CRIMINAL LAW OUTLINE

I. CLASSIFICATIONS OF CRIMES
   a. Capital crime: a crime worthy of the death penalty
   b. Infamous crime: United States v. Moreland (SCOTUS, 1922)
      i. Hard labor is “infamous” punishment
      ii. Opposing view: “infamous” punishment only means imprisonment, in a penitentiary, for more than one year
      iii. RULE: Presentment or indictment before a grand jury is required before sentencing someone to infamous punishment (Federal crimes only! Some states have followed suit voluntarily)
      iv. **It is what sentence can be imposed, not what was imposed, that is the material consideration in whether a statute requires presentment or indictment by a grand jury (look to potential punishment)**
      v. **A crime is infamous if it’s punishment is infamous (other courts look to underlying conduct)**
      vi. Many statutes restrict what positions/activities are available to persons convicted of an infamous crime (serving on police force, holding office)
   c. Presentment or indictment by a grand jury:
      i. Indictment: the prosecution convenes a grand jury and asks it to deliver a charge against someone
      ii. Presentment: used when a grand jury comes up with its own charge
   d. Held to answer: being put to trial or convicted
   e. NOTE: always consider the purpose of the statute in deciding what rule of decision should govern which activities fall within its sphere
   f. Melton v. Oleson (MT, 1974)
      i. MT law: a felony is identified by the sentence actually imposed (when the crime is punished by death or imprisonment in the state prison)
      ii. Fed. law: a felony is identified by the potential punishment (when the crime is punishable by death or imprisonment for a term exceeding 1 year)
      iii. MT law applies because state laws (especially those regarding areas of law which are the sole province of the states – i.e. voter registration laws) should be subject to state classifications
      iv. Voting rights rationale: voters of different states should not be able to decide the voting rights of MT citizens!
   g. Why classification matters:
      i. Determines the rights of the individual after their time is served
      ii. Determines which type of trial court the case will be heard in
   h. MAJORITY RULE: once judgment has been entered, you can use the “actual punishment” test to classify the crime
   i. MPC hierarchy of crimes:
      i. Felonies
      ii. Misdemeanors
      iii. Petty misdemeanors
      iv. “Real crimes” vs. “civil offenses”/”violations”
II. ASSAULT AND BATTERY
   a. State v. Foster (WA, 1979)
      i. Criminal legislation must be definite in language
      ii. It must provide *fair notice* so that persons of reasonable understanding
          know what conduct is prohibited.
          1. It would violate due process to convict a person for something that
             is not known to be a crime.
          2. Courts insist on *fair notice*, not perfect notice
      iii. It must contain *ascertainable standard for adjudication* so that police,
           judges, and juries are not free to decide on their own what conduct is
           prohibited and what is not.
           1. Also ensures uniformity in the courts.
           2. Mere disagreement among judges about the meaning of statutory
              language does NOT prove that a statute is “vague”
      iv. In a vagueness challenge, the court must look to the statute as a whole
   b. 2 ways to get to criminal negligence in assault:
      i. Acting negligently
      ii. Having an unreasonable belief that the use of force was necessary
   c. Intent: you can be found to have intended a consequence EITHER if you desired
      it to occur OR if you were reasonably certain it would occur
   d. Assault
      i. Tort law definition: intentional placing of another in reasonable, imminent
         apprehension of offensive contact
      ii. Criminal law definition: describes what would be battery in tort law
         (actually causing real, harmful contact). Sometimes courts use “assault
         and battery” to refer to this one crime.
         1. United States v. Bell (7th Circuit, 1974): the act of putting another
            in reasonable apprehension of bodily harm is NOT a required
            element of criminal assault
         2. Common law, MPC, and most jurisdictions agree
      iii. Jurisdictional views of assault:
         1. Minority view: To have a criminal assault, you need an attempted
            battery
         2. Minority view: To have a criminal assault, you need an attempted
            battery AND the present ability to complete the battery
         3. Majority view: To have a criminal assault, you need an attempted
            battery OR the tort definition of assault
      iv. MPC 211 Assault
         1. § 211.1 Simple Assault. 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 serious bodily injury.
Simple assault is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

2. **§211.2 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; or
   b. Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.

Aggravated assault under (a) is a felony of the 2nd degree; aggravated assault under (b) is a felony of the 3rd degree.

3. Notes about the MPC:
   a. The MPC takes a restrictive view of assault – it’s not enough to just apply force, you have to intend to hurt someone
   b. The MPC requires more than common law – it requires recklessness, not just criminal negligence
   c. MPC definition of negligence is really criminal negligence (gross deviation from the standard of care)

   e. Battery
      i. Tort definition: actually coming into harmful contact with the victim
      ii. Common law criminal definition: the unlawful application of force to the person of another
         1. Nothing explicitly refers to the state of mind of the Δ
         2. Does not require harmful contact (don’t need bodily injury)
         3. Does not necessarily require contact at all
      iii. Mental state required:
         1. Most jurisdictions: criminal negligence required
         2. Some jurisdictions: recklessness required
         3. Very few jurisdictions: criminal intent required
      iv. **Every battery does NOT require an attempted battery**
         1. **Attempt requires intent** – there may have been a completed battery without any intent to come into harmful contact
         2. Criminal negligence can result in a charge of battery
   f. **Menace:** anything that would cause a reasonable person to be fearful
   g. Variables to look for:
      i. Does the law require bodily injury or serious bodily injury?
      ii. Does the law require an attempt or an actual physical harm?
      iii. State of mind: recklessly, knowingly, negligently, or some combination
      iv. Does the law require a deadly weapon?

