Criminal Law Final Outline

Mens Rea
MPC Mens Rea Levels (ˈ 2.02.2):
$ Purposely - df intends to cause the result
   $ intent to act includes the intent to cause the natural consequences of the act
$ Knowingly - df knows/is virtually certain that the result will occur
   $ includes deliberate/willful ignorance
$ Recklessness w/ Extreme Indifference to the Value of Human Life
$ Recklessness - df knows of a risk and ignores it (when doing so is a gross deviation from the RP std of care)
$ Criminal Negligence - gross deviation from the RP std of care
$ Ordinary Negligence - any deviation from the RP std of care
$ Strict Liability - df state of mind doesn’t matter
   $ usually reserved for crimes against children & regulatory measures
   $ justified when:
      $ the need for deterrence is great and the ability to prove MR is difficult
      $ the penalty is small and the number of cases is large
      $ the conduct is not a traditional wrongdoing (regulatory matters)
      $ but it allows conviction of the morally innocent
Each material element must have some level of culpability (MPC ’ 2.02.1)
$ elements = conduct, circumstance, result
If not explicitly stated, the MR for an element is RK (MPC ’ 2.02.3)
If a MR is only given for the crime as a whole, that MR applies to all elements (MPC ’ 2.02.4)
Each higher level of MR includes the lower levels (MPC ’ 2.02.5)
Df cannot negate intent by imposing a condition he has no right to impose (MPC ’ 2.02.6)
Tort law’s vicarious liability shldn’t apply to criminal sanctions
$ there must be a conspiracy
Cts can interpret statutory crimes, but can’t make up new crimes (DPC)

Actus Reus
All criminal acts must be performed voluntarily (MPC ’ 2.01.1)
$ driving while using medication is a voluntary act
$ acts performed while unconscious are not voluntary (sleepwalking, not falling asleep while driving)
Omissions are only acts when there’s a legal duty to act (MPC ’ 2.01.3)
A legal duty can exist by: statute, relationship, contract, creation of risk, or voluntary assumption (voluntary aid that prevents other aiders)

Causation
Df’s act/omission must be the/an actual and proximate (foreseeable) cause
$ can be one of several contributing concurrent actual causes
$ omissions only count if there’s a legal duty
MPC ' 2.03 - also has to involve the risk of the kind of harm that actually happened, or a lesser harm
V\$ supersensitivities don\$ matter
Med mal doesn\$ cut off causation (unless egregious)
3\textsuperscript{rd} party\$ intentional act does cut off causation (PC - intervention of another\$ free will)
$ 3\textsuperscript{rd} party\$ Neg/RK act usually cuts off causation
Intent transfers if df misses
Df can be guilty of RK homicide if he creates a risk that an incompetent person will take his own life
$ MPC ' 210.5 - df is guilty of homicide if he causes V to commit suicide by force, duress or deception (misdemeanor if V doesn\$ succeed)
$ guilty of 2\textsuperscript{nd} degree felony for aiding suicide

Rape
Traditional view requires either force & resistance or threat & fear
$ force may not have to be anything beyond penetration
$ threat must be immanent & fear must be reasonable
$ MR for (df\$ perception of lack of) consent is negligence or recklessness
MPC Rape - sex compelled by force/threat or w/o legal consent (MPC ' 213.1.1)
$ illegal consent - involuntary intoxication, unconsciousness, less than 10 yrs old
$ df must be male, V can\$ be his wife
MPC Gross Sexual Imposition - sex w/ consent obtained by threat, incapacity or fraud (re df\$ identity) (MPC ' 213.1.2)
$ df must be male, V can\$ be his wife
MPC Corruption of Minors - V must be less than 16 yrs old (MPC ' 213.3)
$ belief of V\$ age is strict liability if V must be under 10, can be a defense if V must be under some other age (MPC ' 213.6.1)

