Criminal Law Outline

Definition

Crime -- any social harm defined and made punishable by law
Felony--punishable by death or by imprisonment exceeding one year—at common law
burglary, arson, robbery, rape, larceny, murder, manslaughter and mayhem are considered felonies.
Misdemeanor—is an act committed or omitted in violation of a public law either
forbidding or commanding it. Punishable by imprisonment of less than one year or by
fine only.

Palmer v. City Euclid, Ohio (Pg. 12)
Vague by Person:
No man shall be held criminally responsible for conduct, which he could not reasonably understand
to be proscribed.

Stanko I
Vague On its Face:
The court says the statute is unconstitutional on its face. It would have to provide something more
concrete. In every case, a numerical limit would have to be determined, and would result to an
unfair calculation on each account.
Cannot challenge a statute for vagueness when

Stanko II
The Court is stating that there is not speed alone but other circumstances. Neither officer cited
Stanko for reckless driving based solely on speed.

I. Imputability

A. The Necessity of an Act

What Constitutes An Act:

State v. Taft
Need Positive or Affirmative Act; Person has Control over Act
If a vehicle is moved by some power beyond the control of the driver, or by accident, it is not such
affirmative or positive action on the part of the driver will constitute a driving within the meaning of
the statute.

People v. Decina
Act + Mental State + Result= Criminal Negligence
With this knowledge and without anyone accompanying him, he deliberately took a chance by making a conscious choice of a course of action, in disregard of the consequences, which he knew might from his conscious act, and which in this case ensue.

**State v. Kimbrell**
Possession is an act when a person is knowingly in actual or constructive possession. Mere presence is not enough.

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

Possession as an Act= 1) power to Control Action 2) Intent to control action (Intent can be inferred from knowledge 3) Power to terminate the action

**Not Voluntary Acts**
1) Reflex or convulsion
2) Bodily movement during unconsciousness or sleep
3) Conduct during hypnosis
4) Bodily movement that otherwise

**NEGATIVE ACTS**

**Biddle v. Commonwealth**
Depends on the nature or character of the act or omission to determine the degree of the crime. If death is the direct consequence of the malicious omission of the performance of a duty, but if the omission is not willful, and arose out of neglect only, it is manslaughter.

**Commonwealth v. Teixera**
Failure to not pay if you cannot is not willful it is impossible.
Have to be capable of doing what by law you have a duty to do.
Knowledge of Duty + Ability to Perform the Duty

**Walker v. Superior Court**
Conduct that is legal in one statutory context thus may be actionable under separate statutes created for different legislative purpose.
To determine whether governmental regulation of religious conduct is violative of the 1st Amendment, the gravity of the state’s interest must be balanced against the severity of the religious imposition.

**Jones v. United States**
Criminally Liable if:
1) Statute imposes a duty to care for another
2) Stands in a certain status relationship to another
3) Assumed a contractual duty to Care for another
4) Voluntarily assumed the care of another or prevent others from rendering aid.
A finding of legal duty is the critical element of the crime charged and failure to instruct the jury concerning it was plain error.
Cannot incur liability unless you have a legal duty to do something.

**Davis v. Commonwealth**
Quid pro Quo—Implied Contract → Legal Duty

**Moreland v. State**
It would be the owner’s duty, when he saw that the law was being violated and that his machine was being operated in such a way as to be dangerous to the life and property of others on the highway, to curb and restrain one in his employment and under his control, and prevent him from violating the law with his own property.

**Van Buskirk v. State**
The key to this case is that her conduct created the peril, and the foreseeable consequence is that another motorist would come over the crest of the hill and hit and killed the deceased. The foreseeability was apparent.

**Ray Edwin Billingslea**
Duty had to be created by statute.

**Robinson v. California**
One of the problems with this case is that you have to place liability with the act, but the act must take place in Los Angeles. We have evidence of drug use however, no evidence where the act took place. Act could have happen in another state, county, etc.

**MENS REA- culpable state of mind**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Intent</strong></td>
<td>Intentionally</td>
<td>Purposely</td>
</tr>
<tr>
<td>△ desired to commit the act</td>
<td>Maliciously</td>
<td>-consciously engage in the particular conduct in question</td>
</tr>
<tr>
<td><strong>Specific Intent</strong></td>
<td>Willfully</td>
<td>Knowingly</td>
</tr>
<tr>
<td></td>
<td>Strict Liability</td>
<td>Recklessly</td>
</tr>
<tr>
<td></td>
<td></td>
<td>-Consciously disregards a substantial and unjustifiable risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Subjective Standard</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Negligently</td>
</tr>
<tr>
<td></td>
<td></td>
<td>-Should be aware of a substantial and unjustifiable risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Objective Standard</td>
</tr>
</tbody>
</table>
Mens Rea Continuum:

1. **N** = Negligence: - Failure to perceive a great risk (objective test)
2. **R** = Recklessness: - Consciously disregard a great risk
   - Risk is substantial and unjustifiable, a gross deviation from the standard of care of a reasonable person in similar circumstances.
3. **K** = Knowledge: - Majority of courts – subjective knowledge is standard (e.g. Beale).
   - Subjective; or, if objective, then reasonably should have known.
   - Willful blindness
4. **W** = Willfully: - deliberate, intentional violation of a known legal duty.
5. **M** = Maliciously: - intent to injure, vex, annoy, or do wrong.
6. **S** = Specific Intent: - intent to bring about the desired result.

**Liparota v. United States**
Not a question of what knowing is but what you are required to know. The wording of statute is vague. Government just proved the act not that he knew that this act was a violation of the statute.

**CRIMINAL NEGLIGENCE**
gross deviation, which below the standard established by law for the protection of others against unreasonable risk of harm

**Gian Cursio v. State**
Negligence is any conduct, except conduct intentionally harmful or recklessly disregardful of an interest of others, which falls below the standard established by law for the protection of others against unreasonable risk of harm. Defendant held him out to be able to cure, despite not being medically qualified to do so. Thus, he is measured by the standard of other such medical personnel. Good faith/bad faith is irrelevant as this is measured purely from an objective perspective. This is a gross deviation from the general practice of treatment

**RECKLESSLY—**

**State v. Peterson**
For purposes of determining a person is reckless it is not enough that they took a risk but whether that risk was substantial and unjustifiable.