III. THE CRIMINAL ACT
   a. **MPC § 2.01 Requirement of Voluntary Act; (Omission on Basis of Liability;)** Possession as an Act.
i. A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

ii. The following are NOT voluntary acts within the meaning of this Section:
   1. A reflex or convulsion;
   2. A bodily movement during unconscious sleep;
   3. Conduct during hypnosis or resulting from hypnotic suggestion;
   4. A bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

iii. . . .

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

b. Voluntary
   i. You have to be conscious of the act you are committing
   ii. There is a distinction between the question “is there a voluntary act” and the question “did the Δ act negligently, recklessly, etc.”
   iii. A voluntary act would be a voluntary *inaction* (see omission below)

c. Intent alone, not coupled with some overt act toward putting the intent into effect (an admission to someone else, possession of a weapon to be used, maps, etc.), is not cognizable by the Courts.

d. Omission
   i. If legal liability is going to be based on omission to act, the prosecution has to show that there was a legal duty to act
   ii. A legal duty exists when:
      1. Statute imposes a legal duty (taxes, draft)
      2. Parent-child relationship
      3. Δ enters into a contract
      4. Voluntarily assume the care of someone and seclude them from others who might provide help
      5. If you create the peril in the first place

IV. THE CRIMINAL STATE OF MIND
   a. Actus reus: the physical element present in every crime
   b. Mens rea: the mental element present in some crimes
   c. Types of Crimes
      i. Malum in se: true crime, something that is objectively wrong
         1. Mens rea is usually required
      ii. Malum prohibitum: a civil offense, something that is wrong only because the legislature has said so
         1. The legislature often imposes strict liability for these types of crimes (so some mala prohibitum offenses do not require a showing of knowledge)
      iii. Consequences flow from this decision
         1. Affects the issue of whether you can be guilty of a conspiracy
2. Affects the burden of proof (civil offenses don’t require proof beyond a reasonable doubt)
3. Misdemeanor manslaughter rule: only mala in se crimes come within the scope of the rule (the real test is NOT whether the crime is a misdemeanor, but whether it is mala in se)
d. Burden of proof
i. Three classes of cases (The King v. Ewart – obscene magazine case):
   1. Mens rea crimes – general mens rea OR specific intent crimes (a guilty mind is necessary)
   2. Strict liability crimes – where the Legislature intended to prohibit the act absolutely, and the question of the existence of a guilty mind is only relevant for the purpose of determining the quantum of punishment
   3. General mens rea crimes with a rebuttable presumption – when the commission of the act itself prima facie imports an offence, but the person charged may prove that he did not have a guilty mind
ii. If the statute requires you to do something knowing that it is true, then the burden is on the prosecution
iii. If the statute explicitly requires a specific state of mind, then the burden is on the prosecution to prove that state of mind
iv. If there is NO explicit state of mind referenced, then the court must decide whether it is a type (1) or (2) crime. If it is a type (1) crime, they have to decide what mens rea to assign to the crime.
v. General rule: if the Δ claims it was a mistake, then the burden is on the Δ to prove it
e. Absolute Liability
i. When the actus reus alone is enough to convict (the fact that the prohibited act occurred fixes liability on the actor)
ii. Every criminal statute does NOT require a mens rea (examples: speeding, negligence, etc.)
iii. State v. Chicago, Milwaukee & St. Paul Railway Co.: statutes imposing criminal penalties rarely impose absolute liability. Statutes imposing criminal penalties almost always require a mens rea (intent).
   1. When the crime has a particularly heinous stigma attached to it, strict liability will be rare
   2. When the conduct is particularly reprehensible, a mens rea will generally be required
iv. Registration laws cannot be applied under a strict liability doctrine.
   1. Lambert v. California – CA registration law for felons
   2. The first time an offender finds out about the registration law is when they are in violation of it! No notice and therefore no opportunity to avoid the consequences of the law
   3. Violation occurs by innocent inaction
v. When the statute doesn’t specify what the mens rea is, the court has to interpret/infer the Legislature’s intent
vi. Impossibility defense: (MODERN LAW) if the circumstances are such that it was impossible to come into compliance with the statute (even a strict liability crime), that can be a defense to statutory violation

f. Vicarious Liability (Commonwealth v. Koczwara – liquor sales to minors)
   i. Courts cannot impose a sentence of imprisonment in a case where vicarious liability is imposed
   ii. You can’t imprison on the basis of vicarious liability, but you can fine
   iii. Vicarious liability is an artificial concept that should not be expanded

