Classification of Crimes (Ch. 1)

I. Definition of a Crime

A. Sources of Law
   a. Statutes – criminal matters are governed by statutes at both the state and federal level
   b. Common Law – provides definitions and example to interpret statutes
   c. Model Penal Code – equivalent of restatement, has been foundation for reform in about half of the states and has influenced common law

II. Classification of Crimes

A. Felony vs. Misdemeanor – penalty is used to distinguish the two. There are differences in the type of prison the offender may be sent to and the length of sentence which can be imposed.

B. Infamous Crimes – whether or not a crime is infamous is determined by possible punishment, not the actual punishment imposed.
   a. U.S. v. Moreland – All infamous crimes must be charged by the grand jury system, imprisonment with hard labor is infamous punishment. B/c Δ had possibility of being sentenced to an infamous punishment he could only have been brought to trial by a Grand Jury.

C. Federal Felonies – states are not bound by federal classifications of offenses
   a. Melton v. Oleson – MT has the responsibility of establishing public offices and voting rights and thus for MT to be bound by a federal crime classification system that effects these things would result in injustices.

Statutory Interpretation

I. Literal Plain Meaning Rule – when language of the statute is clear follow it literally regardless of the result.
   a. Reasoning behind this is that the court’s job is to interpret the statute, not interpret the intent of the legislature. This is not followed widely today. Shortcoming of the rule is that when drafting the statute the legislature cannot possibly anticipate every theoretical fact situation, thus there needs to be some way to compensate for unforeseen facts.

II. Golden Rule – when language is clear follow it literally unless it results in absurdity
   a. Same as above, except more widely used b/c by allowing for a different interpretation when an absurdity results better meets the aims of the statute and the legislature

III. Social Purpose Rule – identify the purpose of the statute and adopt whatever interpretation best promotes that purpose
   a. Some courts distinguish between intent and purpose. Intent is the result the legislature would have desired based on the specific facts of the case, purpose refers to a broad general purpose. Legislative history gives judges broad discretion b/c the more sources they have available the easier it becomes to substitute their views for that of the legislature.
IV. Canons of Construction
   a. Words take meaning from their whole context
   b. Ejusdem generis – When particular words of meaning are followed by general words the latter are limited to include only the meaning of those previously mentioned
   c. Expression of one things means exclusion of another
   d. Terms of “art” are given their usual meanings
   e. Legislative action vs. inaction – i.e. if an ambiguous statute has existed for a long time and consistently been interpreted a certain way
   f. Penal statutes should be strictly construed for policy reasons

V. 4 Pillars of Criminal Law
   1. Retribution
   2. Deterrence
   3. Incapacitation
   4. Rehabilitation

Imputability

I. ACT – Actus Reus

Generally: In order for a court to be able to recognize a crime, in addition to intent, there must be some kind of actus reus, that is voluntary act that adds proof to intent and criminal conduct

A. Mere Intent to Commit a Crime is Insufficient to Convict

1. State v. Quick – in a trial for unlawful manufacture of intoxicating liquor the evidence indicated the Δ intended to commit the crime, but did not do anything to further its commission. Ct. held there must be an overt act of criminal nature before any person can be convicted of a crime.

B. An act is an external manifestation of the actor’s will. It can be physical, verbal, or even an omission to act.

1. People v. Decina - Δ was an epileptic who chose to drive a car knowing that a seizure could strike at any time. One day while driving Δ suffered a seizure and hit and killed 4 people. Ct. held Δ was convicted of criminal negligence for the resulting deaths. The Δ consciously and knowingly committed the act of getting behind a wheel and disregarded the possible consequences.
   a. If Δ had been 50 yrs. old and had not had a seizure for the past 20 yrs. he most likely would not be guilty b/c his conscious disregard of the risk would not be high enough to meet std. for criminal negligence.
   b. MPC §2.01, Requirement of a Voluntary Act;
      (1) A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act…
      (2) The following are not voluntary acts:
          (a) a reflex or convulsion
          (b) a bodily movement during unconsciousness or sleep,
          (c) conduct during hypnosis or resulting from hypnotic suggestion
(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

- Under the MPC the case would still have the same holding b/c the voluntary act was not the seizure but rather the Δ making the decision to get behind the wheel of the car

C. An Omission of a Legal Duty is an example of “voluntary inaction” as an actus reus

1. 4 Situations where failure to act constitutes a breach of duty
   (1) Where a statute imposes a duty if care for another
   (2) Where one stands in a certain relationship to another (i.e. parent-child)
   (3) Where one has assumed a contractual duty to care for another
   (4) Where one has voluntarily assumed the care for another and secludes that person as to prevent others from rendering aid.

2. Jones v. U.S. - Δ was hired to care for G’s children. One child died due to improper care. Evidence conflicted as to whether D was terminated prior to the child’s death. The jury was not instructed to find if Δ had a legal duty to care for the child, but convicted her of involuntary manslaughter. App. Ct. reversed on the grounds the judge should have instructed the jury to find whether or not a legal duty existed between Δ and the children.
   a. Prosecution has the burden to prove existence of a legal duty

3. MPC §2.01(3) Requirement of a Voluntary Act; Omission as a Basis of Liability
   (3) Liability for the commission of the offense may not be based in an omission unaccompanied by action unless:
      (a) the omission is expressly made sufficient by law defining the offense, or
      (b) a duty to perform the act is otherwise imposed by law

II. RENUNCIATION

Generally: A person may abandon a crime prior to completing it, but abandonment of criminal intent does not exculpate the actor if the acts already completed constitute an offense (inchoate or substantive). The MPC (and some modern cts.) allow abandonment as a complete defense if the abandonment was voluntary and if no harm was done.

Inchoate Crimes - (solicitation, attempt, conspiracy) common law holds renunciation is not a defense

Substantive Crimes – Common law allows for renunciation as a defense where the substantive offense has not yet been committed.

A. Once a Δ can be held guilty of attempting the offense the Δ may not abandon the crime.

1. Stewart v. State - Δ entered a service station and began an armed robbery by asking for money, during this the Δ saw police enter the station and thus put the gun down and pretended to be buying some oil. Upon leaving the station the Δ was arrested and later convicted of attempted robbery. Δ appeals on the ground he abandoned the crime before it was completed. The App. Ct. affirmed his conviction holding when one has the criminal intent to commit a crime and performs some kind of overt act towards the
commission of the crime they are guilty of attempt regardless of the reason why the crime was abandoned.

a. The ct. notes the Δ is guilty regardless of whether Δ’s renunciation was voluntary or not

2. §5.01(4) Attempt – Renunciation of Criminal Purpose: When the actor’s conduct would otherwise constitute an attempt it is an affirmative defense that he abandoned his effort to commit the crime, or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

Renunciation is not voluntary if it motivated by circumstances which were not present at the inception of the attempt, which increase the probability of detection or apprehension. Renunciation is not complete if it is motivated by a decision to postpone criminal conduct until a more advantageous time or if the criminal objective is transferred to another similar objective or victim.

B. Where one solicits another to commit a crime, but then tries to dissuade the other from committing the crime and communicates to the other person their withdrawal, before any harm is done the solicitor’s abandonment is a complete affirmative defense.

1. State v. Peterson - Δ solicited A to burn her house down for the insurance money. Before A burned the house Δ asked A not to burn it after all. A burned it anyway. Δ was convicted of arson and asserts the alternative defense that (1) she told A not to do it in the 1st place and (2) she tried to stop A while he was committing the act. The App. Ct. reversed Δ’s conviction on the grounds that the fact she communicated her desire to A to not commit the crime prior to the it being carried out is a valid defense of renunciation.

2. §5.02(3) Solicitation, Renunciation – It is an affirmative defense that the actor, after soliciting another person to commit the crime, persuaded him not to do so or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

a. Rationalization: Stewart was guilty, Peterson was not:

i. In each case the Δ withdrew prior to commission of the substantive offense. However, Stewart was guilty b/c prior to renunciation he had completed the offense of attempted robbery. At the time of withdrawal Peterson had not completed any offense

ii. It is possible Peterson could have been charged w/ attempted arson or conspiracy to commit arson but it would depend on if, at the time of renunciation, she had gone far enough to be convicted of these offenses.

C. Other MPC Provisions:

1. §5.03(6) Duration of Conspiracy:

(a) conspiracy continues when the crime or crimes which are its abject are committed or when the agreement that they be committed is abandoned by the Δ and those w/ whom he conspired

(b) abandonment is presumed if neither the Δ or anyone w/ whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation; and

(c) if an individual abandons the agreement the conspiracy is terminated only as to him only if and when he informs those with whom he conspired of his abandonment, or
he informs the authorities of the existence of the conspiracy and his participation therein.