**State v Howard**
The difference between the minimum required mens rea of recklessness for manslaughter and criminal negligence for negligent homicide is simply whether the defendant was aware, but consciously disregarded a substantial risk the result would happen, or was unaware but ought to have bee aware of a substantial risk the result would happen.

Negligence—Objective standard
Recklessness—Subjective Standard
**Specific Intent**  
indicate actual intention—in addition to desiring to bring about the actus reus, must have desired to do something further

**Thacker v. Commonwealth**  
He could be charged with recklessly endangerment—No intent to harm but if you are acting in a manner that can cause harm or death to an individual then you are guilty of recklessly endangerment, --Statutory Regulations  
To do an act with intent to commit one crime cannot be an attempt to commit another crime though it might result in such other crime.

**MALICE**

**State v. Natsoff**  
Modification may have been intentional, but intention is not synonymous with maliciousness. The statute clearly requires a showing of a malicious state of mind (wish to vex, annoy, injure another person, or intent to do a wrongful act). Government failed to prove that defendant intended to start the fire, or which is the requisite intent for liability for maliciousness.

**KNOWLEDGE**

**State v. Beale**  
Need actual positive knowledge, is not enough what a reasonable person would have known that the goods were stolen.

**WILLFUL BLINDNESS**  
Occurs where the Δ has a suspicion that something is the case, but in order to be able to deny knowledge, has purposely refrained from making inquiries which would have led to the knowledge in question.

**United States v. Jewell**  
Conscious purpose to avoid knowing. If you have an innocent purpose than that’s OK. However if you deliberately close your eyes to the truth when you are aware with a high probability that you are carrying something illegally.

**WILLFUL**  
When used in a criminal statute it generally means an act done 1) with a bad purpose 2) without justifiable excuse 3) stubbornly, obstinately perversely 4) characterize a thing done w/o ground for believing it is lawful or

**Fields v. United States**
Willful means no more that the person knows what he is doing. Intentionally or deliberated. Even if he has a good faith believe even if he thinks the documents are privilege. Good faith is not enough if the behavior is intentional and deliberate.

**Cheek v. United States**
Willfulness requires the Government to prove that the law imposed a duty on the defendant, the defendant knew of his duty, and that he voluntarily and intentionally violated that duty.

**STRICT LIABILITY**

**The Queen v. Stephen**
Doesn’t require any proof of blameworthy mind.

**Commonwealth v. Olshefski**
Mala in se –need mental element and the pysical element
Mala prohibita—mental element (mens rea) not necessary-for the commission of the crime, and one who does an act in violation of the statute and is caught and prosecuted, is guilty of the crime irrespective of his intent or belief.

**UNLAWFUL CONDUCT**

**State v. Horton**
An act can be malum in se when it amounts only to a civil trespass, provided it has a malicious element or manifests an evil nature, or wrongful disposition to harm or injure another in his person or property.

**United States v. Rybicki**
Knowledge of the officer status is important. If saw people removing car from house, could reasonably infer that they were criminals attempting to steal the vehicle. Issue of whether there is a requirement that the person know that the person being assaulted is a federal agent. Though the assault itself is unlawful, there is a question whether it was justified or not.

**Gladden v. State**
If one intends to injury to the person of another under circumstances in which such a mental element constitutes mens rea, and in the effort to accomplish this end he inflicts harm upon a person other that the one intended, he is guilty of the same kind of crime as if his aim had been more accurate.
Gladden’s culpability under the law and the resultant harm to society is the same as if he had accomplished the result he intended when he caused the death of the innocent youngster.
# HOMICIDE

## MURDER (STATE OF MIND)

<table>
<thead>
<tr>
<th>COMMON LAW</th>
<th>MODEL PENAL CODE (210.2)</th>
</tr>
</thead>
</table>
| **Intent to Kill Murder**  
1) Desires result  
2) Substantial Certain result will occur  
-Deadly Weapon Doctrine—infer intent from the use of a deadly weapon.  
-Includes first degree (deliberation and premeditation) and second degree  
NOTE: mental state is not accompanied by other redeeming or mitigating mental or external factors. | **Purposely or Knowingly**  
MPC did away with malice aforethought  
Murder is a felony in the 1st Degree |
| **Intent to do serious bodily injury Murder**  
-No intent to kill but to cause serious injury |  |
| **Depraved Heart Murder**  
1) Unjustifiable high risk  
2) U is or should be aware of risk  
Socially utility of U conduct  
NOTE: Some courts have an objective standard “reasonable man” and others use an subjective standard | **Recklessly** (extreme indifference to human life)  
-Subjective state of mind of recklessness |
| **Felony Murder**  
1) Intent to commit a felony  
2) Foreseeable danger to human life  
3) Casual relationship b/t the felony and killing | MPC rejects the Felony Murder rule per se.  
However MPC establishes a rebuttable presumption of recklessness…manifesting extreme indifference to the value of human life where the U engaged or is an accomplice in the commission of, or attempt to, or flight after committing (BARRK). If rebutted MPC should then be contrasted if available with the FMR |

### Identifying felonies that apply:
- felonies inherently dangerous to human life  
- felonies at common law  
- felonies which are malum in se

### Elements of Murder
1. Actus Reus (affirmative act, or omission to act [duty])
2. Mens Rea (accompany state of mind)
3. Legal cause of Death (proximate cause)
4. Death must occur w/I year and a day after U conduct

### When Does Life Begin?
Some modern codes and MPC define person for the purposes of the law of homicide as meaning a human being who has been born and was alive at the time of the homicidal act.

CL- depends on the victims Status at the time of death not the homicidal act.

Cuellar v. State
Born alive doctrine held that it is not the victim’s status as the time the injuries are inflicted that determines the nature of the crime but the victim’s status at the time of death. It is not necessary that all of the elements of a criminal offense be immediately satisfied at the time of the defendant’s conduct. A homicide conviction may stand even though the victim’s death is not instantaneous with the defendant’s conduct but results form that conduct at a later time. What is the rationale surrounding that the individual be born alive?

1) provides conclusive proof that the fetus was alive—makes for a stronger case. Can say w/ level of certainty that the individual’s conduct was the reason behind the baby’s death.