g. Intent
   i. Casebook author - intended consequences are those which:
      1. Represent the very purpose for which an act is done (regardless of likelihood or occurrence), OR
      2. Are known to be substantially certain to result (regardless of desire)
   ii. Legomsky – intent is either:
      1. Desire, or
      2. Knowledge to a substantial (practical certainty)
         a. It’s not enough to show that the consequence was substantially certain to occur – the Δ must KNOW that the consequence was substantially certain to occur

h. Attempt
   i. An attempt is composed of two elements:
      1. The intent to commit the substantive offense; AND
      2. A direct, ineffectual act done towards the commission (The act must reach far enough towards the accomplishment of the desired result to amount to the commencement of the consummation)
   ii. If the definition of a crime says you have to DO x, y, and z, you don’t actually have to DO those things – you could CAUSE the happening of x, y and z

i. Two categories of crimes:
   i. Crimes that require intent to do something
      1. General mens rea crimes
         a. The state of mind which every crime requires at a minimum. It embodies two elements, EITHER:
            i. An intent to do the deed that constitutes the actus reus, OR some recognized substitute (like recklessness or negligence), AND
            ii. The absence of justification or excuse
         b. General intent exists when the prohibited result may reasonably be expected to follow from the offender’s voluntary act, even without any specific intent by the offender (Dobbs’ Case – burglarizing stable to kill horse)
         c. Every crime requires a the general mens rea, some crimes require something else
      2. Specific intent crimes
a. A crime that requires the general mens rea PLUS a an additional specific intent
   i. Burglary: requires the actus reus of breaking into someone’s home at night, AND requires the intent to commit a felony
   ii. Larceny: requires the actus reus of taking and carrying away the property of another, AND the intent to steal and not return the property (State v. Cude – garage car repair case – must have the intent to take someone else’s property)
   iii. Indecent exposure: requires the actus reus of someone observing you nude, AND the intent for that person to see you nude (State v. Peery, jurisdictions are divided on whether the additional specific intent is actually required)
b. Specific intent exists where, from the circumstances, the offender MUST have subjectively desired the prohibited result (Dobbs’ Case)
c. An act from general malevolence is not an attempt to commit a crime, because there is no specific intent (Thacker v. Commonwealth – shooting into tent)
   ii. Crimes that require only some lesser mens rea (negligence, recklessness)
j. Forgery (State v. May)
   i. Intent to defraud: means the intent to gain some advantage through forgery
   ii. A person possessing a recently forged document, or passing it, is presumed either to have forged it or to have the intention to defraud. This is a rebuttable presumption, it shift the burden to the Δ.
   iii. Policy rationale for the forgery rule:
      1. We must have confidence in financial documents and faith that they are true and enforceable (must maintain the integrity of written documents)
      2. The Δ should not get to decide what risk the lender is willing to take (must provide lender will full and true information)
      3. It’s not right for a person to speak for another person on financial matters without their explicit consent (even if they “know” the person would be cool with it)
k. Conditional Purpose
   i. If a Δ makes an UNLAWFUL REQUEST, coupled with a THREATENED INJURY and the PRESENT ABILITY to inflict that injury, that act will constitute an assault even if the person complies with the request (People v. Connors – factory union dispute)
   ii. If the Δ makes a LAWFUL REQUEST, couples with a THREATENED INJURY and the PRESENT ABILITY to inflict that injury, then the act does NOT constitute an assault (ex: removing trespassers from your land)
iii. **MPC §2.02(6) Requirement of Purpose Satisfied if Purpose is Conditional**: When a particular purpose is an element of an offense, the element is established although such purpose is conditional, UNLESS the condition negatives the harm or evil sought to be prevented by the law defining the offense.

1. *Purposely* = intent (parallels the two-prong approach above)
2. The condition would negative the harm or evil IF: you took a book home, thinking it was yours, on the condition that you would return it if your book was at home. You get home and it IS your book – so the fulfillment of the condition makes the act legal

l. **Knowledge**
   i. **Resale of stolen goods - State v. Beale**
      1. MAJORITY RULE: (“Subjective Standard”) The knowledge or reasonable belief that goods are stolen must be personal to the re-seller (i.e. pawn shop owner). It is not enough that the “reasonable person” would think the goods were stolen
      2. MINORITY RULE: (“Objective Standard”) If a person has information from facts and circumstances which should convince him that the property has been stolen, which would lead a *reasonable person* to believe that the property had been stolen, then in a legal sense he “knew” it
      3. You CAN take statements that the Δ made or conduct he engaged in to *infer* that the Δ had actual knowledge

ii. **MPC §2.02(2)(b) Kinds of Culpability Defined – Knowingly**: A person acts knowingly with respect to a material element of an offense when:
   1. If the element involves the *nature* of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; AND
   2. If the element involves a *result* of his conduct, he is aware that it is practically certain that his conduct will cause such a result
      a. Legomsky: practically certain = almost 100%

iii. **MPC § 2.02(7) Requirement of Knowledge Satisfied by Knowledge of High Probability**: A requirement that an offense be committed *willfully* is satisfied if the person acts *knowingly* with respect to the material elements of the offense, UNLESS a purpose to impose further requirements appears. (willfully = knowingly)

m. **Ignorance or Mistake**
   i. **Ignorance of law**
      1. “My ignorance of the law prevented me from having the requisite intent to commit the crime”
      2. This is a valid defense for larceny – if you thought you had a right to take the property, that is a defense (*State v. Cude* – garage car repair case)
      3. **State v. Cude** & **Commonwealth v. Benesch** (securities law case) – ignorance of some other law prevents the forming of intent required for the crime charged (a common fact pattern)
4. **MAJORITY RULE:** ignorance of the law defense is limited to *specific intent* crimes

