Criminal Law Outline

Chapter One

- (we have harsh sentences, but generous procedural law)
- How Guilt is Established
  o Purposes of criminal sanctions
    ▪ Punitive
    ▪ Remove dangerous people from the community
    ▪ Deters others from criminal behavior
    ▪ Transform lawbreakers into law-abiding citizens
  o Parts of the criminal justice system
    ▪ Police
    ▪ Prosecutor
      • Discretion to decide what charges to bring (offense to charge on with) and what
disposition to recommend
      • Right to plea bargain
    ▪ Courts
      • Lower courts
        o Dispense with misdemeanors or petty offenses
        o First stage of felony cases
        o Process the majority of offenders
          o jury is a check on the judicial system and police and prosecutors
        • Until the 1970s, punishment was entrusted almost entirely to the discretion of the trial
judge (and judgments varied widely based on the judge)
          o Now there are moves to limit
            ▪ Mandating specific punishments
            ▪ Providing appellate review of trial court sentencing
            ▪ Legislature providing a minimum sentence
  o Corrections
    ▪ Major purpose is rehabilitation of criminals
    ▪ Major task is custody of criminals
  o States of a Criminal Case
    ▪ Investigation
    ▪ Diversion of cases before charge
      • 50% are released early in the process
    ▪ Pretrial release
      • Possibly pending trial…depends on magistrate
    ▪ Guilty pleas
      • 90% of criminals aren’t tried
    ▪ Trial
      • Most civil cases are tried without a jury
    ▪ Sentencing

- The Process of Proof
  o An Overview of the Criminal Trial Procedure
    ▪ The facts can be as obscure and malleable as the law
    ▪ Eyewitness testimony isn’t very credible
      • There can be credibility problems, especially of women who are viewed as unpredictable
and emotional and thus less credible
      • gender, race, and socio-economic makes some witness less credible
• constitution…you have the right to know your accuser
• one can’t just read police report because it’s hearsay
• 5th and 6th….right to not incriminate oneself….thus use witnesses
• not heard to disprove credibility…were they drinking
  ▪ Plea negotiation can lead to better results. A jury isn’t left with the extreme alternatives of guilty of a crime of the highest degree or not guilty of any crime, with no room for any immediate judgment
  ▪ Bargaining around the middle ground can occur

  o Note of Formal Trial Procedure
    ▪ Selection of the jury
    ▪ Presentation of the case
      ▪ Each side makes an opening statement
    ▪ Prosecution calls in witnesses
      ▪ Prosecution must prove beyond a reasonable doubt
      ▪ In civil cases, it’s preponderance of the evidence
        ▪ 5th and 14th amendment….due process clause
        ▪ 5th – federal….14th - state
      ▪ Defense can ask for a directed verdict OR
      ▪ Defense can bring in their own witness and evidence
        ▪ Judge gives instructions to the jury
        ▪ Jury retires to deliberate

- Difference btwn burden of proof and burden of production?
  o Usually both are borne by prosecution, though state law may allocate burden of production to defense, but burden of persuasion to the prosecution
  o production…just putting forth enough evidence to put a fact in issue (usually done by prosecutor)
    ▪ if accused comes up with enough evidence to put the fact in issue, it’s an affirmative defense
    ▪ MPC - state’s burden to disprove an affirmative defense
    ▪ defense must raise at least a reasonable doubt on the matter and then it’s up to prosecution to disprove that beyond a reasonable doubt
  o burden of persuasion/proof…allocating the burden of convincing the trier of fact
    ▪ prove to a jury beyond a reasonable doubt

Proof Beyond a Reasonable Doubt
- MPC 1.12 Burden Beyond a Reasonable Doubt; Affirmative Defenses; Burden of Proving Fact When Not an Element of an Offense; Presumptions
  o Each element of the offense must be proved for conviction
  o Only have to disprove an affirmative defense if there is evidence supporting such a defense
  o DD does not have to prove the defense by a preponderance of the evidence unless the statute or code requires
    ▪ An affirmative defense is either in a code or statute OR
    ▪ It involves a matter or excuse or justification peculiarly within the knowledge of the DD on which he can be fairly required to adduce supporting evidence
    ▪ The burden of proving a fact lies on the one whose interest will be furthered if the finding should be made
- definition of reasonable doubt
  o not a mathematical probability, but
  o leaves the minds of the jurors in that condition that the cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge (a mere possible doubt is okay)