STATES OF MIND AND CULPABILITY

A. Recklessness

King v. State (Statute derived from MPC)
To bring appellant’s conduct within the murder statute,
1) Act was imminently dangerous 2) presented a very high or grave risk of death to others and 3) that it was committed under circumstances which evidenced or manifested extreme indifference to human life.

If death actually results to an endangered person and occurs in a foreseeable way, the defendant’s conduct makes him an eligible candidate for a murder conviction. The crime charged here differs form intentional murder in that if results not from a specific, conscious intent to cause the death of any particular person, but from an indifference to or disregard of the risks attending appellant’s conduct.

1. Extreme Indifference to Human Life

State v. Hokenson (MPC w/ felony murder rule presumption)
Case was proven w/o felony murder rule presumption. The appellant’s act of carrying an active bomb into the store knowing it to be extremely dangerous as shown by his handling, manifests extreme indifference to the value of human life. This act, coupled with the ensuing explosion and death suffices without the presumption to establish murder

A person is criminally liable for the natural and probable consequences of his unlawful acts as well as unlawful forces set in motion during the commission of an unlawful act. The appellant voluntarily set in motion an instrumentality which carried a very real probability of causing great bodily harm. The statute requires no showing that the homicide took place during the attempted robbery.
B. Felony Murder

1. Must be an Inherently Dangerous Felony

**People v. Phillips** (CL)
A felony murder can only be properly grounded upon a felony “inherently dangerous to life”—grand theft is not such a crime
Don’t look at the facts of a specific case to find one element of its dangerous. You look at the crime in the abstract, without respect to how the crime was committed then that would determine whether a crime is inherently dangerous.

2. Res Gestae
Acts immediately following the transaction and so closely connected with it as to form in reality a part of the occurrence

**State v. Mayle**
Felony murder statute does apply where the robbery was completed but the defendants were still in the act of escape. As long as activities are a part of one continuous transaction.

3. Only applies to Felony Independent of Homicide

**People v. Wilson**
Purpose of FMR is to deter felons from killing negligently or accidentally by holding them strictly responsible for killings they commit. Where a person enters a building with an intent to assault his victim with a deadly weapon, he is not deterred by FMR. The doctrine can serve its purpose only when applied to a felony independent of the homicide. A burglary based on intent to assault with a deadly weapon is included in fact within a charge of murder, and cannot support a felony-murder instruction.

C. Intent to Kill

1. Intent can form instantaneous

**State v. Schrader**
Courts have consistently recognized that the mental process necessary to constitute willful, deliberate and premeditated murder can be accomplished very quickly or even in the proverbial twinkling of an eye. The language of “willful, deliberate and premeditated” only means that the killing be intentional. Thus the mental state can immediately precede the act of killing.

2. Premeditation & Deliberation are needed (1st Degree)

**Midgett v. State**
In order to permit conviction of 1st Degree murder it must be shown by substantial evidence to have premeditated and deliberated the killing. See HO pg. 15
Deliberation—requires a cool mind capable of reflection
Premeditation—requires that the one with the cool mind did in fact reflect, at least for a short period of time before his act of killing.
3. Circumstantial Evidence can establish Premeditation and Deliberation

**State v. Forrest**

On the basis of events before and at the time of the killing, the trier of fact will sometimes be entitled to infer that the \( \Delta \) actually premeditated and deliberated has intentional killing. \( \Delta \) statements about ending his father misery, and promises to father showed premeditation and Deliberation.

<table>
<thead>
<tr>
<th>Schrader</th>
<th>Midget</th>
<th>Forrest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intentional</td>
<td>Cool mind capable of reflection</td>
<td>Thought out before for some length of time</td>
</tr>
<tr>
<td>Knowing</td>
<td>Actual Reflection</td>
<td>Cool Mind</td>
</tr>
<tr>
<td>Instantaneous</td>
<td>May be Brief</td>
<td></td>
</tr>
</tbody>
</table>

**MANSLAUGHTER**

### Common Law

**Voluntary Manslaughter**

1. Intent to Kill
2. Under extenuating circumstances

Requirements
- Reasonable Provocation
- Acts in a “heat of passion”
- No reasonable time to cool off
- Did not actually cool off

- If \( \Delta \) lacks reasonable provocation and no reasonable time to cool off=2\text{nd} Degree Murder
- If \( \Delta \) lacks heat of passion and did not actually cool off=1\text{st} Degree Murder

**Objective Standard**

### Involuntary Manslaughter

1. Unintentional killing
2. Behavior is grossly negligent or reckless

2 types
- Criminal negligence manslaughter
- Unlawful act manslaughter

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

### Model Penal Code 210.3

**Manslaughter**

**Extreme Mental or Emotional Disturbance**

- Manslaughter if committed under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse.

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

Merges the two concepts of heat of passion and diminished capacity

**Recklessly**

- The actor consciously disregards a substantial and unjustifiable risk amounting to a gross deviation from due care. § 2.02(2)(c)
- Requires Actual awareness
Some states require actual awareness, and others do not.

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

**VOLUNTARY MANSLAUGHTER**

**A. Measured by Objective Standard** (Common Law)

**State v. Guebara**
Must apply an objective standard for measuring the sufficiency of the provocation, the court should not consider the innate peculiarities of the individual Δ. Although Δ posses the requisite emotional state necessary to constitute heat of passion, the evidence did not show that Δ’s emotional state of mind arose from circumstances constituting sufficient provocation.

**B. Extreme Mental or Emotional Disturbance (Subjective Standard) (MPC)**

**State v. Dumlao**
In determining whether there was a reasonable explanation or excuse should be made by viewing the subjective internal situation in which the Δ found himself and the external circumstances as he perceived them at the time, however inaccurate that perception may have been, and assessing from that standpoint whether the explanation for his emotional disturbance was reasonable, so as to entitle him to a reduction of the crime charged from murder to manslaughter.

**IN Voluntary MANSLAUGHTER**

**A. Grossly Reckless Conduct**

**State v. Hardie** (Common Law)
Human life is not to be sported with by the use of firearms, even though the person using them may have good reason to believe the weapon used is not loaded, or that being loaded it will not cause injury. When persons engage in such reckless sport they should be held liable for the consequences of their acts.