2. §2.06(6)(c) Substantive Offense – A person is not an accomplice in an offense committed by another person if: he terminates his complicity prior to the commission of the offense and, (i) wholly deprives it of effectiveness in the commission of the offense, or (ii) gives timely warning to the authorities or otherwise makes a proper effort to prevent the commission of the offense.

III. MERGER OF CRIMES

Generally: It is often said that some crimes merge into other crimes. When this merger occurs a defendant cannot be convicted of both crimes. For example, attempted murder merges into murder.

A. Common Law Approach – Crimes that merge into other crimes
   1. Solicitation mergers into everything. This includes attempt, conspiracy, and the substantive offense.
   2. Attempt does not merge into conspiracy. You can be convicted of both conspiracy to commit murder and attempt to commit murder.
   3. Attempt merges into the substantive crime
   4. Conspiracy merges into the substantive crime

B. MPC §5.05(3)
   1. The effect of this provision is that you cannot be convicted of more than one inchoate at a time, and that all inchoate crimes merge into their requisite substantive offenses. (Thus you could be convicted of conspiracy to commit murder and arson, but not of conspiracy to commit arson and arson.

Responsibility

I. State of Mind - MENS REA

   Generally: W/ the exception of SL offenses no one can be convicted of a crime without having a “guilty mind”. For conviction this must also be accompanied by a voluntary act (actus reus).

   As a Rebuttable Presumption: Mens rea is often presumed/inferred from the acts of the accused. This is however a rebuttable presumption and the accused may prove he did not have a guilty mind.

A. When an actor makes all attempts to comply with a statute, but cannot criminal liability cannot be imposed b/c the actor did not have the required mens rea.

   1. State v. Chicago, Milwaukee RR Co. – An engineer failed to stop at a RR crossing, as required by law, b/c of defective brakes. A statute imposed a fine on the engineer and a trial ct. found him guilty. App. Ct. reversed holding the engineer did not have the required mens rea and in fact tried to stop the train.
   a. Ct. also noted legislative intent of the statute would not be met if the fine were imposed in this case
b. Ct. identified statute as purely penal in nature and thus should be construed to impose absolute liability. Also an intent element must be implied unless expressly excluded.

B. Conduct resulting from an inattentive, inadvertent act cannot be an offense if there is no guilty intention.

1. *State v. Peery* - Δ stood naked in front of his dorm window. Women who were walking by noticed him. Δ admitted that he often changed clothes without drawing the shade, and that he did not notice any passersby. There was no evidence Δ, while nude, drew any attention to himself. Δ was convicted of indecent exposure but the Ct. of Appeals reversed b/c there was no evidence Δ had a guilty intention. (Ct. also looked to fact Δ was a veteran and “gentleman”)

   a. The statute read more like a strict liability statute however the ct. chose to read into a guilty mind (intent) as a requirement.

C. MPC §2.02 General Requirements of Culpability

(1) Minimum requirements of culpability. Except a provided in §2.05 a person is not guilty of an offense unless he acted purposefully, knowingly, recklessly, or negligently…

(2) Kinds of culpability defined:

   (d) **Purposely** – A person acts purposely w/ respect to a material element of an offense when: (i) the element involves the nature of his conduct or a result thereof; *if it is his conscious object to engage in conduct of that nature or to cause such a result, and (ii) the element involves the attendant circumstances, and he is aware of those circumstances, or he hopes or believes those circumstances exist.

   (e) **Knowingly** - A person acts knowingly if (i) the material element of the offense involves the nature of his conduct and the attendant circumstance and he is aware that his conduct is of that nature or that those circumstances do exist and (ii) if the element involves a result of his conduct he is aware that it is practically certain his conduct will cause such result.

   (f) **Recklessly** – A person acts recklessly when…he consciously disregards a substantial and unjustifiable risk.. that exists or will result from his conduct. The risk must be of such nature and degree that …its disregard involves a gross deviation from the standard of care a law-abiding person would have used in that situation

   (g) **Negligently** - A person acts negligently when he should be aware of a substantial and unjustifiable risk that exists or will result from his conduct. The risk must be of such nature and degree that the actor’s failure to recognize it, given the circumstances known to him, involves a gross deviation from the standard of care a law-abiding person would observe in the actor’s situation.

II. State of Mind - **INTENT**

   **General Intent** – Intention, purpose, or design. Intended consequences are those which it was the actor’s purpose or desire, or when the actor knew with substantial certainty such consequences would result. Intent to do an act that itself constitutes a crime.

   Ex.) - In the case of indecent exposure the only intent required is to expose oneself in the presence of others

   - In the RR engineer case the only intent required was to not stop the train at the RR crossing
Specific Intent – These crimes require an intent to do some further act, or cause some additional consequence beyond that which was necessary to complete the actus reus of the crime. It cannot be inferred, and must be proven, although proof through circumstantial evidence is allowed.

Ex.) - Larceny, b/c you need the intent for the actus reus, to enter upon someone’s land and take their property, but you also need the specific intent to keep it and not give it back.
- Forgery, the actus reus is to pass the document off as true, the specific intent is the additional intent to use it to defraud someone.

A. Specific Intent, if required, must be present at the time the crime was perpetrated, it does not matter what the Δ’s intentions were after committing the act.

1. State v. May - Δ forged his father’s signature as a cosigner on a note for a loan. He then presented the note an received $4,000. Δ was convicted of forgery but on appeal argues (1) Δ intended to repay the loan, and (2) if his Dad had been available at the time he would have signed it anyway. The Ct. rejects these arguments and affirms Δ’s convictions.
   a. Intent to defraud means the purpose to use false writing to gain some kind of advantage and Δ had this intent, thus his other arguments are irrelevant
   b. Intent to defraud was a rebuttable presumption, Δ could have tried to do that here, but he did not.

B. A person cannot be convicted of a felony (burglary) if all they intended was a misdemeanor.

1. Dobb’s Case - Δ broke into Δ’s stables with the intent to injure Δ’s horse. Injuring the horse was a misdemeanor. The horse then died, and killing a horse was a felony. Δ was charged with burglary. The ct held the Δ did not have the specific intent required for burglary at the time of breaking and entering, thus Δ should be acquitted. (Δ was later indicted for killing the horse and capitally convicted.)

C. A person cannot be convicted of attempting a crime they did not intend to commit.

1. Thacker v. Commonwealth - Δ was drunk and when walking home saw a light on in a tent and said he would shoot it out. Then Δ approached the tent to request lodging. Δ was told to go away. Δ then again states he would shoot the light out and shot at the light 3 times narrowly missing the heads of 2 people in the tent. Δ was convicted of attempted murder and appeals b/c he had no intent to injure/kill anyone. Ct. held attempt requires the intent to commit a crime + an act done towards its commission. An act that is generally malovent, or an act designed to do something else, is insufficient.
   a. Δ could not be convicted of attempted murder, or of attempted assault, (under the attempted battery prong), or attempted burglary b/c he had no specific intent
   b. Δ could be convicted of reckless endangerment if prosecution can prove Δ knew his acts constitutes a gross deviation and conscious disregard of risk
   c. MPC §211.1 presumes recklessness if one person points a loaded firearm at another whether or not the actor believes the firearm to be loaded.
   d. Δ could also be convicted of malicious mischief, etc.
D. When one person makes a conditional threat to another, and that threat is coupled with the present ability of the threatener to do harm, that threat will constitute an assault even if the condition is complied and no violence or harm results.

1. **People v. Connors** - Δ was convicted of assault for using threats of violence accompanied with a loaded revolver to compel mine workers to cease work and go join the Union (strike). Potential victims complied w/ Δ’s threats and no harm resulted. Δ appeals in that he cannot be convicted of assault b/c had only conditional intent which is not the same as an intent to kill/harm. Ct. held when threat is conditioned upon a demand a person has a right to make it does not infer an intent to kill. The intent must be actual and not conditioned upon a proper demand. However, if it is conditioned upon a demand the Δ has no right to make it is to be considered an assault even if no violence results.
   a. Ct. distinguished this from the **Hairston** case where there was held to be no assault b/c Δ was demanding for a trespasser to get off of his property, this was a conditional demand, but the demand was not unlawful

2. **MPC §2.02(6) Requirement of Purpose Satisfied if Purpose is Conditional** “When a particular purpose is a element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the statute or by the law defining the offense”
   a. Applied to Connors the harm is not eliminated by compliance b/c the Δ could then still go on to make further threats
   b. Under the MPC it does not matter whether the demand was lawful or not but rather whether the condition negatives the harm the statute intended to prevent.
   c. Ex. of converse – if you are studying in the library and you see a crim law book and you cannot remember if you brought yours of if it is at home it is not larceny b/c if the condition that your book is at home is true then there is no intent to steal and thus the law behind larceny is negated.