- In re Winship
  o The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt (to be proved by the prosecution) of every fact necessary to constitute the crime charged
    ▪ High std. since one may lose their liberty and their good name
    ▪ Smaller risk of factual errors allows people to have confidence in the system
- Worse to convict an innocent man then let a guilty one go free

- **Curley v. United States**
  - Test judges apply:
    - If one must have a reasonable doubt, judge must require acquittal
    - However, if one may have reasonable doubt, it should go to the jury

### Allocating the Burden of Proof

- **Patterson v. New York** – PP say his wife in a state of undress with a neighbor, so he shot the neighbor in the head
  - Elements state must prove for 2nd degree murder
    - Intent to cause the death of another (mens rea…guilty mind)
    - Causing the death of the person or a third person (actus rea…guilty act)
  - Defense of extreme emotional distress must be proved by PP…okay with due process since state has done its job of proving that PP intentionally killed another
    - This would change it from murder to manslaughter
    - Not unconstitutional for the burden of proving an affirmative defense to be placed on DD

### The Justification of Punishment

- **MPC 1.02 Purposes; Principles of Construction**
  - Purpose of defining offenses
    - Forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests
    - Have public control over persons whose conduct indicates that they are disposed to commit such crimes
    - Safeguard conduct that’s without fault from condemnation as criminal (culpability)
    - Give fair warning of the nature of the conduct declared to constitute an offense
    - Differentiate on reasonable grounds btwn serious and minor offenses (Proportionality)
  - Purpose of provisions governing sentencing and treatment of offenders are
    - Prevent commission of offenses (deterrence/incapacitation)
    - Promote correction and rehabilitation of offenders
    - Safeguard offenders against excessive, disproportionate or arbitrary punishment
    - Give fair warning of the nature of the sentences that may be imposed on conviction (Legality) (deterrence)
    - Differentiate among offenders with a view to a just individualization in their treatment (rehabilitation)
    - Define, coordinate and harmonize the powers, duties and function of the courts and agencies responsible for dealing with offenders
    - Advance the use of generally accepted scientific methods and knowledge in sentencing and treatment of offenders
    - Integrate responsibility for the administration of the correctional system in as State Dept. of Correction

- Principle forms of punishment
  - Fines, probation, imprisonment, death penalty
  - Conviction = social stigma, barrier to future employment and risk of enhanced future punishment
  - Intermediate sanctions
    - Home detention, community service, intensive supervision probation (counseling or treatment)

- Justifications of Punishment
  - Retributive (backward looking)
    - People deserve it…eye for an eye…duty to punish
    - Principle of equality
- Used by US
  - Utilitarian (forward looking)
    - Punishment serves a purpose
    - Prevention, rehabilitation, and incapacitation
      - Serves as a deterrent and reflects the revulsion/disapproval felt by the great majority of citizens
        - specific deterrence
        - general deterrence…an example to society
    - cost-benefit analysis
      - one life to save three (of the strongest)…maybe capital punishment argument

- Regina v. Dudley and Stephens – cannibalism on high seas (general deterrence and retributive)
  - There’s killing with malice aforethought…but is there a justification/defense?
  - Only self-defense justifies killing another
    - One ought to die themselves than kill an innocent (can be a moral necessity to sacrifice one’s own life)
      - No absolute necessity to preserve one’s life
    - Extreme necessity doesn’t justify larceny, let alone murder