Homicide
M1 - purpose + (e.g. premeditation/malice aforethought (time, planning, motive, method))
M2 - purpose or knowing (willful, no premeditation), maybe reckless w/\$i
$ intent to cause gbh is enough
$ can include vicarious liability for killings done by a 3\textsuperscript{rd} party as a result of df\$ recklessness w/\$i (getaway driver in Taylor)
FM - df is guilty of M1 for any homicide committed during a felony
$ MR is strict liability
$ may require the felony to be one of an enumerated list or to be inherently dangerous or committed dangerously
$ list of felonies may divide FM into FM1 and FM2
$ may not apply to acts of third parties
$ the killing may have to be foreseeable or done in furtherance of the felony
$ Merger Doctrine - FM doesn\$ apply when the felony necessarily involved the personal injury that lead to death (unless df intended to kill)
$ PC - otherwise wld undermine MR classifications for homicide
$ Misdemeanor Manslaughter - same as FM but for misdemeanors
VMS - provoked intentional killing
$ has to be A reasonable and actual
$ a concession to human nature (doesn’t change df’s MR)
$ words may not be enough
$ no cooling off may be required
$ includes M w/ imperfect defenses
IMS (MPC reckless homicide) - reckless (w/o ei, malicious)
$ can be w/o subjective awareness of the risk
$ PC - unintended results matter b/c they’re bad, even though there’s no diff in MR
Lesser homicide - usu vehicular w/ crim negligence
Euthanasia - traditionally justified b/c considered an omission, but the act/omission distinction isn’t strong
$ have to have clear & convincing proof that decedent wanted to die
$ PC - concern for abuse; don’t want to encourage suicide

MPC Homicide
$ Murder - MR = PR or KN or RK w/EI (MPC ‘ 210.2)
  $ RK w/EI is presumed when V killed while df was committing certain felonies
$ Manslaughter - MR = RK (MPC ‘ 210.3)
  $ also includes provoked M (judged by RP in df’s situation std)
$ Negligent Homicide - MR = Neg (MPC ‘ 210.4)

Attempt
Df must have PR MR for the conduct elements & PR/KN MR for result elements, and whatever MR is required for the circumstance elements (even if it’s SL) (MPC ‘ 5.01.1)
$ df only has to believe his act will cause the crime
$ all MRs are as of the time the offense is attempted
Attempt, solicitation & conspiracy are the same grade as the target offense (unless it’s a 1st degree felony (then it’s 2nd degree)) (MPC ‘ 5.05.1)
The act done must be a step toward the actual completion of the crime:
$ last possible act (one extreme)
$ Am immediate nearness or At dangerous proximity - crime wld have been committed but for intervention (Rizzo)
$ equivocality test - the act unequivocally demonstrates df’s intent
$ substantial step (that’s strongly corroborative of df’s intent) (MPC ‘ 5.01.2))
$ any act if there’s evidence of MR (the other extreme) (McQuirter)
Renunciation defense may be allowed (MPC ‘ 5.01.4)
$ renunciation must be voluntary and complete
Mere solicitation usu is not attempt

Accomplice Liability
Df must have PR to aid & same MR as the result elements (MPC ‘ 2.06.4)
$ waffles on the circumstances elements
$ df can either solicit, aid or fail to prevent (if there’s a legal duty) (MPC ‘ 2.06.3.a.i-iii)
Accessory before or during the fact makes df liable for the target crime (minority - and
other foreseeable crimes)
$ accessory after the fact is a lesser level offense
The aiding act can be minor & not a but for cause (e.g. clapping in Wilcox v. Jeffery)
Df isn’t an accomplice if: (MPC ’ 2.06.6.a-c)
$ he is a victim
$ his conduct was necessary but is unpunished by the statute, or
$ he quits & destroys the help he provided/goes to the police (renunciation)
Principal must commit the crime for accomplice to be guilty unless:
$ the law makes aiding a crime in itself
$ the law makes aiding a crime if it wld have been attempt otherwise (?)
$ accomplice uses an innocent agent (accomplice is actually a principal)
$ principal has a defense that doesn’t extend to accomplice
$ both parties are prosecuted, one jury finds principal innocent & another finds accomplice guilty
If Principal doesn’t commit/attempt the crime, df is guilty of attempt (MPC ’ 5.01.3)