**Be wary of intent in situations where:**
- you have a crime where the statute requires the court to read in intent in order to determine guilt
- where the crime accused requires a specific intent
- whenever the crime charged is an attempt, intent must always be proven.

**If intent is conditional:**
- determine whether the condition is lawful or not
- MPC approach, determine whether compliance with the condition eliminated the harm the statute is intending to prevent

III. State of Mind - **KNOWLEDGE**

**Generally:** A criminal statute may prohibit acts which a person knowingly commits. If a person acts knowingly, with respect to their conduct, or if they are aware that certain circumstances exist, then they are determined to have had knowledge.

A. A subjective test should be applied in determining whether or not a Δ had knowledge of their actions (Maj. view)

1. **State v. Beale** - Δ, a shop owner, sold property after it had been identified as possibly stolen by the previous owner. Δ was tried and convicted of knowingly concealing stolen
property. Δ contends he purchased the property from reliable people and has the receipts to prove it. Trial judge denied Δ’s request for a jury instruction that would exonerate Δ if he believed he had lawful possession of the goods under the circumstances. Δ appeals and App. Ct. affirmed his conviction.

a. Jury was instructed as to both subjective and objective tests, that is, Δ was guilty if Δ believed the goods to be stolen, or, if a reasonable person under those circumstances would have believed them to be stolen
b. Maj. Rule is subjective test, which better meets criminal law objectives for intentional wrongdoing on the part of the Δ.
c. In order to determine whether or not the Δ had knowledge the goods were stolen the jury does not need positive proof the Δ knew, but rather can infer whether Δ would have known based on the surrounding circumstances and what a reasonable person in that situation would have known.

2. MPC §2.02(b)(ii) Knowingly is defined as “he is aware that it is practically certain his conduct will cause such result.”
MPC §2.02(7) “When knowledge of the existence of a particular fact is an element of the offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.
   • “high probability is likely >50%; practical certainty is a higher standard than “high probability”

IV. IGNORANCE OR MISTAKE OF LAW (as a defense)

2 Common Situations:
1. Δ may lack necessary mental element of intent b/c of ignorance or mistake
2. Δ may have necessary mental state but claim to be unaware the conduct was prohibited by criminal law (very rarely a defense)

A. If mistake of law prevents someone from forming the necessary specific intent they cannot be convicted of the substantive offense.

1. State v. Cude - Δ left his car at a garage to be fixed and when it was finished he did not have the money to pay for it. After hours he took his car and drove away claiming he did not know it was illegal to take the car from the garage and that he took the car in order to sell it so he could pay the garage bill. Δ was convicted of grand larceny and appeals. The App. Ct. held Δ was mistaken as to the property law and thought he could rightfully take his car from the garage. This prevented him from forming the necessary specific intent for larceny, that is to enter onto someone else’s property and take something that is theirs with the intent to keep it.
   a. The Δ’s mistake of law here was property law, not criminal law. When the mistake is as to some other law than the one the Δ is being charged with the Δ stands a higher chance of being acquitted.

B. Δ must have both actual knowledge of the law and an intent to violate it in order to be guilty of conspiracy.

1. Commonwealth v. Benesch - Δ and others were convicted of conspiracy to sell securities under an installment plan which violated blue-sky laws. Δ was head of the enterprise and
engaged in the securities business. The other Δs were salesmen who became involved after the scheme had been operating for some time. Δs challenged the indictment on the grounds they did not know the law. The ct. held that in order to be guilty of a conspiracy of a malum prohibitum offense the Δs need to know the law and be aware they are committing the offense. Benesch can be inferred to know the law b/c he was the head of the business, however the others, cannot. Since you cannot conspire alone none of them are guilty.  

a. Some jurisdictions allow conviction for unilateral conspiracy where you can be convicted if you are set up and conspire (or think you are conspiring) with a government agent.

b. Δs here is not charged with the substantive crime, but rather with a conspiracy to do the substantive crime. B/c Δ’s are ignorant of the blue sky laws they are incapable of forming the intent to conspire (similar to Cude)

c. The main criteria for determining whether a statute which is silent of its face as to mens rea implies a mens rea, or is to be treated as strictly liable is to look to the punishment. If it is only a fine then it is most likely SL. Punishment of imprisonment, a deprivation of one’s personal liberty requires a mens rea.

C. For Δ to be convicted of a passive act they must have knowledge on the law that their failure to do something was wrong.

1. **Lambert v. California** – LA had an ordinance requiring all felons in the city to register with the police, and specified that failure to register was a continuing offense. Δ was a resident of LA for over 7 yrs. during which she had been convicted of a felony, but had never registered. When Δ was arrested for another offense she was convicted of violating the registration ordinance. The S. Ct. reversed, holding that a person must have knowledge that passive conduct is a crime in order to held guilty of that offense.

a. Action/inaction is not so much the basis for the cts. decision as was notice. If the Δ had been convicted of the failure to register it would’ve violated her due process rights b/c she had no notice that failure to do so was an offense.

b. This case is distinguishable from Bensech. Bensech was a businessman and thus is presumed to know the laws relevant to operation of his business. Lambert is an ordinary citizen who has no such burden to inquire into the laws of LA simply b/c she lives there.

c. Lambert represents a minority view. Cts. are reluctant to hold that not knowing the law is a defense for malum prohibitum crimes (also for malum in se). In order for most cts. to allow it there has to be a clear case where there would be no reason for the Δ to know of or learn about the law.

D. **Overview: Ignorance of the Law is no Excuse**  
   (Exceptions and Qualifications)

1. If the offense is malum prohibitum, and passive, then the Ct. may inquire whether a reasonable person would have reason to know about the law

2. If Δ reasonably relies on some statement of the law that is later superceded it is an allowable defense

3. It is not a defense to say you reasonable relied on the advice of your attorney which turned out to be wrong

4. Conspiracy to commit a malum prohibitum offense requires knowledge that the substantive offense is a crime (Benesch)

5. If you are charged with a crime that requires a specific intent (or some other element beyond general mens rea) and if you ignorance of a law other than the one you are
accused under prevents you from forming the specific intent, you cannot be guilty of the crime.

V. IGNORANCE OR MISTAKE OF FACT (as a defense)

**General Rule:** Ignorance or mistake of fact may be asserted as a defense if the following three criteria are met:

1. The mistake is honestly believed,
2. The mistake is based upon reasonable grounds, and
3. The conduct of the actor would have been lawful if the facts had been as believed by the actor

**Mental Element Required:** The general rule applies to crimes which require a general mens rea. For other mental states:

- **Specific Intent:** Mistake of fact may not need to be reasonable, only genuine and honestly believed
- **Strict Liability:** Mistake of fact is not a defense and the actor is guilty regardless of good or bad faith

A. An inference of mens rea can be rebutted by evidence of honest ignorance by the Δ, thus preventing the Δ from possessing the necessary guilty mind.

1. **King v. Ewart** - Δ sold a newspaper which contained obscene matter, Δ claimed he honestly did not know the obscene matter was in the paper. Δ was convicted of selling obscene matter and appealed. The App. ct. held inference of a guilty mind can be rebutted by evidence of honest ignorance, and that determination is for the jury to decide. (Was a category 3 crime, see below)

   a. J. Edwards in concurring opinion identified 3 categories of crimes and where the burden of proof in each type lays:
      i. Crimes where a guilty mind must be inferred from the nature of the act done or must be established by independent evidence (Prosecution has the burden on proof)
      ii. Crimes the legislature intended to prohibit absolutely, where existence of a guilty mind in only necessary for determining the quantum of punishment (SL)
      iii. Crimes where commission of the act is a presumption that the required mens rea is present and that assumption is rebuttable by the Δ. (Δ has burden to rebut)

         1. For category 1 the act itself proves the mens rea, for category 3 the act proves only the presumption of a mens rea
         2. In order to categorize a crime look first to whether it is category 1, whether the statute expressly requires a specific state of mind.
            Then, if not 1, determine whether it is 2 (SL), or 3. This can be determined by looking to severity of possible punishment, level of stigma (if low it is a SL offense)

B. A good faith belief can act as a defense to mistake of fact
1. **People v. Vogel** - Δ was convicted of bigamy but appealed on the grounds that he mistakenly believed his first wife had divorced him, but the trial ct. refused to admit evidence to evaluate the reasonableness of Δ’s belief. The App. Ct. held that the statute required wrongful intent and based on his reasonable belief, the Δ did not have that wrongful intent. Ct. also reasoned that b/c bigamy is an immoral crime it is unlikely the legislature intended to hold the morally innocent guilty.
   a. **MPC § 231.6 Bigamy** – A married person is guilty of bigamy (a misdemeanor) if he contracts or purports to contract another marriage unless at the time:
      (a) the actor believes that the prior spouse is dead, or
      (b) the actor and prior spouse have been living apart for 5 consecutive yrs. during which the actor though the prior spouse was dead, or
      (c) a court has entered judgment to terminate or annul the prior marriage and the actor does not know the judgment is invalid, or
      (d) the actor reasonably believes he is legally eligible to remarry.