- United States v. Bergman – rabbi padded medicare claims to his nursing homes
  - Prison sentence necessary because:
    - General deterrence…discourage similar wrongdoing by others (show them law’s warnings are real and consequences of their actions)
    - Any lesser penalty would depreciate the seriousness of the DD’s crime (retribution)
      - proportionality
    - Not: rehabilitation, specific deterrence, incapacitate him (not dangerous)

- State v. Chaney – beat, raped, and robbed a woman (retribution, deterrence, rehabilitation, incapacitate)
  - Trial judge imposed minimum sentence and wanted immediate parole (thought army was best place for him)
  - Appeals court disapproved, but couldn’t change sentence
    - Violent circumstances, no remorse
      - Minimizes his comprehending his wrongfulness
    - Falls short of community condemnation and reaffirmation of societal norms

- United States v. Jackson – DD had been convicted of four armed bank robberies and robbed another 30 minutes after being released from prison
  - Statue provides anyone who has a firearm and three previous convictions for robbery/burglary shall be fined up to $25,000 and at least 15 years of prison and no possibility of parole
    - Specific deterrence failed, but court is permitted to consider general deterrence and incapacitation (protect society from him)

- United States v. Johnson – padded payroll checks and took 50% as a kickback
  - Sentence was reduced because of extraordinary family circumstances (ordinary will not work)
    - She was solely responsible for the upbringing of three kids, including an infant, and young child of her institutionalized daughter
    - Doesn’t reduce her culpability, but the courts are reluctant to wreak extraordinary destruction on dependents who rely solely on the defendant for their upbringing

Chapter Three: Defining Criminal Conduct – The Elements of Just Punishment

- Three principles limit the distribution of punishment
  - Culpability
    - Attempt to safeguard conduct that is without fault from criminal liability
  - Proportionality
Actus Reus – Culpable Conduct/ voluntary act

- MPC 2.01 Requirement of Voluntary Act; Omission as Basis of Liability; Possession as an Act
  - A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or omission to perform an act of which he is physically capable
    - Voluntary act…depends on definition
    - Commentaries suggest it’s whether the act was controllable by the DD
    - Not voluntary
      - Reflex or convulsion
        - People v. Decina
      - Bodily movement while unconsciousness or sleep
      - Conduct during hypnosis
      - Possession if not knowingly procured or received or knowing, but not having been able to terminate his possession

- Martin v. State – arrested at home and taken on highway by officers…was convicted of being drunk on a public highway
  - Alabama code criminalized one who appears in a public place while intoxicated
  - A voluntary appearance is presupposed and since this was not voluntary, conviction was erroneous
  - Since he wasn’t on the highway voluntarily

- Winzar v. Chief Constable of Kent – found drunk in hospital and placed in police car and then taken to police station…found drunk on highway
  - Words “found drunk” in the statute meant “perceived to be drunk” by the police
  - Fact that his presence wasn’t of his own volition and was momentary made no difference

- People v. Newton – DD was arguing with a police office and shot in the stomach. Although DD lost consciousness, he engaged in a struggle and his gun was discharged killing the officer
  - Since DD’s acts (physical movement) were committed while unconscious, he can’t be convicted of criminal homicide…must be an affirmative act…here he’s not conscious of acting
  - Unconsciousness is a complete defense…can’t try and deter it with punishment

- Voluntary/Involuntary
  - Drunkenness…if not self-induced…involuntary…complete defense
  - Habit…voluntary
  - Seizure…if you know of condition and are responsible for putting yourself in the situation
  - Possession…only if the person is aware she has the thing she is charged with possessing…requires knowledge
  - Hypnosis…involuntary
  - Somnambulism (sleepwalking)…involuntary…mom who killed daughter with an axe
  - Legal Insanity…burden of defense is on the defense…not an element PP has to prove
    - Have actus reas, but not mens rea
  - Need act…words/thoughts aren’t enough
    - Exception: treason…acting to subvert the government

Omissions
- MPC 2.01
  - Liability for the commission of an offense can’t be based on an omission unaccompanied by action unless:
    - The omission is expressly made sufficient by law
    - A duty to perform the omitted act is otherwise imposed by law