**B. Must be determined by Conduct not resulting Harm (proximate cause/casual link b/t conduct and death)**

**People v. Rodriguez**
Criminal negligence must be the proximate cause of death mere negligence is not sufficient to authorize a conviction of involuntary manslaughter. The act must be one which has knowable and
apparent potentialities for resulting death. Mere inattention or mistake in judgment resulting in death of another is not criminal unless the quality of the act makes it so.

It was not foreseeable to her that the house would catch on fire. There was no evidence on how the fire was started.

**NEGLIGENT HOMICIDE**

A. Gross deviation from a reasonable standard of care—Foreseeable Risk

*State v. Bier*

$\Delta$ conduct in pulling out, cocking and throwing a loaded gun within reach of his intoxicated wife clearly qualifies as a gross deviation giving rise to criminal culpability. It was also a foreseeable risk that $\Delta$’s wife would shoot him or herself.

**CAUSATION**

<table>
<thead>
<tr>
<th>Common Law</th>
<th>Model Penal Code §2.03</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cause in fact</strong> (Actual Cause)</td>
<td><strong>Cause of a result</strong></td>
</tr>
<tr>
<td>1) “But For” expansive but does not include</td>
<td>1) “But for”</td>
</tr>
<tr>
<td>2) “Substantial Factor”</td>
<td>2) Any addition requirements imposed by Code or Law</td>
</tr>
<tr>
<td>- an act other than $\Delta$ sufficient to bring result, but $\Delta$ act is a substantial factor in bringing about the result</td>
<td><strong>Purposely or Knowingly</strong></td>
</tr>
<tr>
<td>- Act shortened the victim’s life</td>
<td>- Not established if actual result is not within the purpose or the contemplation of actor, unless</td>
</tr>
<tr>
<td></td>
<td><em>different person or property injured</em></td>
</tr>
<tr>
<td></td>
<td><em>not too remote or accidental in its occurrence.</em></td>
</tr>
</tbody>
</table>

**Proximate Cause** (Legal Cause)
- policy issue decided on a case by case basis
- separately treated in terms of crimes of intent vs. crimes resulting from recklessness or negligence.

**Unintended Victims—Transferred Intent**
The fact that the actual victim defendant’s act was not the intended victim will not prevent the $\Delta$ act from being the proximate cause. Does not apply to attempts

**MPC § 2.03(2)(a)**—dealt with in terms of causation rather than transferred intent. $\Delta$ act is not prevented form being the proximate cause of a result if the result differs from the intended “only in the respect that a different person or different property is injured are affected.

**People v. Stamp**

Felony Murder Doctrine is not limited to foreseeable deaths. As long as the homicide is the direct causal result of the robbery the felony murder rule applies whether or not the death was a natural or probable consequence of the robbery. So long as a victim’s predisposing physical condition, is not the substantial factor bringing about the death, that condition and the $\Delta$ ignorance of it, in no ways destroys the robber’s criminal responsibility.
B. Intervening Act—Improper treatment does not break the chain of causation

**State v. Sauter**
Only if death is attributable to the medical malpractice (gross negligence or intentional malpractice) and not induced at all by the original wound does the intervention of medical malpractice constitute a defense.

C. Liable if act is connected w/ or naturally resulted from Intervening Cause

**Letner v. State**
\( \Delta \) is liable although act was not immediate cause of death, but was connected with the intervening cause, or the act or intervention was the natural result of the act.

D. Proximate Cause—Criminal Standard higher than Torts

a. Proximate Cause Theory—Minority View
- Under the Felony-Murder Rule a participating felon is guilty of murder when the killing is committed by a person other than the accused felon or co-felon
- Casual Connection—Set in motion those events leading to death \( \Delta \) is culpable as if he committed the Act.

b. Agency Theory—Majority View
- In order to convict for felony-murder, the killing must have been done by the defendant or by an accomplice or confederate or by one acting in the furtherance of the felonious undertaking.

**Campbell v. State**
Under the felony murder doctrine, criminal culpability shall continue to be imposed for all lethal acts committed by a felon or an accomplice acting in furtherance of a common design. However, criminal culpability ordinarily shall not be imposed for lethal acts of nonfelons that are committed in furtherance of a common design.

**INCHOATE CRIMES**

<table>
<thead>
<tr>
<th>ATTEMPT</th>
<th>COMMON LAW</th>
<th>MODEL PENAL CODE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Intend to Commit Crime</strong></td>
<td>An Act toward the Commission of Crime</td>
<td>Purposely engages in Conduct</td>
</tr>
<tr>
<td>1) <strong>Last Proximate Act Test (Strict Test)</strong></td>
<td>- ( \Delta ) completed every act in his power towards the completion of the crime - Current trend not to use LPAT</td>
<td>Act or omission constituting a Substantial Step</td>
</tr>
<tr>
<td>2) <strong>Dangerous Proximity Test</strong></td>
<td>- ( \Delta ) is dangerously close to success (what’s left) - Preparation may be enough if it comes very near to the accomplishment of the act - Some preparation is not enough</td>
<td>- Emphasis is upon what the actor has already done rather than what remains to be done</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Liability will be imposed only if some firmness of criminal purpose is shown</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Conduct may be assessed in light of ( \Delta ) statements</td>
</tr>
<tr>
<td><strong>Substantial Step Approach</strong></td>
<td>1) lying in wait, searching or following victim</td>
<td><strong>Substantial Step Approach</strong></td>
</tr>
<tr>
<td></td>
<td>2) Enticing victim to place for commission</td>
<td></td>
</tr>
</tbody>
</table>
- Must take into account the gravity of the crime, the uncertainty of the result, and the seriousness of the apprehension, coupled w/ great harm likely to result.