C. Split authority on mistake of fact in cases of statutory rape

1. Majority View, **People v. Cash** – 30 yr. old Δ picked up a runaway girl who was 15yr. 11mo. old but told him she was 17. Δ took her to a motel where they had sex, Δ was charged with statutory rape. At trial the ct. refused Δ’s jury instruction that reasonable mistake as to the girl’s age was a defense. The Δ was convicted but appealed. App. Ct. held reasonable mistake of age was not a defense b/c:
   a. The statute was recently amended giving the legislature opportunity to change it and allow for mistake of age as a defense but they chose not to.
   b. Δ’s claim that the statute’s absence of specific intent violated due process but the ct. rejected the argument holding these types of statutes are common and the constitution requires no defense of honest mistake.
   c. Public policy does not support the view for mistake of age as a defense b/c statutory rape laws are designed to protect children, who b/c of their age are unable to consent, etc.
   d. Ct. in this case treats statutory rape as a category 2 offense and this is majority treatment

2. Minority View, **People v. Hernandez** - Δ had sex w/ a girl who was 17yrs. 9mo. old, with her consent. At trial Δ was denied the opportunity to offer evidence that he reasonable believed her age to be 18. Δ was convicted and appealed. The App. Ct. held that without specific legislative direction to the contrary mistake as to age was a defense and should have been allowed.
   a. Limitations on Hernandez holding: (1) applies only to mistake of fact (not mistake of law); (2) mistake has to be reasonable
   b. The theme runs through this case that premarital sex is morally wrong, but not criminal
   c. Ct. here treats statutory rape as a category 3 offense

3. **MPC §213.6 Provisions Generally Applicable to Sexual Offenses**
   (1) **Mistake as to Age** – when the criminality of conduct depends on a child age being below 10 yrs. it is no defense the actor did not know the child’s age or thought the child to be older than 10. When criminality depends on the child being below a critical age of other than 10 it is a defense for the actor to prove by a
preponderance of evidence that he reasonably believed the child to be older than 10.

C. **MPC §2.04 Ignorance or Mistake**

   (1) Ignorance or mistake to a matter of fact or law (does not differentiate) is a defense if:
   
   (a) the ignorance or mistake negatives the purpose, knowledge, belief, recklessness or negligence requires to establish a material element of the offense, or
   
   (b) the law provides that the state of mind established by such ignorance or mistake constitutes a defense

   (2) Although ignorance or mistake may otherwise provide a defense it is not allowable if the Δ would have been guilty of another offense if the situation has been as he supposed. (it may however mitigate the punishment)

VI. **PARTIES TO A CRIME**

**Generally:** Under common law a person who participated in a crime was either the principal or an accessory. An *accessory before the fact* was one who incited another to commit a crime, an *accessory at the fact* is one who aided the principal in commission of the crime, an *accessory after the fact* is one who protected the principal from the authorities.

   Under modern law most states have simplified these classifications with statutes and case law. The basic rule is that you are guilty of a crime if you were the perpetrator, if you encouraged someone to do it, or if you helped in the commission of the offense. Accessories after the fact are usually not viewed as parties to the substantive offense and their actions are usually classified as obstruction of justice.

MPC §2.06(3) A person is an *accomplice of another in the commission of an offense* if:

   (a) with the purpose of promoting or facilitating the commission of the offense he:

   (i) solicits another to commit it, or
   
   (ii) aids or agrees or attempt to aid such other person in planning or committing it, or
   
   (iii) having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so, or

   (b) his conduct is expressly declared by law to establish his complicity

A. In order for an accessory after the fact to be convicted the substantive offense must have been completed at the time the accessory acted.

1. **State v. Williams** - Δ helped Hicks evade police after Hicks shot a man. The man did not die until after Δ helped Hicks escape. Δ was convicted of an accessory after the fact of murder and appealed claiming there was no murder at the time he aided the felon. The App. Ct. agreed and held in order to be convicted as an accessory after the fact the prosecution must prove (1)the principal felon committed the crime, (2)the accused knew that the principal committed the felon and (3)that the accused offered some kind of assistance to the felon.

   b. The ct. noted the Δ could have possibly been convicted as an accessory after the fact to assault w/ intent to kill

B. Even if a person cannot be guilty of the substantive offense, they can be held guilty an accessory to the substantive offense.
1. **Law v. Commonwealth** - Accused was indicted as a principal in the second degree for aiding and abetting Lin committing rape. Law was convicted of attempted rape. The accused, at the time of commission of the offense was 11 years and 11 months old, and the common law rule is that a boy under 14 cannot be guilty of the crime of rape due to physical incapacity. Δ was convicted and appeals arguing since the law prevents him from being able to be convicted as a principal he cannot be guilty as a principal in the second degree. The Ct. held although the Δ may be incapable of committing the specific offense he is still capable of aiding and assisting another in committing the offense, and thus can be held liable as a principal in the second degree.
   a. The reason for the legal rule (physical incapacity) does not carry over to the situation of aiding and abetting
   b. **MPC §2.06(5) Liability for Conduct of Another** – A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.

   A person is legally accountable for another when:
   1. he acts with the culpability necessary for the commission of the offense or causes an innocent or irresponsible person to engage in such conduct, or
   2. he is made accountable for the conduct of the other person by the law defining the offense, or
   3. he is an accomplice of such other person in the commission of the offense.

C. When one felon withdraws from the commission of a felony, but the felon is carried out anyway, and it is impossible to tell which felon withdrew and which felon carried out the offense neither felon can be convicted of the substantive offense.

1. **King v. Richardson** – 2 Δ accosted victim in street and asked him how much money he had. When he said it was a small amount one Δ told the other Δ not to bother and walked away. The other Δ robbed the victim nonetheless. The evidence was insufficient to establish exactly which Δ took the money. Both Δ were convicted an appealed. The App. Ct. held that b/c one Δ made an effective withdrawal from the crime and the prosecution could not establish which Δ carried out the crime both Δs must be acquitted.
   a. It is possible that both Δ could have been convicted of conspiracy to commit robbery.

**Malum Prohibitum / Strict Liability Offenses**

I. **STRICT LIABILITY**

   Generally: Strict liability crimes require no criminal state of mind. B/c of this they are often seen as a breach of civic duty rather than a true crime. Good faith or innocence is not a defense and even if the violation of the statute was accidental the Δ is still liable

   **Strict Liability Crimes are Characterized by:**
   1. the crime is part of a regulatory scheme rather than one of the traditional common law offenses
   2. a relatively light penalty is given upon conviction (only a fine)
   3. Proof of mens rea would impede implementation of the legislative purpose
   4. the crime does not involve a direct a positive infringement upon the rights of other persons
A. Violation of a civil offense harms the public at large thus the Δ should be strictly liable regardless of their intentions.

1. The Queen v. Stephens - Δ owned and operated slate quarries near a river. Δ employees stacked rubbish on the bank which fell into the river an blocked navigation. Δ was indicted for obstructing the river. Δ was convicted and appeals on the grounds that he should not be liable for the acts of his employees, and because he did everything he could to ensure the debris did not fall into the river. The Ct. held the Δ was liable, choosing to read the statute as a strict liability offense.
   a. For all practical purposes this was a civil proceeding, it just proceeded under criminal law b/c the nuisance affected the public at large rather than 1 or 2 individuals.
   b. The Δ’s state of mind is irrelevant b/c all that is intended is to prevent the situation from recurring and holding someone strictly liable will always have a deterrent effect.

B. Malum in Se – these are crimes b/c the act is bad in and of itself (i.e., murder)
Malum Prohibitum – these acts are made criminal by statute, they are not inherently bad, but are criminal b/c the legislature chooses to treat them as so.