- Reluctance of our criminal system to impose liability for omission even where the failure to act is clearly immoral
- Liability for a failure to act will only occur if
DD was under a legal duty to act AND
DD had the necessary knowledge AND
It would have been possible for DD to act

- **Pope v. State** – Mom killed child while staying with PP. PP did not get child medical attention
  - Not guilty of child abuse according to statute since she was not the parent or responsible for supervision of child since mom was there
    - Thus no legal obligation on party of PP even though mom was crazy
  - Not guilty of misprision of felony (disclose knowledge of criminal acts)
    - the offense doesn’t exist in MD any more (up to legislature to create it)

- **Jones v. United States** – 10-month old died from lack of food and medical care. Dispute of whether PP was paid to take care of baby…mom lived with PP for some time, but not sure how long. Charged for failure to provide nourishment/tell police
  - Situations where a failure to act may constitute a breach of a legal duty
    - Where a statute imposes a duty
    - Where one stands in a certain status relationship to another (spouse, parent/child)
    - Where one has assumed a contractual duty to care for another
    - Where one has voluntarily assumed the care of another and so secluded the helpless person as to prevent others from rendering aid
    - Where one puts the person in harms way
  - Here the jury must be informed that there must be a legal duty and so it’s reversed and remanded

- **Commonwealth v. Cardwell** – DDs daughter was raped by PPs husband…she told her mom and later ran away. Mom charged with child abuse for not protecting her daughter. Wrote letters to husband. She was afraid of him and he had hit her and carried a gun
  - One charged with duty of care is required to take steps that are reasonably calculated to achieve success
  - She unquestionably endangered her daughter’s welfare by doing nothing to prevent the continued abuse

- **Regina v. Stone and Dobinson** – DDs had Stone’s sister living with them. She paid a little for rent. She died from anorexia. They tried to find a doctor, but failed and took no further steps…not even telling her social worker
  - They were convicted of manslaughter because they had assumed a duty of care since she there was a personal relationship and a contractual duty (rent)
  - Here there’s a duty to control the conduct of others

- **People v. Oliver** – DD met decedent at bar. He came to PPs house and ingested heroin. He passed out and she went back to bar. Daughter called her and she told daughter to put him behind the shed. When he was still there the next morning, she told daughter to call police. He was found dead of overdosing
  - She was convicted of involuntary manslaughter because the Court determined that the events lead to a relationship that imposed a duty to seek medical aid
  - She took charge of a person not able to prevent harm to himself…took him to a private place…her conduct in giving him spoon for drug contributed to his demise

- **Jones v. State** – DD raped a child of 12 and she fell/jumped into a creek where she drowned
  - He was convicted of second degree murder because he intentionally abstained from rescuing her though he could’ve done it without peril to himself
  - His criminal act put her in danger….if you create peril – you’re liable

- **Kuntz v. Montana** – DD and boyfriend fought. He became abusive and she knifed him in the chest. She left and didn’t call for help
  - She created the peril and was under a legal duty to remedy

- **Barber v. Superior Court** – physicians removed tubes keeping man alive per family’s request
  - Physician has no duty to continue treatment once it’s found ineffective
Euthanasia isn’t justifiable, but here they didn’t intentionally kill him, but allow the original cause of action of kill him
- Not actively killing, but passively letting die
- Act of omission which is okay

**Mens Rea – Culpable Mental States**

- **Traditional mens rea**
  - wickedness

- **MPC 2.02 General Requirements of Culpability (one of these must be present)**
  - A person is not guilty of an offense unless he acted purposely, knowingly, recklessly, or negligently, as the law may require, with respect to each material element of the offense
    - **Purposely**
      - It is his conscious object to engage in conduct of that nature or to cause such a results and
      - If the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist
    - **Knowingly**
      - 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
      - If the element involves a result of his conduct, he is aware that it’s practically certain that his conduct will cause such a result
      - There’s a high probability of its existence
    - **Recklessly**
      - He consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct…conscious risk creation
      - His disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor’s situation
      - Default position
    - **Negligently**
      - Should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct…inadvertently creates the risk of which he ought to be aware
        - Should be aware of the risk, which a jury finds substantial
      - Risk is of such a nature that the actor’s failure to perceive it involve a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation
      - Less culpable because he acts inadvertently