5. **MINORITY RULE:** allows ignorance as a defense in *general mens rea* cases. (This seems more logical and scholars prefer it.)

ii. Ignorance of fact
   1. Ignorance of fact can prevent you from forming intent
   2. **People v. Cash** (statutory rape case): a reasonable mistake of fact is NOT a defense
   3. **COMMON LAW:** an honest and reasonable belief in the existence of circumstances which, if true, would make the act for which the person is indicted an innocent act, is a valid defense
   4. TEST: if his belief were correct, would his act have been legal?

iii. Intoxication is not itself a defense, but it CAN wipe out the mental element necessary for some crimes

iv. **MPC §2.04 Ignorance or Mistake**
   1. Ignorance or mistake as to a matter of fact or law is a defense if:
      a. The ignorance or mistake negatives the purpose, knowledge, belief, recklessness or negligence required 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 defense.
   2. Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is NOT available if the Δ would be guilty of *another* offense had the situation been as he supposed.
   3. A belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense based upon such conduct when:
      a. The statute or other enactment defining the offense is not known to the actor AND has not been published or otherwise reasonably made available prior to the conduct alleged; OR
      b. He acts in *reasonable reliance* upon an official statement of the law, *afterward* determined to be invalid or erroneous, contained in
         i. A statute or other enactment
         ii. A judicial decision, opinion or judgment
         iii. An administrative order or grant of permission, OR
         iv. An official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the offense.
   4. The Δ must prove a defense arising under (3) by a *preponderance of evidence*

v. Exceptions to the rule: “ignorance of the law is not a defense”
1. **Lambert** exception: if the offense is malum prohibitum, AND the law is obscure enough that it would be unfair to expect the Δ to know about it, THEN: ignorance of the law will be a defense
2. **Benesch** exception: CONSPIRACY to commit an offense that is malum prohibitum requires knowledge of that malum prohibitum law, as well as knowledge of the relevant facts.
3. If the mistake was made in reasonable reliance on some official, governmental pronouncement.
4. A mistake as to some law, other than the one you are accused of violating, will be a defense, if it eliminates any specific intent required for that offense. (In a minority of jurisdictions, it will also be a defense if it eliminates ANY mental element required for the crime.)

n. Intent to commit conspiracy
   i. In the case of conspiracy, there must be an intent to do wrong
   ii. Conspiracy is a malum prohibitum offense
   iii. To be guilty of intent to commit conspiracy, it must appear that the Δ knew of both:
      1. The existence of the law (the underlying substantive law that you’re accused of conspiring to violate), AND
      2. The facts of its actual or intended violation (the facts that amount to the conspiracy)
   iv. Intent
      1. Conspiracy to commit an offense *mala prohibitum* requires a showing of intent.
      2. Conspiracy to commit an offense *mala in se* does NOT require a showing of intent. (Everyone knows committing a mala in se crime is wrong.)
   v. Defenses to intent to commit conspiracy: **Commonwealth v. Benesch** (securities law case) – ignorance of the substantive law can prevent the forming of intent required for a conspiracy
   vi. One cannot be a conspirator alone

o. Statutory Rape
   i. Strict liability standard
   ii. We want to send potential defendants the signal that they shouldn’t risk it if it’s a close call – if there is ANY doubt don’t do it!
   iii. Persons under the age of consent cannot, as a matter of law, consent
   iv. The purpose of the statute is to protect children
   v. There is usually an express exemption if the two people are married.
   vi. **MPC § 213.6 Provisions Generally Applicable to Sexual Offenses**
      1. **Mistake as to Age**: whenever in this article the criminality of conduct depends on a child’s being below the age of 10, it is no defense that the actor did not know the child’s age, or reasonably believed the child to be older than 10. When criminality depends on the child’s being below a critical age other than 10, it IS a
defense for the actor to prove by a preponderance of the evidence that he reasonably believed the child to be above the critical age

2. MPC is a more lenient standard!

V. CONCURRENCE OF ACT AND STATE OF MIND

a. Commonwealth v. Cali: it is not necessary that the intent be formed before the criminal act is started. It is enough that the Δ accidentally started the fire and then chose not to put it out (intent can be formed at that later point)

b. Usually with specific intent crimes, the mens rea can’t be formed after the fact

c. Jackson v. Commonwealth: Δ can be guilty of murder if the act actually killing her was part of the felonious attempt to kill her at an earlier point in time
   i. The act that actually killed her was coupled with the intent to kill her
   ii. There was continuing intent, and one continuous act

d. Look at concurrence of the act and state of mind in terms of causation:
   i. The first, ineffectual attempt at murder was part of the actus reus. IF they had not done the first thing, then none of the later stuff would have happened
   ii. Courts do not require that the actus reus and the mens rea happen at the same time, but that the mens rea must CAUSE the actus reus