1. Commonwealth v. Olshefski - Δ ran a trucking business. One of Δ’s employees pick up a load of coal and had it weighed, it was 15,200 pounds. (15,750 was the statutory maximum). Employee left to deliver the coal and was stopped by the police who weighed the vehicle at 16,015 pounds. Δ was charged for the violation he asserts that he did not know the truck was overweight as a defense. The Ct. held the Δ criminally liable even when he believed in good faith he was not violating the statute.
   a. Typically malum prohibitium offenses carry only fines and no imprisonment as punishment (or even possible punishment)
   b. Many cases have now held that in order to be innocent the Δ needs to prove that it was impossible to comply with the statute/regulation without having to do something unconscionable. This is a higher standard to prove than mere intent. (Ex. engineer on train and brakes won’t stop)

II. VICARIOUS LIABILITY

Generally: There is no respondeat superior doctrine in criminal law (as in tort law). The state of mind of the employee cannot be imputed to the employer. However, strict liability offenses are an exception. Employees may be held criminally liable for the acts of their salespersons.

A. Commonwealth v. Koczwara - Δ was licensee and operator of a tavern. Δ’s employees sold liquor to minor’s outside of Δ’s presence and without his knowledge. This was prohibited by the liquor code and Δ was convicted and sentenced to 3 months in jail and a $500 fine. Δ appeals on the grounds he had no knowledge. The Ct. held the Liquor Code has no mens rea requirement thus Δ’s state of mind is irrelevant and he is strictly liable. However, imprisonment in vicarious liability cases violates due process and thus Δ’s sentence must be modified to a fine only.
Inchoate Crimes

I. ATTEMPT

Generally: as long as you have the intent required for the commission of the substantive offense you can be held guilty of attempting the crime. Majority of the state today impose a higher penalty on commission of the substantive offense, however a minority of states and the MPC impose the same level of punishment for both.

A. The act, if it had been completed by the Δ, must constitute a substantive crime.

1. Wilson v. State - Δ altered a check for $2.50 to make it $12.50 by altering the numeric amount, not the text. The check was printed as “ten dollars or less”. When Δ attempted to cash the check he was arrested and convicted of attempted forgery. Δ appealed and the App. Ct. held Δ was not guilty of attempt b/c although Δ may have had the intent to defraud his alteration of the note voided it so that no harm could result, thus it was not a crime.

B. Δ’s actions towards the crime must constitute a “substantial step” (w/in dangerous proximity of carrying out the crime) in order to be convicted of attempt

1. People v. Paluch - Δ was convicted with attempting to practice barbering without a certificate of registration which is a violation of an IL statute. P went to the shop and asked the Δ if it was open. Δ admitted Pinkston, walked over to the barber chair, put on his own smock and offered the chair to Pinkston. Δ had his own barbering tools. P then asked if Δ had a license. Δ pointed twice to a license that was not his and then admitted that he worked at the shop, but had no license. Δ argues on appeal that all he did was prepare to do something, but no substantial step towards barbering was committed thus he cannot be guilty of attempt. The ct. held the evidence was sufficient to establish a substantial step by the Δ towards the commission of the offense.
   a. test for substantial step is not just mere preparation but whether the actions amount to a dangerous proximity of successful completion of the offense
   b. lying in wait is typically deemed a substantial step

C. Where the Δ(s) are not within physical proximity of the location the offense will be carried out there is no substantial step

1. People v. Rizzo - Δ and others intended to rob R of the payroll and went in search of R, driving around the city. They went to the bank but were unable to find R. They were later arrested when they got out of their car, R was not present. Δs were convicted of attempted robbery and appeal. The App. Ct. held that the accused must have been caught within the physical proximity of the place where they were intending to commit the crime in order for their actions to constitute a dangerous proximity of success necessary for conviction of attempt (Δs could probably have been convicted of conspiracy to commit robbery.)
D. Factual Impossibility unknown to Δ is not a defense to attempt if the facts, as Δ believed them would have resulted in a successful completion of the crime.

1. **State v. Mitchell** - Δ went to W’s house and shot through the window to W’s bed where he believed him to be sleeping. Unbeknownst to Δ W was not there. Δ was convicted of attempted murder and asserts impossibility as a defense on appeal. The ct. rejects it and holds that Δ had the intent, capacity and committed the overt act to kill. Had the facts been as he supposed he would have been guilty of murder thus he is guilty of attempted murder.
   a. Compared to Wilson:
      - in Wilson the Δ accomplished everything he set out to do but still did not succeed in completing the substantive offense (fraud)
      - in Mitchell, if Δ had been successful in carrying out everything he intended to do he would have been guilty of the substantive offense (murder)
   b. Ask if it is certain Δ had no intention of turning back prior to completing the crime. Mitchell, yes. Rizzo, answer in uncertain.

E. If the police intercept stolen property and use it to convict a Δ the Δ must be charged with attempt to receive stolen property

1. **People v. Rojas** – H stole goods and arranged to sell it to Δs who knew the goods would be stolen. Police then intercepted the goods and used them as bait to convict the Δs. The Δs were convicted of receiving stolen property and appeal on the grounds that the goods, when they received them were not stolen b/c they had been recovered by the police. The App. Ct. modified the Δs conviction to attempting to receive stolen property. The fortunate detection of the stolen property by police should not wipe out the criminality of the Δs.

F. If Δ has the intent and apparent capability to commit a crime but then physical incapacity prevents the commission of the crime the Δ can still be convicted of attempt.

1. **Preddy v. Commonwealth** - Δ and old man attempted to rape a woman but was unable to complete the crime due to impotence. At trial the jury was instructed that impotence was no defense to the charge and Δ was convicted. Δ appeals. The ct. held the only incapacity recognized as a defense is legal incapacity, i.e. the common law that says a boy under 14 cannot commit rape. In this case if Δ had succeeded in accomplishing everything he had set out to do he would have been guilty of the substantive offense and thus should be guilty of attempt.

G. Overview of Attempt

- **Impossibility is not an issue if:** the Δ has gotten w/in a dangerous proximity of completing the substantive offense
- **Impossibility may an issue if:** the Δ is not w/in dangerous proximity and something happens to prevent the completion of the crime.
   - Ask, If Δ had set out to accomplish everything they had set out to do would they be guilty of the substantive offense? If yes, impossibility is not a defense If no, impossibility may be a defense
   - at this point look to whether the impossibility is a legal impossibility that bars the Δ from being able to commit the offense (i.e. boy of 14 yrs.); or if
it is a factual impossibility. Use what outcome the Δ intended to guide yourself through the process.

H. Attempted assault is an offense where the state defines assault as attempted battery with the intent to batter, and w/ present ability

1. State v. Wilson - Δ threatened his wife and then went to get a gun. When he returned his wife was safely behind locked doors. Δ was convicted of attempted assault and appeals that an assault is an attempted battery which is an attempt to attempt, which cannot logically be a crime. OR had an assault with a deadly weapon statute and a general attempt statute. The ct. rejected the Δ’s argument b/c the OR statute defined assault as (2) attempted battery (w/ intent) and present ability. Where the conduct has exceeded mere preparation it should be characterized as an attempt.
   a. If a state defines assault the same as the tort law definition then the Δ’s argument would be true and the Δ would not be guilty.

I. MPC §5.01 Criminal Attempt
   (1) Definition – A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for the crime he:
      (a) purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believed them to be, or
      (b) when causing a result is an element of a crime, he does or omits to do anything with the purpose of causing, or with the belief that is will cause such result w/out further conduct on his part, or
      (c) purposely does or omits to do anything which under the present circumstances or as he believes them to be , is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime
   (2) Conduct which may be held to be a Substantial Step:
      (a) lying in wait
      (b) enticing or seeking to entice the contemplated victim
      (c) reconnoitering the place contemplated for the commission of the crime
      (d) unlawful entry of a structure, vehicle or enclosure, in which it is contemplated the crime will be committed
      (e) possession of materials to be employed in the commission of a crime, which are specifically designed for unlawful use and can serve no lawful purpose for the actor under the circumstances
      (f) possession, collection, or fabrication of materials to be employed in the commission of the crime at or near the contemplated place of commission
      (g) soliciting an innocent agent to engage in conduct constituting an element of the crime

II. CONSPIRACY

Common Law: Combination of 2 or more persons for an unlawful purpose

Reasons behind charging conspiracy as an offense:
- Existence of a group increase the danger, the more people involved the more damage that can result
- It is easier to thwart a crime carried out by one individual rather than a group of individuals
- Chance of abandonment is greater if you are on your own
- All point to the fact that a group crime, once planned is more likely to occur, thus conspiring to commit a crime should be punishable
- Criminologists have found that if a group successfully commits a crime they are more likely to commit future crimes

A. **Wharton’s Rule** – When the crime charged requires the participation of 2 or more persons for its completion the agreement to commit the crime cannot be prosecuted.