- Having the will to do something; Mental state required to accompany the act that produces or threatens the harm
  - Look at the level of intentionality…what the DD intended, knew, or should have known when he acted
- Blame and punishment are inappropiate and unjust in the absence of choice
- Thus defenses may be:
  - Involuntary act
  - Duress
  - Legal insanity
  - Accident
  - Mistake
- Need mens rea to ensure the punishment is only for those crimes that are morally culpable and to filter out those dangerous to society (not dangerous if you don’t realize you’re doing a wrong and won’t do it again)

- **Regina v. Cunningham** – DD took a gas meter for the money. He didn’t realize that he’d let a large volume of gas escape and endangered the life of his neighbor when she was exposed to the gas
  - Although his act was clearly unlawful, there must be mens rea (maliciousness) for the harm
    - The required mens rea means that either the DD intended the particular type of harm or that he foresaw that harm would occur, but nevertheless recklessly did the act
    - If MPC…requires that all material elements are proved…find mens rea for all these
      - Nature of conduct
        - Stealing the gas meter
      - Attendant circumstances
- **Regina v. Faulkner** – sailor went to steal rum…to see better he lit a match and ended up destroying the ship
  - The act done must be intentional and willful or that the accused knew that the injury would be the probable result of his unlawful act and did the act reckless of such consequences
  - Not criminally foreseeable

- **Holloway v. United States** – statute says “carjacking with intent to cause death or serious bodily harm” is a federal offense
  - Court held that meant any carjacking carried out with a threat of violence…not just where DD has an unconditional intent to kill
  - Ensures more deterrence

- **United States v. Jewell** – DD transported marijuana in his car from Mexico to the US. Whether he knew it or not is questionable
  - Deliberate ignorance and positive knowledge are equally culpable
  - To act knowingly is not necessarily to act only with positive knowledge, but also to act with an awareness of the high probability of the existence of the fact in question…practically certain that he knew
    - Affirmative defense that DD must prove…that he didn’t know
    - Active role to sustain ignorance
  - MPC 2.02 (7)

**Mens Rea – Mistake of Fact**

- **MPC 2.04**
  - Ignorance or mistake as to a matter of fact or law is a defense if
    - The ignorance or mistake negatives the purpose, knowledge, belief, recklessness, or negligence required to establish a material element of the offense OR
      - (negates state of mind essential to the commission of the offense)
  - Ignorance or mistake isn’t a defense if the defendant would be guilty of another offense had the situation been as he supposed. It will however reduce the grade or degree of the offense of which he may be convicted to those of the offense of which he would be guilty had the situation been as he supposed

- **MPC 213.6**
  - If the criminality of conduct depends on a child’s being younger than 10, it is no defense that the actor didn’t know the child’s age or reasonably believed the child to be older.
  - If criminality depends on the child’s being below a critical age other than 10, it’s 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.

- If you put salt in tea instead of arsenic…you’ll be liable
- If you put arsenic in tea instead of salt…not liable

- **People v. Olsen** – trailer park sex (don’t know if it was consensual or not). Girl was 13, told them she was 16. Statute made it unlawful to have sex with someone under 14
  - Reasonable mistake as to age isn’t a defense
  - Protects children of a tender age

**Strict Liability**

- cases where liability is imposed without any demonstrated culpability, not even negligence
- **235…strict liability for police officers**

- **United States v. Balint** – DDs sold derivatives of opium and coca leaves without the proper order form required by the Act. It wasn’t proved that they knew they were selling prohibited drugs
  - Mens rea wasn’t required by the Act
Because of the public hazard of drugs and social benefit of act, there was high/strict liability

- **Malum in se** – crime inherently evil (murder, rape, theft…ones at common law)
- Here it’s malum in prohitem – prohibited by state, but not inherently evil