Conspiracy
Conspiracy requires an (intentional) agreement (MPC ’ 5.03.1 requires PR for conduct, 
MR required by the crime for results & waffles on circumstances)
$ MPC 5.03.5 - and an act in furtherance (unless it’s a 1st or 2nd degree felony)
$ some Js don’t require any MR for result as long as the crime is foreseeable
$ agreement can be to commit a crime or aid the commission of a crime
Conspirators must be working toward a common goal (spokes v. chain)
$ MPC ’ 5.03.2 - extent of the conspiracy depends on what a df subjectively agreed to
Conspiracy allows:
$ multiple punishment (unlike attempt/accomplice) & longer sentences
  $ maj rule, but not under MPC
$ trial where any act was done
$ sol not to start until conspiracy is over
$ guilt for those who cldn’t be guilty of aiding
  $ maj rule, but not under MPC ’ 2.06.3 - it’s the same std for both
$ likely prejudice of codfs
$ hearsay exception to stmts between conspirators in furtherance of the conspiracy if 
jdg finds there was a conspiracy BPE 
A conspirator is liable for any act foreseeably done in furtherance of the conspiracy
A conspirator is liable for acts of conspirators he knows about (MPC ’ 5.03.2)
Conspiracies only end w/ accomplishment of ends or affirmative renunciation of 
members (MPC ’ 5.03.7)
$ renunciation must be complete and voluntary, and df must thwart the success of 
the conspiracy (MPC ’ 5.03.6)
The agreement can be tacit/implied/inferred
Conspirators are liable even if they joined late, played a minor role, or didn’t know the 
full extent of the conspiracy
A merchant is a conspirator when:
$ he has a stake in the venture (e.g. by charging excessively)
there is no legitimate purpose for the goods, or
the volume of the business is grossly disproportionate to any legitimate use, or the
illegal use business makes up a disproportionate amount of his business

Mistake of fact may prevent intent to conspire s/t df isn't guilty
Impossibility prob doesn't matter unless it is legal impossibility
There is no conspiracy if df's involvement is necessary for the crime but left unpunished
by the statute (MPC ' 5.04.2)

PC - respect for legislature's intent

**Defenses**

Victims' contributory negligence & consent are not defenses
unless consent negates an element of the crime (e.g. rape, kidnapping MPC ' 2.11.1)

**Mistake of Fact**

mistake of fact is a good defense if it negates the required MR (MPC ' 2.04.1)
RK/Neg mistake won't negate a RK/Neg MR
implied MR - reasonable mistake = less than Neg; unreasonable mistake = Neg
not a defense for strict liability crimes

mistake of fact is not a good defense if df wld be guilty of a different crime if he had
been right (MPC ' 2.04.2) (df will be guilty of the lesser crime)

**Mistake of Law**

mistake of law is only a defense if df acts in reasonable reliance on an official
statement of the law later determined to be invalid (MPC ' 2.04.3)
PC - don't want to encourage ignorance v. unfair to punish for acts df didn't know were criminal

a mistake about how the law views a circumstance is a mistake of fact & is a valid
defense if the MR is PR or KN as to that circumstance
unless knowledge of the circumstance is an element of the offense
strict liability is imposed for knowing what the elements of a crime are

**Impossibility**

If the act wldn't be a crime, even under the circumstances as df believed them to be, df is not guilty (legal impossibility)
If the act wld be a crime under circumstances as df believed them to be, df is guilty of attempt (MPC ' 5.01)

**Self Defense**

Self defense is allowed when df reasonably believes that use of defensive force is
immediately necessary and reasonably responds with force to it (MPC ' 3.04.1)
reasonableness is judged under the circumstances
deadly force is only allowed to protect against death/gbh/rape/kidnapping (MPC ' 3.04.2.b)
there may be a requirement to retreat if not at home (MPC ' 3.04.2.b.ii)
Evidence of BWS can provide a context to affirm df's credibility
helps jury understand the reasonableness of df's fear
df's experience makes her an expert on whether V's attack is deadly
$ explains why df didn’t leave V
An original aggressor can’t claim self defense unless he tells V he is withdrawing from the conflict & attempts to retreat
If df’s actual belief is RK/Neg, any defense doesn’t work for RK/Neg crimes (MPC ' 3.09.2) (unreasonable belief negates a defense defense for RK/Neg crimes)
$ for MPC crimes, a correct but unreasonable belief is still a defense to PR/KN crimes