1. **U.S. v. Figuerdo** - Δ and 7 others were convicted of conducting an illegal gambling operation in violation of federal law and were also convicted of the conspiracy to do so. The statute required the concerted action of at least 5 people in order for the substantive offense to be punishable. Δ moved for a dismissal and the ct. issued an opinion in response to Δ’s arguments, and held that under Wharton’s rule, where the substantive offense requires 2 or more people, the conspiracy to commit the substantive offense cannot be prosecuted.
   a. Exceptions to Wharton’s rule:
      1. A conspiracy can be charged if the offense is committed by one person (really a restatement of the rule)
      2. A conspiracy can be charged if the crime does not logically require a concerted action (even though as a practical matter it may) Ex.) Where there are two business partners in one office and one commits a crime, and the other person does not officially know but probably figured it out. The statute does not require 2 persons for commission of the crime but could probably not be carried out by one person
      3. Third person rule; where one assists 2 others in the commission of the crime then all three are guilty of conspiracy Ex.) Under the rule as stated conspiracy to commit adultery cannot be charged but if a 3rd party is involved somehow in the commission of the offense (a matchmaker) then all 3 can be charged w/ conspiracy.
   
   b. The third person exception does not apply in Figuerdo b/c the statute specifies “5 or more” for the commission of the substantive offense, thus the three extra persons can be charged w/ the substantive offense, in the adultery example the third person cannot be charged with the substantive crime.
   
   c. This case was overturned on appeal, and it represents a split in authority. Majority view (mathematical approach) is to look at the number of persons involved in the crime and compare that to what is statutorily required. If you have more persons involved in the crime that what is required by the statute then Wharton’s rule does not apply

B. If two people commit a crime but only one person has the necessary mens rea and criminal intent, both people cannot be convicted of conspiracy.

1. **Gebardi v. U.S.** – The Mann Act prohibited interstate transportation of women for immoral purposes. Δ and his future wife violated this Act. The Act expressly prevents conviction of the woman involved in the offense regardless of whether she consented or not. Both were convicted of conspiracy, and appealed. The ct. held the woman could not be convicted of conspiracy b/c she could not be convicted of the substantive offense. B/c
the woman cannot be convicted of conspiracy the man cannot either (you cannot conspire alone)
a. There can be no conspiracy where (1) the substantive offense involves the consent of another person, and (2) that person cannot be guilty of the substantive offense
b. Wharton’s rule does not provide a defense b/c the Mann Act can be violated even without the consent of both parties and thus it can be carried out alone. The rule does not apply
c. A case where both rules would provide a defense is where there is a prostitution statute that only punishes the prostitute, not the client. Under both rules there can be no conspiracy conviction

C. A seller of lawful goods is not guilty of conspiracy even if he knows that what he sells will be used to commit a crime, as long as the crime is a misdemeanor.

1. **U.S. v. Falcone** - Δ sold items to distillers whom they knew would use them to manufacture liquor illegally. Δ was convicted of conspiracy to manufacture liquor illegally even thought the items sold were lawful. The ct. held there could be no conspiracy conviction if the goods are lawful, the seller does not promote illegal activity, and if there is no specific intent to be involved in the illegal act.
   a. In order to be guilty Δ would have to directly benefit from the conspiracy itself, that is, have some kind of “stake” in it.
   b. The seller’s interest in making a living must balances against the public’s interest for safety. When the danger to the public is great enough cts. are willing to override the seller’s interest. This often happens where the substantive offense is a felony, or a serious misdemeanor

D. A co-conspirator does not need to commit an overt criminal act in order to be convicted of conspiracy. (CL typically did not require an overt act although most jurisdictions today do.)

1. **Pinkerton v. U.S.** – 2 brothers conspired to evade tax laws. One brother did nothing beyond the planning stage (Δ), while the other committed the overt criminal act. Both were convicted of conspiracy and the Δ appeals claiming no participation in tax evasion. The ct. of appeals confirmed the conviction and held the overt action of one conspirator can be imputed to their co-conspirator as long as there has been no withdrawal
   a. This imputation is limited only to crimes that are a foreseeable result of the conspiracy
   b. Pinkerton Rule: Each co-conspirator is responsible for the crime committed by their co-conspirator’s that are (1) reasonably foreseeable and (2) done in furtherance of the conspiracy.
   c. Today there is a split of authority whether to recognize Pinkerton, federal cts. do, however most state cts. and the MPC reject it:
   d. The overt action is an additional element (to unlawful combination), and any act towards the commission of the substantive offense is sufficient:
      **MPC §5.03(5) Overt Act:** No person may be convicted of conspiracy to commit a crime, other than a felony of the 1st or 2nd degree, unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired

E. **MPC §5.03 Criminal Conspiracy**
   (1) **Definition** - A person is guilty of conspiracy with another person(s) to commit crime if with the purpose of promoting or facilitating its commission he:
(h) agrees with other person(s) that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
(i) agrees to aid such other person(s) in the planning or commission of such crime or attempt or solicitation of such crime.

(2) **Scope of Conspiratorial Relationship** - If a person guilty of conspiracy knows that a person with whom he conspires to commit a crime has conspired with other person(s) to commit the same crime, he is guilty of conspiring with such other persons whether or not he knows their identities.

(3) **Conspiracy w/ Multiple Criminal Objectives** – If a person conspires to commit a number of crimes he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

### III. SOLICITATION

**Generally:** The use of words or other device by which a person is requested, urged, advised, counseled, tempted, enticed or otherwise incited to commit a crime. The solicitation itself is the actus reus.

A. A person may be convicted of solicitation even if the crime solicited was never committed.

1. **State v. Blechman** - Δ counseled another to set fire to a building w/ the intent to defraud the insurer. Δ was tried and convicted of solicitation. Δ appeals on the grounds that b/c the building was never burned no crime was committed. The ct. affirmed conviction holding that the act of solicitation is a crime in itself.
   a. Difference between solicitation and attempt is that in solicitation the Δ uses a guilty agent whereas w/ attempt the Δ personally participated. If the crime is completed the solicitor is guilty of the completed offense.

B. **§5.02 Criminal Solicitation**

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

   (2) **Uncommunicated Solicitation** – It is immaterial that an actor fails to communicate with the person he solicits if his conduct was designed to effect such communication.

*Note – With the inchoate offenses (attempt, conspiracy, solicitation) the MPC:

- advocates the same punishment that completion of the substantive offense would have carried.
- also allows for mitigation when the conduct charged to constitute the inchoate offense is inherently unlikely to have resulted in the commission of the crime, or any harm to the public.
- provides a person may only be convicted of 1 inchoate offense in connection w/ the substantive offense. See generally, §5.05.*

Offenses Against the Person (Ch. 2)

I. **HOMICIDE** - generally
A. **Common law**: killing of one human being by another human being. Each homicide is distinguished by the state of mind of the offender.

B. **Corpus Delicti Rule**: In order to convict for any type of homicide the prosecution must first prove, independent of any confession or out of court statement of the accused that:
   1. death occurred
   2. there is evidence the death resulted from criminal agency of another person
      - once this has been established evidence regarding the third requirement for a homicide conviction, that the criminal agent was the Δ, may be introduced.

   a. Circumstantial evidence of corpus delicti is sufficient
      1. *Downey v. People* – Ct. held circumstantial evidence introduced by prosecution was enough to establish death by criminal agency, that Δ’s wife’s death was not accidental.

   b. Evidence of criminal agency, independent from confessions of Δ, is required
      1. *Hicks v. Sheriff, Clark County* – death is established by the body but there is not evidence of criminal agency such as bruising, wounds, etc. Thus any evidence placing suspicion on Δ is inadmissible b/c second component of corpus delicti rule has not been met.
      2. Both Downey and Hicks show the need to carefully distinguish the evidence of criminal agency from the evidence the Δ was the criminal agent.

   c. Inferences drawn from in-court statements can be used to establish corpus delicti
      1. *Warmke v. Common wealth* – A body is not required to prove death, the low probability of the baby’s survival rate is enough. Ct. looked to list of facts provided by the Δ’s testimony as evidence of criminal agency – child was illegitimate, Δ’s story does not add up, etc.

II. **MURDER**

**Common Law**: homicide w/ malice aforethought

A. **MPC §210.2**: criminal homicide constitutes murder when:
   1. it is committed *purposely or knowingly*, or
   2. it is committed *recklessly under circumstances manifesting extreme indifference* to the value of human life.