- **United States v. Dotterweich** – bought drugs from manufacture and put on its own labels based on the manufacture’s description. Twice the manufacture’s label was incorrect
  - DDs were liable for misbranded products in violation of an act
  - Court said it doesn’t require mens rea…penalties serve as an effective means of regulation
  - In the interest of the larger good it puts the burden of acting at hazard upon a person otherwise innocent, but standing in responsible relation to a public danger…better than putting in on the innocent public
  - Gave him light sentence…no jail time

- **Morissette v. United States** – junk dealer took bomb casings he thought abandoned and sold them. Statute made it a crime to “knowingly convert” government property.
  - Theft requires intent to take property of another…here there’s no guilty intent
  - Theft is malum in se
    - So they have to prove intent
  - **Strict liability will be upheld where it is a new regulatory crime, but not where it’s a old crime suddenly being held to new standards…bright line standard**
  - Though the statute did not mention intent, it does not mean that it’s eliminated from the crime

- **Staples v. United States** – DD had a gun, which he never registered bc he didn’t realize it was considered a firearm (the piece preventing it from being a firearm had broken off). The statute was silent on the mens rea
  - Offenses that require no mens rea are disfavored and thus proof is required that he knew he possessed a machine gun
  - Courts want to avoid construing a statute to dispense with mens rea where doing so would criminalize a broad range of apparently innocent conduct
    - Unthinkable to believe that Congress intended to subject law-abiding, well-intentioned citizens to 10 years in jail when the genuinely and reasonably believed was gun was modified to be a semi-automatic weapon
  - Government must prove every fact
  - This is a narrow holding and other cases are good law…strict sentencing may have pushed this over

- **State v. Guminga** – waitress served minor alcohol. Business was held liable. Vicarious liability by legally transferring liability from one to another
  - Court finds that one can’t be convicted of a crime punishable by imprisonment for an act he didn’t commit, didn’t have knowledge of, or give consent to…violates due process
  - There are alternative means to achieve the same end…fines, license suspension, which don’t entail the legal and social ramifications of a criminal conviction
  - Balance public interest against the intrusion on personal liberty
  - Criminal is inappropriate…but civil would be constitutional

- **State v. Baker** – cruise control stuck in accelerate position causing him to speed. Had proof of having it fixed before, but it was not allowed in
  - Speeding statute is an absolute liability offense
  - Driving and use of cruise control was a voluntary act on his part…even though speeding wasn’t
  - He assumed full control of the vehicle and cruise control and thus was the agent causing the act of speeding
    - Specifically differentiate brake failure or throttle malfunction…these aren’t overt acts

- **Regina v. City of Sault Ste. Marie** -
  - Justification for absolute liability in public welfare offences
    - Protection of social interests…people will maintain high standards if they know ignorance or mistake won’t excuse them
      - Incentive to take precautionary measures
    - Administrative efficiency
• Proof of fault is too great a burden in time and money to place upon the prosecution
  o Reasons against absolute liability
    ▪ Violates fundamental principles of penal liability
    ▪ Rests upon assumptions, which haven’t been established
  o Court finds grounds for three categories of offences rather than the traditional two
    ▪ Offences in which mens rea must be proved
    ▪ Offences in which there’s no necessity for mens rea to be proven – doing of the prohibited act is prima facie evidence – leaves open to the accused to avoid liability by proving he took all reasonable care
    ▪ Offences of absolute liability where accused can’t show he was free of fault

**Mistake of Law**
- **MPC 2.04**
  o Believing that conduct doesn’t legally constitute an offense is a defense to a prosecution for that offense based upon such conduct when:
    ▪ The statute or other enactment defining the offense is not known to the actor and hasn’t been published or otherwise reasonably been made available
    ▪ He acts in reasonable reliance upon an official statement of law, afterward determined to be invalid or erroneous contained in
      ▪ A statute or other enactment
      ▪ Judicial decision, opinion, or judgment
      ▪ An official interpretation, administration or enforcement of the law defining the offense