VI. INCHOATE CRIMES

a. Inchoate crimes derive meaning ONLY from some other substantive crime that they are connected to

VII. CONSPIRACY

a. Conspiracy: an agreement or combination for an unlawful purpose
   i. Common law: some conspiracies for lawful purposes were punishable
   ii. Requirements:
      1. An agreement to commit the crime (express or implied), AND
      2. Some actus reus towards the completion of the crime (it takes very little – buying matches is enough for conspiracy to commit arson)
   iii. Rationale for conspiracy law:
      1. No abandonment defense because it’s no longer one person’s decision to abandon the plan (once an agreement is made)
      2. The agreement itself is an actus reus – it is the first step towards completion of the crime

b. Wharton’s Rule (United States v. Figuerdo – gambling law requires 5 ppl.)
   i. RULE: an agreement between two person to commit a particular crime cannot be prosecuted as a conspiracy when the crime is of such a nature as to necessarily require the participation of two persons for its commission
   ii. When the crime requires 2 or more actors, the conspiracy merges into the substantive offense
   iii. 3rd person exception (Figuerdo rule – MINORITY VIEW): when the conspiracy involves the 2 necessary actors plus 1 or more others who are performing additional, unnecessary conspiratorial roles, then Wharton’s Rule will NOT block a conspiracy charge (ex: drug deal where 1 person puts another person into contact with the drug dealer)
      1. The 3rd party is not directly involved in committing the crime
2. The 3rd party is a go-between or a matchmaker (someone in an aiding and abetting role)
3. The aider & abetter is going beyond the act done by those committing the crime – he is committing some additional evil which creates the ability to charge him with the additional crime of conspiracy
4. 3rd party exception does NOT apply when the 3rd person is playing a statutorily required role for the commission of the offense

iv. MAJORITY RULE: when the number of people necessary for committing the crime is exceeded, Wharton’s Rule no longer bars a conspiracy charge (example: if the gambling law requires 5 people and you have 6)

c. Gebardi v. United States – Mann Act case
i. The Legislature clearly intended to exclude even a willingly transported woman from culpability under the statute (the Act punishes transporters of women across state lines for immoral purposes)
ii. When the Legislature does NOT clearly intend to exclude the non-punishable actor, then it is possible for that actor to be guilty of conspiracy to commit the non-punishable offense

d. U.S. v. Falcone (sale of equipment used to manufacture bootleg liquor) – in order to be guilty of a conspiracy based solely on selling otherwise lawful goods to someone, you must have a stake in the outcome

e. Culpability of co-conspirators for the substantive crime
i. PINKERTON RULE (Pinkerton v. United States - IRS case where one partner acted alone): so long as the partnership in crime continues, the partners act for one another in carrying it forward. An overt act of one partner may be the act of all without any new agreement specifically directed to the act.
ii. FEDERAL RULE / MINORITY STATE RULE: if the substantive crimes were in furtherance of the conspiracy AND reasonably foreseeable, then all are guilty of the substantive crimes
iii. MINORITY STATE RULE (less restrictive): if the crimes were committed in furtherance of the conspiracy, all are guilty of the substantive offense (no reasonably foreseeable requirement)
iv. MAJORITY STATE RULE: all conspirators are NOT guilty of the substantive crime
   1. Most states have rejected Pinkerton in favor of this rule
   2. MPC is consistent with this majority view

f. Unilateral conspiracy
i. Most jurisdictions will not allow a conspiracy without 2 guilty parties
ii. MPC recognizes unilateral conspiracies when they are a sting operation

g. MPC §5.03 Criminal Conspiracy
i. Definition of Conspiracy: A person is guilty of conspiracy with another person or persons to commit a crime if, with the purpose of promoting or facilitating its commission, he:
1. Agrees with such 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
2. Agrees to aid such other person or persons in the planning or commission of such crime, or of an attempt or solicitation to commit such crime.

ii. **Overt Act.** No person may be convicted of a conspiracy to commit a crime, other than a felony of the first or second 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.

VIII. ATTEMPT

a. **Attempt** – a direct, yet ineffectual act towards the commission of a crime

b. TEST: if the Δ had accomplished everything he had intended to do, would he be guilty of the attempted crime?
   i. **People v. Rojas** – Δ intended to receive un-intercepted goods. Just because they had been intercepted didn’t destroy their attempt
   ii. **Wilson v. State** – attempted forgery case, Δ found not guilty because there was no material alteration to the document (Δ intended only to make the alteration he actually made)

c. Attempt **merges** with the substantive crime
   i. SOME STATES allow prosecutors or courts to decide whether they will charge the Δ with attempt or with the substantive crime
   ii. SOME STATES dictate that once the crime has been completed, the Δ cannot be charged with attempt, only the substantive crime
   iii. EVERY STATE requires you to choose between one or the other