3) Probable Desistance Test
- \( \Delta \) will not voluntarily stop short of completing the offense w/o interference from an outside source.
- same as dangerous proximity test

### Failure to Complete Crime

#### DEFENSES

**Impossibility**

1) Legal Impossibility
   - \( \Delta \) action will never constitute a crime
   - Objective Standard
2) Factual Impossibility
   - Mistake concerning an issue of fact that prevents \( \Delta \) from committing the offense
   - Almost never a defense

**Abandonment**

- No defense once attempt is complete

| 3) Reconnoitering the place contemplated |
| 4) Possession of specially designed Materials |
| 5) Possession of materials at or near place contemplated |
| 6) Soliciting an innocent agent to engage in conduct constituting an element of crime |

### DEFENSES

**Impossibility**

- Not a defense if \( \Delta \) intent was to commit the crime
  - Subjective
  - Only true legal impossibility is a defense

**Abandonment**

- Voluntary and complete abandonment can operate as an affirmative defense of renunciation.

---

**A. Acts**

i. Beyond Mere Preparation

**Moffet v. State**

A direct but ineffectual act toward a commission of the crime is the required actus reus for an attempted crime. The act need not be the actual commencement of the potentially death producing action. The defendants were no longer merely preparing for the crime; they were now perpetrating the crime itself. If it weren’t for the fortuitous escape of the intended victim, the crime would have been completed. There is no issue as to the criminal intent.

ii. Perpetrating Act

1. Dangerous Proximity Test

**People v. Rizzo**

\( \Delta \) acts were not so near to the commission of robbery that there was a reasonable likelihood of its accomplishment before the interference. The act must come very near the accomplishment of the crime.

2. Substantial Step Approach (MPC)

**Young v. State**

\( \Delta \) took substantial steps to show that the overt act was beyond mere preparation if furtherance of a crime. He reconnoitered the bank, wore disguise, gloves, etc.

It’s not relevant how distant the crime is, as long as the conduct is a substantial step. The substantial step must be strongly corroborative of the defendant’s criminal purpose.
B. Impossibility
   i. Factual Impossibility no Defense

**State v. Mitchell**
The fact that the potential victim was not where Δ believed him to be, did not make it any less an attempt of murder. Δ had a deadly weapon accompanied by a present capacity to murder.

   ii. Legal Impossibility
      1. Opposing Views
         a. Criminality is not destroyed (factual)

**People v. Rojas**
Although the property was no longer stolen after it was recovered by the police, the receivers of the stolen property are still liable for the attempt to purchase; they didn’t know that the property was not stolen; they received the goods with the belief that they were stolen goods. The criminality of the attempt was not destroyed by the intervention by the police. However, just attempt now. No longer have actual receipt of stolen goods.

   b. Criminality is destroyed (legal)

**Boothe v. State**
It is fundamental to our law that a man is not punished merely because he has a criminal mind. It must be shown that he has, with that criminal mind, done an act, which is forbidden by the criminal law.

   iii. Rectifying Legal v. Factual Impossibility

**United States v. Oviedo**
The requisite mens rea was lacking in Ovieda’s case. He claims that he knew it wasn’t heroin and that he was merely trying to rip off the agents. In this case, objective acts that would corroborate the necessary mens rea is missing. This case can fit into both perspective, so test not enough. The court rectified this by demanding that in order for a defendant to be guilty of a criminal attempt, the objective acts performed, without any reliance on the accompanying mens rea, mark the defendant’s conduct as criminal in nature. The acts should be unique rather than so commonplace that they are engaged in by persons not in violation of the law.

C. Attempt is a Specific Intent Crime

**People v. Guerra**
Crime of attempted murder requires a specific intent to kill, a mental state coincident with express malice but not necessarily with implied malice or felony murder.

<table>
<thead>
<tr>
<th>Solicitation</th>
<th>COMMON LAW</th>
<th>MODEL PENAL CODE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request or Encourages</td>
<td></td>
<td>Commands, Encourages or request</td>
</tr>
<tr>
<td>Another to perform a criminal act</td>
<td></td>
<td>Another Person to engage in specific conduct</td>
</tr>
<tr>
<td>-No overt act required</td>
<td></td>
<td>—Immaterial that solicitation was</td>
</tr>
<tr>
<td>-No corroboration required.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
DEFENSES
No defenses recognized

DEFENSES
- Voluntary Renunciation
  • Affirmative Defense if prevented the commission of the crime
  • Has to be a complete and voluntary renunciation of criminal purpose

A. No Overt Act Required

State v. Blechman
Even if the person being incited refuses, can still be held liable for solicitation. Solicitation is a crime unto itself. Once the third party is counseled with the intent to incite them, the crime is complete, and liability has ripened. The solicitation constitutes a substantive crime in itself, and not an abortive attempt to perpetrate the crime solicited. If falls short of an attempt, in the legal sense, to commit the offense solicited.

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

Stewart v. State
Once an intent to commit a crime has been formed and overt acts toward the commission of that crime have been committed by a defendant he is then guilty of attempt, whether he abandoned that attempt because of the approach of the other persons or because of a change in his intention due to a stricken conscience.

Commonwealth v. McCloskey
The overt act must be sufficiently proximate to the intended crime to form one of the natural series of acts which the intent requires for its full execution. So long as the acts are confined to preparation only, and can be abandoned before any transgression of the law or of others’ rights, they are within the sphere of intent and do not amount to attempts

CONSPIRACY

<table>
<thead>
<tr>
<th>COMMON LAW</th>
<th>MODEL PENAL CODE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elements:</td>
<td>Elements:</td>
</tr>
<tr>
<td>1) Agreement (between two or more persons)</td>
<td>1) Agreement (Unilateral Theory).</td>
</tr>
<tr>
<td>- Could be Implied</td>
<td>• individual liable for conspiracy if he just simply agrees with another person.</td>
</tr>
<tr>
<td>- Pursuing common objective not enough</td>
<td>• Not necessary to know identity of others</td>
</tr>
<tr>
<td>- Not necessary to know identity of other</td>
<td>• Need overt act unless felony in 1st or 2nd Degree</td>
</tr>
<tr>
<td>person</td>
<td>→ mere preparation is enough</td>
</tr>
<tr>
<td>2) Unlawful Objective/Means</td>
<td></td>
</tr>
<tr>
<td>3) Culpable Intent</td>
<td></td>
</tr>
<tr>
<td>- Intent to Agree</td>
<td></td>
</tr>
<tr>
<td>Wharton’s Rule</td>
<td>Defenses</td>
</tr>
<tr>
<td>----------------</td>
<td>----------</td>
</tr>
</tbody>
</table>
| Where it is impossible under any circumstances to commit the substantive offense w/o cooperative action, the preliminary agreement b/t the same parties to commit the offense is not an indictable conspiracy i.e. adultery, incest, bigamy, bribery, and gambling. | Withdrawal  
1) No defense for conspiracy itself |
| **Defenses** |  
**Abandonment/Renunciation of Criminal Purpose**  
1) Complete defense relieving liability for all prior involvement in the conspiracy  
2) Thwarted the success of the conspiracy under circumstances manifesting a complete and voluntary renunciation  
3) Presumed if no overt act within SOL  
4) Must advise all co-conspirators or inform police of conspiracy |