**Defense of Property**
Df’s belief that trespass/theft will occur and response must be reasonable (MPC ' 3.06.1.a)
Deadly force cannot be used solely to protect property

**Law Enforcement**
Deadly force allowed to effect an arrest: (MPC ' 3.07.1)
$ of dangerous felons
$ by peace officers
$ when the use of deadly force doesn’t create a substantial risk of injury to innocent bystanders

**Intoxication**
Involuntary intoxication is a defense if it creates a legal insanity (MPC ' 2.08.4)
Voluntary intoxication is only a defense if it negates an element of the offense (MPC ' 2.08.1-2)
$ not allowed to negate a RK or Neg MR

**Insanity**
Insane people can’t be tried, convicted, sentenced or executed
$ PC - logical consistency in reasons for punishment v. retribution, concern about potential abuse, doubt about df’s veracity
MPC ’ 4.01.1 - df isn’t guilty if, due to mental illness, he lacks substantial capacity to
$ understand the wrongfulness of his conduct (cognitive)
$ or conform his conduct to the law (behavioral)
M’Naghten’s Rule - df isn’t guilty if, due to mental illness, he doesn’t understand the nature of his act or its wrongness
$ some Js add an irresistible impulse defense to cover the behavioral side
There’s been a trend toward restricting the defense (e.g. by limiting the behavioral aspect)

**Necessity**
Df’s act is justifiable if it is necessary to prevent a greater imminent harm and the legislature hasn’t already provided for the inclusion/exclusion of such a justification defense (MPC ’ 3.02.1)
$ unless df was RK/Neg in getting into the situation & the crime requires RK/Neg
$ may not be a defense against M (due to uneasiness, not logic)

**Duress**
Duress is a defense if df was coerced to act by threat of unlawful force against himself or another that a person of reasonable firmness wldn’t have been able to resist (MPC ’ 2.09.1)
$ df can’t have recklessly put himself in the position of being threatened (’ 2.09.2)
Establishing Guilt

Prosecution must prove elements of the offense BRD (MPC ’1.12.1)

$ Defense has to prove affirmative defenses s/t pros doesn’t meet its burden of proof
$ some defenses are required by statute to be proven by df BPE
$ but the legis can’t go too far in shifting the burden to df
Laws can’t be so vague that people don’t know what’s covered by them
$ can’t expand the definition of a crime
$ PC - have to give notice; can’t give pros too much discretion (DPC concerns)
Relevant evidence must be probative and material
$ evidence shouldn’t be admitted if its prejudicial effect outweighs its probative value
Jury trial guaranteed for crimes w/ possible penalties of 6 mos or more
$ nullification happens but shouldn’t be promoted
Defense lawyers have a duty to prevent perjury (and any other crime)
$ at the expense of confidentiality?
  Rebuttable presumption - if proven [BRD], x + y + z allows jury to find df guilty of the presumed crime (MPC ’1.12.5.b)
Discretion exists at every level (police, prosecutors, jdgs, etc.)

The Justification for Punishment

Utility - it’s good for society even though it curtails df’s freedom
$ Deterrence
  $ General - on society as a whole
  $ Specific - on the individual offender
$ Moral impact - respect for the law/expression of societal values
$ Rehabilitation - possibly not realistic, but at least imprisonment stops future crimes
Retribution - basic moral jdgmt - crimes deserve a punishment
$ ensures proportionality (eye for an eye)
$ df not used as a social tool

Policy

Policies of Criminal Law:
$ protect the law abiding public from injury
  $ focus on results (cost to society), even if not logically consistent
$ ensure that non-blameworthy conduct is not punished
  $ focus on df’s MR & AR, tends to disregard unintended results

Lingering Questions:
Can dfs be guilty of conspiring to attempt?