d. **Substantial step / dangerous proximity**
   i. In order to be charged with attempt, it is NOT requisite that the act be the last deed immediately preceding that which would render the crime complete
   ii. Mere preparation to commit a crime does not constitute an attempt
   iii. The acts committed must place the Δ in dangerous proximity to success in carrying out the intent
   iv. The greater the apprehension of the Δ, the more likely they will abandon – this should be taken into account in assessing dangerous proximity (**People v. Paluch** – barber case, no apprehension)
   v. Lying in wait is generally automatically regarded as dangerous proximity

e. When an attempt fails
   i. An act done with the intent to commit a crime, which would (but for timely interference) tend to effect the commission of that crime, is an attempt
   ii. TEST: had it not been for the interference, how likely was it that the crime would have been committed?
   iii. **State v. Mitchell** – man fires into empty bed, still guilty of attempt

f. **Impossibility Defense**
   i. Incapacity to commit the offense - **Preddy v. Commonwealth**
1. If the Δ is legally incapable of committing the offense, there can be no conviction of attempt (i.e. 14-year-old boys cannot be charged with rape)
2. If, however, the incapacity is caused by mere nervousness or physical defect, then Δ can be guilty of an attempt
3. Impotency is a sufficient offense for the consummated offense, though not for an attempted assault

ii. Steps to evaluating impossibility defenses
1. See if you can eliminate the defense by finding that a crime had been attempted or committed before something happened to make the crime “impossible”
2. Ask what exactly the Δ intended to do? If the Δ had accomplished precisely that, would he be guilty of the completed crime?
   a. No – then there is no attempt (impossibility is a defense)
   b. Yes – there is an attempt, provided Δ went far enough
3. Think about the facts of Δ’s acts, not the legal conclusions
4. Courts can almost always characterize Δ’s actions as having the requisite intent or not having it – usually judges go for the most realistic depiction of events
5. Another good indicator: some type of objective evidence that makes us feel confident that the Δ really meant to go through with it and complete the crime

iii. Terminology
1. Legal impossibility – when the court holds that impossibility IS a defense
2. Factual impossibility – when the thing that prevented completion was NOT enough to give rise to an impossibility defense
3. Don’t get hung up on this distinction! It is not determinative.

g. MPC §5.01 Criminal Attempt
i. The MPC takes a tough line on attempt – very prosecutorial
ii. Dangerous Proximity
1. Lists particular types of conduct that are NOT to constitute a “substantial step,” UNLESS it is strongly corroborative of the actor’s purpose.
2. The converse is not true – just because something is strongly corroborative doesn’t mean that there has been a substantial step

iii. Impossibility Issues
1. TEST: If the circumstances had been how Δ thought them to be, would he be guilty of the crime?
   a. If yes, then guilty of attempt.
   b. NOTE: the circumstances which the Δ is unaware of must be FACTUAL, not legal
2. TEST: Has Δ completed the last step he needed to complete to commit the crime?
a. If $\Delta$ acts with the purpose of causing, or with the belief that it will cause, the substantive crime to result, *without further conduct on his part*, he is guilty of attempt

3. TEST: Under the circumstances, as $\Delta$ believes them to be, has the $\Delta$ taken a substantial step?

h. Attempted Assault
   i. **State v. Wilson** – criminal assault should be regarded as a distinct crime (not just an attempted battery), and therefore it is possible to attempt it
   ii. Assault requires:
      1. Intent to inflict an injury
      2. Present ability to inflict that injury
   iii. If the $\Delta$ intends to inflict injury but does not have present ability, $\Delta$ can be guilty of attempted assault

IX. **SOLICITATION**
   a. Solicitation itself is an act done toward the execution of a crime (the solicitation itself constitutes the *actus reus*)
   b. Common law: solicitation was a misdemeanor, even if it was of no effect and the crime counseled was not in fact committed
   c. Rationale: once you counsel/solicit someone to commit a crime, you no longer have the ability to stop it unilaterally
   d. When the solicited person does not know their acts will be criminal
      i. The solicited person cannot be guilty of a crime because they have an innocent mind (no mens rea)
      ii. The solicitor cannot be guilty of solicitation, but can be guilty of an attempt to commit the crime solicited
   d. COURTS ARE DIVIDED ON THIS ISSUE