**A. Wharton’s Rule**

**United States v. Payan**
Wharton Rule does not apply. Even though it may be physical necessary to have others help you carry out your purpose, but in the abstract if it can only require one person then the Wharton rule does not apply. △ can be charged w/ both the substantive offense and conspiracy to commit the substantive offense.

**B. Actions must be punishable to qualify for conspiracy**

**Gebardi v. United States**
A conspiracy conviction cannot be obtained against a person who cannot be convicted of the substantive offense because her actions are not punishable. By statute, the defendant could not be liable of the crime, so, the intent of the legislatures was not to punish the female. It would be inappropriate therefore, to extend liability under this theory to the female. Note as well, that contrary to the MPC, the conviction of the male was overturned due to lack of plurality of participants in the conspiracy. The MPC embraces a unilateral theory of liability for conspiracy.

**C. Intent**
1. Intent to bring the desired objective required
People v. Swain
Conviction of conspiracy to commit murder requires a finding of intent to kill, and cannot be based on a theory of implied malice. Implied malice is a test involving hindsight after the fact, not a prospective intent at the time of the agreement to commit an act. It is impossible to infer intent to do something unintentionally.

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

3. Mere knowledge of criminal activities is not enough
People v. Lauria
The intent of a supplier who knows of criminal use to which his supplies are put to participate in the criminal activity connected with the use of his supplies may be established by 1) direct evidence that he intends to participate, or 2) through an inference that he intends to participate based on (a) his special interest in the activity, or (b) the aggravated nature of the crime itself.

D. Acts
1. Overt Act by one conspirator is enough for liability of all
Pinkerton v. United States
An overt act of one partner may be the act of all w/o any new agreement specifically directed to that act. A conspirator is liable for all foreseeable substantive offenses committed by his coconspirators in furtherance of the conspiracy.

E. Withdrawal
1. Not valid defense for completed conspiracy
People v. Scone
Overt actions had already been taken towards the commission of the target offense. Arrangements had been made to hire a hit man, the method of killing had been determined, and the instrumentalities had been acquired. These overt acts were sufficient to show the conspiracy at work. Thus the conspiracy had already come to be. Withdrawal ineffective. However, the calling off has some significance – withdrawal is a partial defense, limiting liability to the conspiracy, however, terminating vicarious liability for the acts of the co-conspirators. No rule exists that a co-conspirator must know the identity of all co-conspirators, or even the number of co-conspirators; as long as the conspirator knows of the general contours and criminal objective, this is enough to render him liable.

F. Mens Rea required for Conspiracy same as Substantive Crime
United States v. Feola
Where a substantive offense embodies only a requirement of mens rea as to each of its elements, the general federal conspiracy statute requires no more. This situation is not one where legitimate conduct becomes unlawfully solely because of the identity of the individual, △ knew from outset that his planned of conduct was wrongful.

G. Rule of Consistency

Marquiz v. People
Where all alleged coconspirators but one are acquitted of conspiracy, the remaining alleged coconspirator may not be convicted of conspiracy. Inapplicable to △s tried in separate trials. There is no inherent inconsistency when different juries return different verdicts in separate trials, because the acquittal of one of the conspirators could result from a multiplicity of factors completely unrelated to the actual existence of a conspiracy. If three are on trial together and only two are convicted of conspiracy then the rule of consistency is not violated because you only need two individual s for a conspiracy however if only one is convicted then this violates the rule of consistency and the conviction would have to be thrown out. If two defendants are tried to together and the other separate, if one of the two is convicted then the rule is still not violated if it is proven that he conspire with the third or an unknown person.

H. Unilateral Approach (MPC)

People v. Foster
There would appear to have been little need for the legislature to adopt the unilateral theory of conspiracy in light of the existence of the solicitation statute. Even though MPC also contains a separate solicitation offense and still provides for a unilateral offense, its commentary makes explicit its intent to do so. △ was not convicted of conspiracy because the other individual had no intention of agreeing with △. Agreement between two individuals is necessary under the bilateral approach.

<table>
<thead>
<tr>
<th>Parties To A Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COMMON LAW</strong></td>
</tr>
<tr>
<td>Principal in 1(^{st}) Degree</td>
</tr>
<tr>
<td>-Person who actually commits the Crime</td>
</tr>
<tr>
<td>-Possible for a crime to have more than one</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Principal in 2(^{nd}) Degree</td>
</tr>
<tr>
<td>-Present at the time the crime is committed and aids and abets its commission, but not commit</td>
</tr>
<tr>
<td>-Can be a constructive presence- i.e. “look out”</td>
</tr>
<tr>
<td>Accessory before the fact</td>
</tr>
<tr>
<td>-Not present when crime is committed but aids and abets its commission.</td>
</tr>
<tr>
<td>Accessory after the fact</td>
</tr>
<tr>
<td>-Does not participate in the crime itself, but furnishes post crime assistance</td>
</tr>
<tr>
<td>Elements are:</td>
</tr>
<tr>
<td>-Completed Felony</td>
</tr>
<tr>
<td>-Knowledge of Felony</td>
</tr>
<tr>
<td>-Aid the Felon</td>
</tr>
</tbody>
</table>
A. Elements
1) Acts—give assistance or encouragement or failed to perform a legal duty to prevent the crime
2) Mental State—intent to promote or facilitate such commission, and have the mental state necessary for the crime actually committed by the other

B. Intent
i. Knowledge is not enough unless intent is present.

People v. Beeman
Sound law requires proof that an aider an abettor act with knowledge of the criminal purpose of the perpetrator and with an intent or purpose either of committing, or of encouraging or facilitating commission, of the offense.