   Such *recklessness and indifference are presumed when* the actor is engaged in the commission of, attempt to commit, or flight after commission or attempt to commit: robbery, rape (or deviant sexual intercourse by force or threat), arson, burglary, kidnapping, or felonious escape.

   a. (Required states of mind: depraved heart and recklessness)
   b. Recklessness is defined as conscious disregard of a substantial (high probability of harm) and unjustifiable (no rational basis for Δ’s actions) risk (subjective)
c. “manifesting extreme indifference to the values of human life” is met when the act is a gross deviation from the standard of conduct of a ordinary law-abiding person. (objective)

B. Malice Aforethought

a. Murder is homicide committed with malice aforethought.

b. Malice aforethought cannot be justified, excused, or mitigated
   1. Justified – it is alright to act the way you did, it is the way the law expected you to. (ex. Killing in wartime) Person is not guilty.
   2. Excused – law holds you were incorrect to act the way you did but your behavior will be excused (ex. Insanity) Person is not guilty
   3. Mitigated – Different from above 2 b/c it is a reduction. Acknowledges wrong of your actions and holds you will be punished for it but due to circumstances the punishment will be reduced. (Ex. Reduction of murder to m/s b/c of provocation)

c. Malice consists of:
   1. Intent to kill or inflict great bodily harm, or
      a. Reckless behavior absent an intent to kill or cause great bodily harm is not malice and does not constitute the necessary intent for murder.
         i. Errington & Others’ Case – jury instruction stated if there is no intent to kill then it cannot be murder, if the intent was to injure or frighten then it is m/s.
   2. Depraved Heart – i.e. wanton or willful disregard of unreasonable human risk
      a. Act must involve an element of viciousness and extreme indifference to human life. Act that causes death must be intentional even though the resulting death may not be.
         ii. Commonwealth v. McLaughlin – Ct. identifies a 3d definition of malice (in addition to intent to kill or do gbh). Ct. held none of the definitions of malice were met b/c the Ω turned around and took the people he injured to a hospital.
   b. Act must show reckless disregard for the value of human life, will be guilt of murder regardless of intent.
      i. Banks v. State – does not matter that there was no malice directed towards any specific person on the train, rather the Ω’s reckless action with a disregard for others is enough to establish malice under the depraved heart definition.
      ii. State v. Hokeson – since Ω was engaged in a felony at the time of the defendant’s death it is murder under the f/m rule. But even if f/m rule was not applied Ω would still be guilty b/c his actions showed extreme indifference for the value of human life. F/m rule requires a connection between the felony and the killing which can be determined by
         1. CA test – killing and felony are part of “one continuous transaction”
2. **PA test** – conduct causing the death was done in the furtherance of the design of the felony.

3. **Iowa statute** “presumes” indifference to human life on the commission of an inherently dangerous felony. This shifts the burden of proof from the Π to the Δ.

3. **Presumed malice implicated by felony murder rule**

   a. **Felony Murder Rule:** a death resulting from the perpetration of an inherently dangerous felony is murder. The felonious act constitutes the required element of malice b/c the act shows a willful and wanton disregard for the value of human life. The MPC lists certain felonies as falling w/in the f/m rule and does not use the “inherently dangerous” approach. MPC also contains a provision listing certain felonies such as robbery, rape, arson, etc. as invoking the f/m rule.

      i. **People v. Phillips** – Ct. held f/m rule should not apply b/c grand theft is not a felony that is “inherently dangerous to human life”. This is the common law approach to the rule.

   b. **Policy considerations of the f/m rule:**

      *For:* - Deterrence, by including these felonies in rule drafter are trying to deter some would be felons, if rule does not deter from commission of felons it might deter felon from acting in manner that results in a homicide.

      *Against:* - lack of connection, why convict a person of murder simply b/c their actions accidentally result in a death.

      - there are a lot of people who commit the same felonies that are fortunate enough not to have a homicide occur, why have a lesser punishment for the same crime

      - distinction between a felony and a misdemeanor is somewhat arbitrary.

   c. **Merger Doctrine:** in order for the felony murder rule to apply the homicide must be independent of the felonious act. When the homicide results from the actual felony committed the felony murder rule does not apply. (Not all jurisdictions require the murder be independent of the felony)

      i. **People v. Wilson** – Ct. held felony murder rule does not apply to assault w/ a deadly weapon (adw) b/c it is not independent. Adw is a lesser included offense of homicide thus it is impossible for the prosecution to prove homicide without proving adw. Thus the 2 are dependant and the f/m rule does not apply. This case provided an example of the statutory f/m rule which states that if you cause a death while committing one of the enumerated felonies you are guilty of 1st degree murder.

C. **Premeditated Murder**

   a. 4 categories of 1st degree murder (**Drum v. Commonwealth**)

      1. Poison
      2. Lying in wait
      3. willful, deliberate and premeditated killing
4. according to the felony murder rule (See *Wilson*)

b. Treat category 2 as one thing, intent to kill w/ a fully formed plan
   1. Willful – an intent to kill
   2. Deliberate – cool head, mind is conscious of what they are doing
   3. Premeditated – fully framed design (plan) to kill

ii. *People v. Cornett* – trial ct. held you can have willful, deliberate and premeditated murder w/ out appreciable length of time between formulating the intent to kill and the killing as long as thinking process occurs prior to formulation of intent to kill. This is erroneous b/c although both statements standing alone are true they cannot be true together. Since there were 2 ways for the jury to reach their verdict, one correct and one incorrect, and it is impossible to determine which they used the case must be overturned.

iii. Drum vs. Cornett
    - Intent to kill and $\Delta$ fullyformed plan to kill (Drum)
    - Intent to kill and weighing of considerations whether or not to kill (Cornett).
    This is a higher standard.

c. 2nd Degree Murder: all other kinds of murder are second degree

III. MANSLAUGHTER

*Common Law*: unlawful homicide w/out malice aforethought

MPC §210.3 Manslaughter
(1) Criminal homicide constitutes manslaughter when
   (a) it is committed recklessly, or
   (b) a homicide which would otherwise be a murder is committed under the influence of extreme mental or emotional disturbance for which there is no reasonable explanation or excuse. Reasonableness shall be determined from the viewpoint of a person in the actor’s situation under the circumstances as he believes them to be.
(2) Manslaughter is a felony in the 2nd degree

Voluntary vs. involuntary m/s
1) First determine whether or not an offense is m/s
2) Then determine whether it is voluntary or involuntary
   Maj. Rule: If m/s resulted from mitigation it is voluntary, otherwise it is involuntary
   Min. Rule: If $\Delta$ had an intent to kill it is voluntary, if not it is involuntary

A. Four types of m/s
   - M/s mitigated down from murder based on provocation
   - M/s mitigated down from murder based on an honest but unreasonable belief
   - M/s from misdemeanor m/s rule
   - M/s based on criminal negligence

a. Mitigation based on provocation, elements are:
1. Intent to kill or inflict great bodily harm

2. Wanton and willful disregard of unreasonable human risk

3. Adequate Provocation
   i. Words as provocation – common law held words alone are never sufficient as
      provocation. Modern courts permit words to be sufficient when they are
      informational rather than merely insulting.
      a. State v. Grugin – Ct. held words which convey information about
         something can be adequate provocation.
      b. State v. Farris – Ct. held insulting language plus poking in the chest is
         not adequate provocation. Adequacy of provocation is an ordinary person
         under the same or similar circumstances.
   ii. Heat of Passion – passion need not be anger. Can include fear or any other violent,
       enthusiastic emotion
   iii. Cooling time – period after which a reasonable person would have cooled down.
        No set time, but usually the greater the provocation the longer the cooling period.
   iv. Cumulative (ongoing) provocation – sufficient provocation can be met by a long
       series of continually provoking acts.
      a. People v. Borchers – Provocation can be any kind of extreme emotion; does not
         have to result from a single act.

b. Mitigation based on honest but unreasonable belief
   i. People v. Watkins - A homicide committed under an unreasonable yet good
      faith belief constituted criminal negligence, and is thus justified. (Ct. cited
      State v. Allison which most likely reached this holding b/c the state does not
      have a negligent homicide statute). There is no malice aforethought. Δ was
      raising issue of self-defense in an attempt to justify but instead it was only
      mitigated.

c. Misdemeanor M/s rule: A killing is unlawful if it occurs during the commission of an
   inherently dangerous misdemeanor; or if it occurs during the commission of an
   ordinarily lawful act which involves high risk of gbh or death and involves a lack of
   due caution and circumspection. (This is a misnomer b/c there is no such thing as an
   inherently dangerous felony)
   i. People v. Williams – Ct. looks to 2 different cases both of which require when
      using misdemeanor m/s rule the judge must instruct the jury what the elements
      of a felony and misdemeanor are.

d. M/s based on criminal negligence
   - some states have statutes which hold if you are criminally negligent then you are
     guilty of m/s,
   - others hold if you are criminally negligent this is a lesser offense than m/s and thus
     you are guilty of negligent homicide.
   - the MPC is more in line with the latter b/c it identifies a specific category as
     negligent homicide.
Most common scheme is that recklessness is m/s and criminal negligence is negligent homicide
- Recklessness is higher than criminal negligence b/c it requires the Δ have subjective knowledge that harm may result.
e. Voluntary vs. Involuntary m/s
- Involuntary m/s is unlawful homicide w/out malice aforethought and without an intent to kill or cause gbh.
- Any m/s in which there is an intent to kill or any m/s that results from mitigation based on provocation is voluntary m/s

B. CRIMINAL NEGLIGENCE

a. **Criminal Negligence**: actor should be aware of a substantial and unjustifiable risk that exists or could result from their conduct. The risk must be of such nature and degree that the actor’s failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involve a gross deviation from the standard or care a reasonable person would exert in the actors situation.

b. **Requirements**: knowledge (actual or imputed) that the act tended to endanger human life; and a gross deviation from the standard of ordinary care.