   e. **MPC §5.02 Criminal Solicitation**

X. **ABANDONMENT DEFENSE & MISCELLANEOUS**
   a. Common law: **Stewart v. State** – once the intent is formed and an overt act toward the commission of the crime has been committed, abandonment is never a defense
   b. **MPC §5.01(4) Renunciation of Criminal Purpose (Criminal Attempt)**
      i. When the act would otherwise have constituted an attempt, abandonment is no defense unless the abandonment is a *complete and voluntary* renunciation of criminal purpose
      ii. “Voluntary” means not motivated by new circumstances (not present or apparent when he started), that increase the probability of apprehension or detection
      iii. Voluntary renunciation IS a defense under certain circumstances
      iv. The MPC does NOT express a moral judgment. Abandonment can be a valid defense even when done for immoral purposes (as long as it’s not motivated by new circumstances AND not followed by a new formation of intent)
      v. MPC is the more modern approach, the common law is much stricter
   c. Rationale
      i. Renunciation defense creates an incentive to abandon attempts
ii. Although, an attempt is already punished less severely than the commission of the crime so this is not much of an incentive
d. Withdrawal from a solicited crime
i. State v. Peterson – one who has procured, counseled, or commanded another to commit a crime may withdraw before the act is done and avoid criminal responsibility IF he communicates the fact of his withdrawal and takes the most effective measure within his power to stop the crime
ii. If, at the time the solicitor withdraws the solicited actor has already gone far enough to be guilty of an attempt, withdrawal will not be a defense
iii. TEST: the question becomes whether the Δ effectively communicated that renunciation to the other person
iv. MPC §5.02(3) Renunciation of Criminal Purpose (Solicitation)
e. MPC
i. Generally, 2 requirements for effective renunciation under the MPC:
   1. Must actually prevent the commission of the crime
   2. The renunciation must be voluntary and complete
ii. MPC §5.04 Incapacity, Irresponsibility, or Immunity of a Party to Solicitation or Conspiracy
iii. MPC §5.05 Grading of Criminal Attempt, Solicitation and Conspiracy; Mitigation in Cases of Lesser Danger; Multiple Convictions Barred
iv. MPC §5.03(6) Renunciation of Criminal Purpose (Conspiracy)
v. MPC §2.06(6)(c) Substantive crime

XI. MERGER
a. MPC §5.05(3) – cannot be convicted of more than one inchoate offense in connection with one target offense
b. Under MPC, cannot be guilty of conspiracy to commit murder AND murder (although you can under common law)
c. Attempt does not merge into conspiracy
d. Conspiracy does not merge into attempt or the substantive offense
e. Otherwise, at common law everything can merge into everything else

XII. PARTIES TO CRIME
a. Common law: classification of parties varied according to the crime, the stage at which the party helped out, etc.
b. State v. Williams – a person cannot be convicted as an accessory after the fact to murder when he aided the criminal after the attack but before the death occurred
c. MPC
i. §2.06 Liability for Conduct of Another; Complicity
ii. §242.3 Hindering Apprehension or Prosecution
iii. §242.4 Aiding Consummation of Crime
iv. §242.5 Compounding
d. Law v. Commonwealth – even if Δ is legally incapable of committing the specific offense, he can still be guilty of aiding and assisting another in its perpetration
e. Accomplices to crimes
i. **Richardson** – a person is not an accomplice if he withdraws from the offense before it is committed (no turning back once it’s committed though!)

ii. **MPC §2.06(6)(c)** A person is not an accomplice if he terminates his complicity prior to the commission of the offense AND
   1. Wholly deprives it of its effectiveness in the commission of the offense; OR
   2. Gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense

f. **MPC vs. common law**
   i. The MPC terminology simplifies the common law, except for accessories after the fact
   ii. Under the MPC, in order to be guilty of crime X you actually have to have the purpose of promoting or facilitating the substantive crime
   iii. “Obstructing justice” – if you didn’t have the intent to commit the crime, but somehow aided or failed to stop the crime, you can be guilty of the MPC version of accessory after the fact

XIII. **INTERNATIONAL CRIMES**
   a. **Transnational crimes**: garden variety crimes defined by national law, which become transnational simply because the particular conduct frequently involves international transactions (drug trafficking, money laundering, etc.)
   b. **International laws**: applicable to all citizens of the world, regardless of nationality
      i. **Jus cogens** crimes – these laws beat everything else, even treaties
         1. Genocide
         2. Slavery
      ii. Customary international law
         1. Applicable to all, regardless of what they’ve signed onto
         2. Have to show that there is a general and consistent practice of state (close to a consensus, but not 100%) 
         3. Have to show that this practice arises out of a sense of legal obligation (similar to malum in se crimes)
      iii. General principles
         1. Principles that countries individually follow because they think it’s a good idea
         2. No sense of legal obligation is present
   iv. **Treaties**
   c. **International criminal tribunals**
      i. Created to try people for crimes committed over specified periods in connection with a specific conflict
      ii. First international criminal tribunals: Nuremberg and Tokyo
      iii. During the Cold War it was almost impossible to get the countries of the world together to collaborate on a tribunal
      iv. 1998: most nations in the world got together to create the first permanent, generic, international tribunal – U.S. is not a party
d. **International Military Tribunal (Nuremburg) - Article 6**
   i. Does not allow for prosecution of the Allied powers
   ii. Allows for prosecution of:
       1. Crimes against peace
       2. War crimes
       3. Crimes against humanity

e. **Allied Control Council Law No.10** – authorizes war criminals to be tried by courts operating in one of the four sectors controlled by the Allies

f. **ICC**
   i. Jurisdiction to try 4 different crimes
      1. Genocide
      2. Crimes against humanity
      3. War crimes
      4. Aggression (aggressive war) – jurisdiction will exist ONLY if the UN has passed a resolution declaring a particular state to be an aggressor – so no one in the 5 permanent seats will ever be tried b/c it would get vetoed
   ii. The court has jurisdiction over any individual who is a national of one of the states party to the court, and it also has jurisdiction over anyone who commits a crime within the territory of one of the member states
   iii. Goals of the permanent tribunal
      1. General deterrence
      2. Punishment
      3. Compensation and rehabilitation
      4. The restoration of public order
      5. The reinvigoration of the international and national rule of law
      6. The preservation of a collective memory
      7. National reconciliation

g. International law works extremely well in regulating conduct. It fails in punishing violations.