ii. Must share criminal intent of principal

State v. Hoselton
He could not be convicted as an accessory because he did not have the requisite intent to be liable. The intent necessary is the intent to commit robbery. There was no evidence to support the fact that he was part of the robbery. The criminal intent and knowledge of it is measured at the time of the overt act; knowledge after the fact is not sufficient to make the act criminal. It is well established that in order for a \( \Delta \) to be convicted as an aider and abettor, and thus a principal in the second degree, the prosecution must demonstrate that he or she shared the criminal intent of the principal in the 1st degree.

iii. Mental State Required depends on Substantive Crime

State v. Foster
Accessorial liability is predicated upon the actor’s state of mind at the time of his action, and whether that state of mind is commensurate to the state of mind required for the commission of the offense. A person may be held liable as an accessory to a criminally negligent act if he has the requisite culpable mental state for the commission of the substantive offense, and he intentionally aids another in the crime.
iv. Foreseeable Consequence Rule

State v. Linscott
An accessory is liable for any criminal act which in the ordinary course of things was the natural or probable consequence of the crime he advised or commanded, although such consequence may not have been intended by him. The rule will allow the defendant to be convicted under an objective manner regardless of his subjective state of mind.

v. Need intent to promote or facilitate offense (MPC)

Bowell v. State
All that’s required is purpose to promote or facilitate commission of the offense, and must have the conscious objective in bringing about the criminal result. Defendant had the purpose with regards to the proscribed conduct and the proscribed result. There was a reckless disregard of the lack of consent.

C. Acts

i. Mere presence is not a sufficient act

State v. Vaillancourt
Mere presence is not enough to convict as an accomplice. Even the fact that the defendant fled with the principal is not enough. There must be some acts that tend to promote the criminal intent of the principal. This element is lacking when the purported accomplice is merely present.

ii. Underlying Crime must be committed (CL)

People v. Genoa
While the conviction of the principal is not necessary to a conviction of an accessory, the prosecution must prove that the underlying crime was committed by someone, and that the defendant either committed or aided and abetted the commission of that crime.

D. Withdrawal

i. No Defense for Attempt (MPC)

People v. Brown
An accomplice may withdraw and avoid accomplice liability if before the commission of the crime, he terminates his effort to promote or facilitate the commission of the crime, and deprives his prior efforts of their effectiveness, or warns the police. Here, removed liability for accomplice liability, however still could be liable as accomplice to attempt.

E. Accessory after the Fact

i. Felony must be complete

State v. Williams
One cannot be convicted as an accessory after the fact unless the felony be complete, and until such felony has been consummated, any aid or assistance rendered to a party in order to enable him to escape the consequences of his crime will not make the person affording the assistance an accessory after the fact. A person cannot be convicted as an accessory after the fact to a murder because he aided the murderer to escape, when the aid was rendered after the mortal wound was given, but before death ensued.
ii. Distinct Offense from Principal Crime

*State v. Truesdell*
An accessory is not connected with the offender after the original offense has been committed. The crime of accessory after the fact is a separate and distinct crime, standing on its own particular elements. And because accessory after the fact is a separate and distinct crime, a conviction of the principal is not a condition precedent to the conviction of the accessory after the fact.

**Ignorance or Mistake**

<table>
<thead>
<tr>
<th>COMMON LAW</th>
<th>MODEL PENAL CODE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mistake of Law</td>
<td>Mistake of Law</td>
</tr>
<tr>
<td>- Traditional view-is never a defense</td>
<td>-defense if it negates the mental state required to establish a material element.</td>
</tr>
<tr>
<td></td>
<td>-state of mind established constitutes defense</td>
</tr>
<tr>
<td></td>
<td>- Not available if △ would have been charged w/ another offense had the situation been as he suppose</td>
</tr>
<tr>
<td>Mistake of Fact</td>
<td>A belief that conduct is not offense is a defense when:</td>
</tr>
<tr>
<td>-Only for specific intent crimes</td>
<td>1) Statute not known and has not been published prior to conduct alleged</td>
</tr>
<tr>
<td></td>
<td>2) Reliance on official statement of law determined to be invalid or in error</td>
</tr>
<tr>
<td></td>
<td>-statute, judicial decision, administrative order or grant, or an official interpretation of the law.</td>
</tr>
<tr>
<td></td>
<td>Mistake of Fact</td>
</tr>
<tr>
<td></td>
<td>- Based on △ subjective belief</td>
</tr>
<tr>
<td></td>
<td>- Mistake of age: no defense if under 10</td>
</tr>
</tbody>
</table>

**MISTAKE OF LAW**

A. Mistake Negates Specific Intent

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

B. Public Policy requires strict application

*State v. Marrero*
The defense should not be recognize, except where specific intent is an element of the offense or where the misrelied upon law has later been properly adjudicated as wrong. The statute relied on must have actually permitted the conduct in order to serve as a defense.
C. In Good Faith

**People v. Weiss**
Willful seizure or confine w. intent to coerce him, w/o lawful authority to be confine. If in good faith they believed that they were acting within the law, there could have been no intent to act without authority of law.

D. Must be Notified of Duty to Act

**Lamber v. California**
Where a person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted consistently with Due Process. Defendant was not aware of statute, and therefore failure to comply was not punishable. This is especially forgivable because the requirement to register would not be contemplated by anyone even current residents of Los Angeles. The act of living in a city does not put a person on notice that they have to register.

E. Good Faith Reliance negates General Intent (limited view)

**Long v. State**
Not liable for bigamy. Defendant made an honest mistake of the law, and had no mens rea to render him culpable. Good faith reliance on advice of lawyer negates the general criminal intent. Actual reliance must exist; there must be reason to believe that the lawyer is generally competent and the advice is accurate. Mistake of law will be recognized as a defense where before engaging in a conduct, the defendant made a good-faith diligent effort to ascertain and abide by the law and defendant erroneously concludes that his conduct is not unlawful.

