. D is not required to do
anything before intervening unless he knows he can completely protect the victim in that way and if the victim could prevent the use of force on his behalf and D knows this then D should try to persuade the victim to do this and neither victim nor D has to retreat from their dwelling or workplace.

- **Defense of Dwelling** – A person is justified in using nondeadly force to defend a dwelling when D reasonably believes that such actions are necessary to prevent or terminate another’s unlawful entry or attack upon a dwelling.

  - One is permitted to use deadly force when the D reasonably believes that
    - the use of force is necessary to prevent a personal attack **and**
    - the entry into the dwelling is riotous, violent, or tumultuous.

  - D is also permitted to use deadly force if such force is necessary to protect the dwelling from one who wants to commit a felony

- **Defense of Other Property** – Defense of property alone can never justify the use of deadly force. A person can only use deadly force to defend property with another use of force.

  - A D can use non-deadly force to defend property from unlawful property – for real property this is entry or trespass, for personal property, this means removal or damage. **The need to use force must be imminent** – force is not allowed if a request would work. Force can not be used to regain property unless the D is in pursuit of the taker.

  - The severity of the crime determines how much force can be used to prevent the commission.

- **MPC – Defense of property** – For the defense of property, the use of force is justified when the actor believes the force is needed to (a) prevent/terminate trespass/unlawful entry or to prevent the removal of tangible property that the actor owns or (b) to enter on land or retake property that D thinks is his in hot pursuit or when a hardship exists that would make a court order difficult. The D must request the intruder/thief to stop interfering unless D believes that (a) such a request would be useless or (b) dangerous to himself or (c) substantial harm would be done to the property before the request could be made.

  - Deadly force is not allowed in defense of property unless the D believes that the intruder/thief intends to deprive him of his dwelling or the intruder is trying to commit arson, burglary, robbery, or other felonious theft and has either (a) used deadly force in the past against D or (b) the use of non deadly force would expose the D to serious bodily harm in that case.