1. The negligent act must be determined by the conduct of the act itself, not from the resulting harm.
   i. *People v. Rodriguez* – mother that left her children unattended at home was not criminally negligent when the house burned down and one of the children died. The test is based on a reasonable person standard regardless of what the outcome is.

2. If the act involves a gross deviation from the standard of care, or if it foreseeably endangers the victim, it is criminal negligence
   i. *State v. Bier* – Ct. held Δ created a risk and grossly deviated from the ordinary standard when he threw a loaded gun on the bed and challenged his intoxicated wife to use it.

3. MPC §210.4 Negligent Homicide
   (1) Criminal homicide constitutes negligent homicide when it is committed negligently.
   (2) Negligent homicide is a felony in the 3rd degree

**ASSAULT & BATTERY**

I. Definitions

A. Common Law (same as tort definitions)

   Battery – unlawful application of force to the person (body) of another
   Assault – into to put another in fear or apprehension of imminent bodily harm

B. Modern Views on Criminal Assault
i. **Majority** – Attempted battery or the tort definition of assault

ii. **Minority**- Attempted battery with present ability to complete the battery (goes beyond a reasonable belief)

iii. **Other** – Attempted battery with no present ability

1. Hypotheticals – *Is there a criminal assault?*

   a. Δ knows gun is not loaded but victim thinks gun is loaded
      i. no attempted battery b/c no intent
      ii. no intent, no present ability = no battery
      iii. Δ would be guilty of assault under the common law definition

   b. Δ thinks gun is loaded but victim knows gun is not loaded
      i. Δ is guilty b/c he has intent to batter
      ii. Δ not guilty b/c no present ability
      iii. Δ is guilty b/c there is an attempt (w/ intent)

   c. Both know gun is not loaded
      i. Not guilty, no intent
      ii. Not guilty, no present ability
      iii. Not guilty, no tort law definition of assault

   d. Both think gun is loaded (but it is not)
      i. Δ is guilty b/c he has intent
      ii. Δ is not guilty b/c has no present ability
      iii. Δ is guilty under both attempt rule and tort definition

C. An honest but unreasonable belief can mitigate 1st degree assault to 2nd degree assault

   i. **State v. Foster** – Foster was beaten by victim on prior occasions. Someone told Foster victim, who was much larger than Foster, also carried a gun. Foster got a gun. One day victim reached inside his jacket, Foster thought victim was reaching for a gun and shot him 2x in what he asserted was self-defense. Jury most likely found Δ had had an honest but reasonable belief for his life and thus mitigated the assault charge. The Δ could still be determine to have been criminally negligent, i.e. he should have known the other guy was harmless, and he could be accused of “firing wildly.”

D. There can be an assault based on attempted battery, the victim need not have an imminent apprehension of bodily harm.

   i. **U.S. v. Bell** - Δ, a patient, attempted to rape a female patient who was mentally incapacitated and thus was not capable of having apprehension. D was convicted of assault with intent to commit rape and appeals the assault charge. This articulates the majority view that an assault can be an attempted battery, or an assault under the tort law definition
      a. This either/or rule is present in a majority of jurisdictions today
      b. In order to be convicted of an attempt to commit a crime you have to have intent, which is why under the maj. rule an attempted battery is an assault. Intent is not required for battery, a battery can be caused by criminal negligence
E. Completed battery includes assault whether or not the victim had an imminent apprehension of bodily harm

i. **U.S. v. Jacobs** - Δ went to B’s house to evict him, and blocked his driveway. When B came home he drove around Δ and started to enter his house. As he started to enter Δ shot him in the arm. Then B turned around and saw Δ was armed. Δ then struck B with the gun. Δ asserted he accidentally fired the gun. Δ was charged w/ 1 ct. of assault resulting in serious bodily injury, and 1 ct. of assault with a dangerous weapon and intent to commit harm, but was convicted of only the first count. Δ appeals on the grounds that B did not see him prior to being shot thus B had no apprehension. The ct. did not agree and judgment was affirmed. It is a basic rule that when actual battery is committed it includes an assault.

a. Δ also argued verdict here was inconsistent, Ct. responds (1) inconsistent verdicts are okay as a natural result of the jury process and (2) that Δ could have also intended the assault, but not the injury, but b/c of the resulting harm would still be guilty.

F. **MPC §211.1 Assault**

(1) Simple Assault (a misdemeanor), A person is guilty of assault if he:

(a) attempts to cause, or purposely, knowingly or recklessly causes bodily injury to another, or

(b) negligently causes bodily injury to another with a deadly weapon, or

(c) attempts by physical menace to put another in fear of imminent bodily injury

(3) Aggravated Assault, A person is guilty of aggravated assault if he:

(a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly, or recklessly, under circumstances manifesting extreme indifference to the value of human life,( 2nd degree felony) or

(b) attempt to cause or purposely or knowingly causes bodily injury to another with a deadly weapon (3rd degree felony)
INTERNATIONAL CRIME

WAR CRIMES

- any violation of the laws or customs of war; a violation of a convention or a violation of any customary legal norm
- basic rule of treaty interpretation is to go by the ordinary meaning given to the terms of the treaty in the context of its light and purpose

Tribunals:
Nuremberg – Article 6
Yugoslav Tribunal
Rwanda Tribunal

Geneva Convention of 1949 Deals with Treatment of Civilian Populations and POW Treatment
U.S. v. List – It is acceptable to take hostages and even kill them under certain situations.

It is lawful for an occupying army to take hostages if:

1. Killing is a last resort and
2. The general population is a party to the offense (the opinion suggests that nationality and geographic proximity of the population may be taken into account.
3. Occupying party must identify the names of the hostages and provide a clear warning they will be killed if any further actions take place
4. The killing must not be excessive
5. Before the killing there must be a trial (unless no time)
6. Motive must be of military necessity

- this sharply contrasts with U.S. domestic law which does not condone the taking of hostages under any circumstances
- Ct. held following orders is not an affirmative defense if the Δ knew or should have known that their actions were wrong

 Article 2 of the Geneva Convention governs situations of declared war and everything in the convention is applicable
- Article 3 applies to armed conflict within the boundaries of one state or country, it stands alone
- Article 4 defines persons protected by the convention

ICC
- defines war crimes by international, and non-international (civil armed conflict)

US Legislation – War Crimes Act of 1966
- makes war crimes as identified in the Geneva Convention punishable under US law
- only applies to military and US nationals as either the perpetrator or the victim
CRIMES AGAINST HUMANITY

Nuremberg Article 6
- allowed for prosecution of crimes committed before the war if they can be linked to other crimes committed during the war
- there are 2 interpretations
  (1) you cannot be guilty of a crime against humanity unless you are guilty of another crime w/in the jurisdiction of the tribunal (this is what Nuremberg intended)
  (2) you can be guilty of the 1st set of crimes (crimes against humanity) whether or not they were committed during war, and thus tied to other offenses in the tribunal

U.N. Control Council 10
- allows for prosecution of humanity independent of a situation of war

ICC
- no linkage to “war” expressly required, but does require a “widespread systemic attack directed against a civilian population”

GENOCIDE

Convention on Prevention and Punishment
- mens rea required, “intent to destroy, in whole or in part, a national, ethnic, racial, or religious group”
- is not self-executing
- U.S. attached so many reservations and understandings to it is “watered down”: “substantial part” – U.S. requires it to be a significant number of the group “mental harm” – U.S. requires permanent impairment, Convention does not jurisdictional – offense has to occur in U.S. or offender has to be a US national