h. **Vienna Convention** – the treaty on treaties
   i. Basic rule of interpretation: when the meaning of a treaty is contested, it should be given the “ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”
   ii. Context means you have to include the whole text of the document
   iii. You are allowed to look at any related agreements between the parties to give meaning to those words
   iv. Allowed to look at the preamble for the purpose/object of the treaty
   v. The “legislative history” of treaties are called “negotiating papers.” Use of negotiating papers is limited:
      1. To confirm the text (not to contradict)
      2. To resolve language that is ambiguous or obscure
      3. To avoid results that are “manifestly absurd or unreasonable”
   vi. Biggest difference between negotiating papers and legislative history – cannot be used to contradict clear language in the text of the law
i. International humanitarian law
   i. Geneva Conventions of 1949
      1. 1864: required countries at war to provide humane treatment to soldiers who were sick or wounded on land
      2. 1906: did exactly the same thing, except this time for combatants who were sick or wounded at sea
      3. 1929: requires humane treatment of POWs
      4. 1949: requires certain humane treatment of civilians
      5. 1977: Protocol 1 – expands to cover colonial conflicts
      6. 1977: Protocol 2 – adds provisions about deliberate starvation of civilian populations and provisions for racial apartheid
   ii. Geneva conventions and the protocols are regarded as customary international law today
   iii. The vast majority of the countries that are party to the Conventions are also parties to the protocols (not the U.S., though)
   iv. United States v. List – this case led to the Geneva Convention on civilians. It’s OK to kill hostages, as long as certain conditions are met:
      1. The hostages must have some geographical or logical connection to the event the occupiers seek to punish
      2. Must issue a proclamation
      3. Number of hostages shot must not exceed in severity the offenses the killings are designed to punish
      4. Must have a judicial proceeding before the executions
      5. The motive has to be military necessity and not revenge

j. War Crimes
   i. Most lawyers would describe war crime as any violation of the laws and customs of war
   ii. No tribunal has jurisdiction over all war crimes. Each tribunal defines the scope of its jurisdiction
   iii. Ineffective defenses
      1. A supervising officer is culpable, even when the acts were committed without his knowledge
      2. When an actor is “just following orders,” that is not a defense
      3. You cannot kill an innocent person to save your own life

k. United States law & Treaties
   i. U.S. treaties are roughly equal to U.S. statutes in terms of authority
   ii. War Crimes Act of 1966
      1. §2401(a): applies to crimes committed inside or outside the U.S.
      2. Must be a grave violation of the Geneva Convention
      3. §2401(b): either the Δ or the victim has to be either a member of the U.S. armed forces or a U.S. national

l. Crimes Against Humanity
   i. The UN added language that limits crimes against humanity to crimes committed in commission of some other international law
   ii. In U.S. there is no law punishing crimes against humanity
iii. Courts have rejected the notion that official state action is required in order to find a crime against humanity

iv. The persecution has to be for certain reasons in order to qualify as a crime against humanity (political, racial, religious, gender, etc.)

m. Genocide – U.S. statute has gutted international genocide law

XIV. STATUTORY MATERIALS

a. Literal meaning approach
   i. The actual words used, interpreted in light of the entire statute
   ii. If the language is clear, then you go by that interpretation, even if the result is absurd

b. Golden rule approach
   i. Same as literal meaning approach, except if the result of the plain meaning would be ABSURD, then the court is free to reinterpret the meaning
   ii. Absurdity can be created through internally inconsistent results

c. Social purpose approach
   i. The parties search legislative history and other evidence for the underlying purpose of the legislation
   ii. Legislative intent: the result the legislature intended in a specific case
   iii. Legislative purpose: the broad purpose of the legislation

d. Expressio unius approach
   i. If the legislature wanted to include that specific offense, they would have enumerated it in the text of the statute
   ii. Anything not enumerated is excluded

e. Trend in American courts: shift from the literal meaning approach to the golden rule approach to, finally, the social purpose approach

f. SCOTUS rules of interpretation (Sewegmann Bros. v. Calvert Distiller’s Corp.)
   i. Resort to legislative history is only justified where the fact of the Act is inescapably ambiguous
   ii. The court should not go beyond committee reports, which presumably are well considered and carefully prepared
   iii. Whenever possible, the court should accept the meaning an act reveals on its face
   iv. The court should not inquire what the legislature meant, but what the statute means
   v. 2 relevant inquiries:
      1. Are you even allowed to consider the social purpose?
      2. If YES, then what sources are you allowed to consult?

g. Aids to interpretation
   i. Internal aids – things within the 4 corners of the statute itself (the statute, a preamble, other provisions of the statute)
   ii. External aids – other statutes, legislative history, judicial opinions that discuss what the purpose was, subsequent legislation that might amend the legislation you’re interpreting that might remotely relate to what you’re doing but still give a hint at meaning