F. Highest Authority Must be relied on

**State v. Striggles**
No decisions of inferior courts invalidating a law may be relied upon for a mistake of law device; only those of the highest court in that jurisdiction may be used. At the lower court level, there may be inconsistent decisions between courts; if the highest court decides, then uniform throughout the entire state. Municipal court law can be overturned and is not precedential. Note that the mayor and attorney weren’t sufficient; their positions were not to interpret the law, so their opinions have no validity to the interpretation of the law.

Mistake of Fact

A. Unlawful act, presumption of unlawful intent, unless justification

**People v. Vogel**
The defendant’s knowledge of the crime is an essential element of bigamy and such was not present here. Statute took out the mental state requirement as a means of reallocating burden. MPC does not differentiate between legal and factual mistake, so Long and Vogel are exceptions to the general rule.

B. Mistake of Age Is No Defense

**People v. Cash**
A reasonable mistake as to age is no defense to statutory rape as it is a strict liability crime which requires no intent to ripen liability.

C. Valid defense if Mistake negates Mental State

**People v. Crane**
Mistake of fact is a valid defense if the mistake negates “the existence of the mental state which the statute prescribes with respect to an element of the offense.

### Limitation on Criminal Liability

**Immaturity (Infancy)**

#### Drunkenness (Intoxication)

<table>
<thead>
<tr>
<th>COMMON LAW</th>
<th>MODEL PENAL CODE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Voluntary Intoxication</strong>&lt;br&gt;-Defense if it negates specific intent</td>
<td><strong>Voluntary Intoxication</strong>&lt;br&gt;-Defense if it prevents an accuse from having the required state of mind.  &lt;br&gt;-Does not negate recklessness or criminal negligence</td>
</tr>
<tr>
<td><strong>Involuntary Intoxication</strong></td>
<td><strong>Involuntary Intoxication</strong>&lt;br&gt;-Actual or threatened use of force unable to resist</td>
</tr>
</tbody>
</table>

**A. Voluntary Intoxication**

   **a. No Defense**

**State v. Cooper**
Voluntary intoxication by alcohol or drugs is not a defense to crime but evidence of such intoxication is admissible to show lack of specific intent.

**State v. Brown**

**B. Involuntary Intoxication**

**Burrows v. State**
Voluntary intoxication; that 1) must be induced by acts amounting in effect to duress; and that 2) it must go to such an extent that the mind of the defendant was incapable of understanding the criminal nature of his act.

### Self Defense

<table>
<thead>
<tr>
<th>COMMON LAW</th>
<th>MODEL PENAL CODE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objective Belief</td>
<td>Subjective Belief</td>
</tr>
<tr>
<td>Minority Rule-duty to retreat</td>
<td>Duty to Retreat or Surrender</td>
</tr>
<tr>
<td>Majority Rule-No duty to retreat</td>
<td>Castle Doctrine</td>
</tr>
</tbody>
</table>
A. Must Have Reasonable Belief

**State v. Realina**
A person will not be held criminally responsible for using force on another if he reasonably believed that such was necessary for the purpose of protecting himself against the use of unlawful force.

**People v. La Voie**
When a person has reasonable grounds for believing, and does in fact actually believe, that danger of his being killed, or receiving great bodily harm, is imminent, he may act on such appearances and defend himself, even to the extent of taking human life when necessary, although it may turn out that the appearances were false, or although he may have been mistake as to the extent of the real actual danger

i. Subjective and Objective Reasonable Belief

**People v. Goetz**
Must first determine whether the had a subjective belief that he believed deadly force was necessary to avert the imminent use of deadly force or the commission of one of the felony. If it is determined that there was a subjective belief, if must then be considered whether that belief is reasonable

B. Duty to Retreat

**People v. Ligouri**
A person who is attacked before he can resort to acts which result in death, is bound to retreat and to avoid the attack, unless the circumstances be such that he believes that he is in such imminent danger of irreparable injury, and the only thing he could do to protect himself and prevent injury being inflicted upon him, would be to act as he did, and do no more to prevent it than was necessary. Whether there is a duty to retreat often depends on such circumstances as the nature of the weapon, i.e. if a felony is being committed against the defendant by another with a gun, defendant is justified in standing his ground if necessary, to defend against the person making the felonious attack.

C. No Duty to Retreat (American Rule)

**Brown v. United States**
If a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant he may stand his ground and that if he kills him he has not exceeded the bounds of lawful defense Detached reflection cannot be demanded in the presence of an uplifted knife.

D. Castle Doctrine

**Cooper v. United States**
People in own home have a heightened interest in tolerating each other’s presence. Castle Doctrine does not apply: each brother has an equal right to be in the house; it’s not like a stranger entering where the trespasser has no right to be in the home. Duty to retreat still existed for the brother.
E. Withdrawal from Assault and Self Defense

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

**Defense of Others**

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

A. Alter Ego

**State v. Saunders**
A person can do whatever the person for whom he intervenes could have done in his own self-defense. –Acting as the alter Ego of the victim

B. Reasonable Belief

**State v. Bernardy**
An individual who acts in defense of another person, reasonably believing him to be the innocent party and in danger, is justified in using force necessary to protect that person even if, in fact, the party whom he is defending was the aggressor.

**Alexander v. State**
\( \Delta \) must be judged on his own conduct, based upon his own observation of the circumstances as they reasonably appeared to him. The reasonableness of his perception and the bona fides of his reactions are key elements of consideration in their setting.

**Defense of Habitation**

A. Applied Broadly—Not just own home

**State v. Mitcheson**
Includes not only a person’s actual residence, but also whatever place he may be occupying peaceably as a substitute home or habitation, such as a hotel, motel, or even where he is a guest in the home of another
People v. McNeese
Narrowest approach—not only have to reasonable believe that there was an unlawful entry, but have a reasonable belief that the intruder will commit a forcible felony, would commit so sort of violence against the individuals inside the home.

Defense of Property

Commonwealth v. Donahue
It is settled by ancient and modern authority that under such circumstances a man may defend or regain his momentarily interrupted possession by use of a reasonable force, short of wounding or the employment of a dangerous weapon. To this extent the right to protect one’s possession has been regarded as an extension of the right to protect one’s person with which it is generally mentioned.

People v. Ceballos
Preservation of human life and limb form grievous hare is of more importance to society than the protection of the property. △ was not warranted in using deadly force to protect his personal property.