- **People v. Marrero** – DD (federal corrections officer) was carrying a pistol in a nightclub. The statute exempted peace officers, which are correction officers of any state correctional facility of or any penal correctional institution. He thought it applied to him
  o Mistake of law (misreading the statutes) does not relieve the DDs of criminal liability
    ▪ It would encourage ignorance, rather than respect and adherence to the law
    ▪ According to MPC, which is the type of analysis the court uses: Ignorance is only an excuse if “he acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in a statute or other enactment”
  o **People v. Weiss**
    ▪ Narrow exception
      ▪ Need to show that the statute permitted your conduct at that time, instead of your mistaken belief that the statute permitted it
        o Where you act on what the statute meant at the time….if they change the law later, it won’t affect you because it was lawful at the time you did it….can’t get you retroactively
      ▪ Not the excuse here….he misread and misinterpreted statute
  o Misreading of the statute doesn’t negate intent

- **Regina v. Smith** – DD damaged wall panels and floor boards to retrieve stereo wiring he’d installed earlier with permission…criminal damage act – guilty if one destroys or damages property belonging to another intending to destroy or damage the property or being reckless
  o Common law
  o Must intend to destroy the property belonging to another….critical element
    ▪ Believes the property is his
    ▪ Mens rea is missing…negates intent element of statute…element of crime isn’t present
  o What would happen under MPC
    ▪ Negate intent

- **State v. Woods** – DD marries a man in Reno after he gets a divorce (though it’s invalid)…Blanket act – a woman with another woman’s husband, found in bed together, under circumstances affording presumption of an illicit intention will be guilty
  o Under MPC
    ▪ She has a good defense….negated her intent
- **Cheek v. United States** – Pilot didn’t file tax return bc he didn’t think he owed any and the laws were unconstitutional…statute says willful violation
  - For criminal, tax offences, there must be a specific intent to violate the law
    - Don’t limit it to reasonable mistakes of law…subjective reason is okay
    - Willful violation…intent is negated
  - Thinking something is unconstitutional is not an innocent mistake and reveals full knowledge
    - If you willfully refuse to comply with the duties placed upon them, they must take the risk of being wrong

- **United States v. Albertini** – DD engaged in peace demonstration, which was not allowed when the PP appealed
  - Can’t retroactively apply a Supreme Court decision…ex. Post facto
    - Should be able to rely on a decision that says your activities are ok until that decision is reversed
    - Acts in accordance with existing law
  - Mistake of law doctrine exists when a DD reasonably relied upon an official statement of the law even if it’s a mistake or later overruled

- **Lambert v. California** – convicted felon didn’t register according to LA code
  - Due process places some limits
  - Notice is sometimes essential so that the citizen has chance to defend against charges
  - Actual knowledge of the duty to register or proof of the probability of such knowledge and failure to comply are necessary before a conviction under the ordinance can stand.

**Legality**
- Preventing crime is the goal, but it’s not really a crime yet (loitering laws)
- **MPC 250.6 Loitering or Prowling**
  - If one loiters in a place or manner not usual for a law-abiding citizen under circumstances that warrant alarm for the safety or persons or property in the area.
  - Circumstances that warrant alarm include
    - Actor takes flight upon appearance of a peace officer, refuses to identify himself, or endeavors to conceal himself
    - Officer must try to get him to identify himself and explain his presence and conduct

- **City of Chicago v. Morales** – PP had a ordinance prohibiting criminal street gang members from loitering with others in any public place
  - Held that it violated due process since it was impermissibly vague and had arbitrary restrictions on personal liberties
  - Vagueness can invalidate a criminal law for two reasons:
    - Fail to provide the kind of notice that’ll enable ordinary people to understand what conduct it prohibits
      - Here it’s too vague and standardless…how do you know someone has a purpose/not loitering?...reaches a substantial amount of innocent conduct
        - Those planning a drug deal do have a purpose
      - No real guidelines for law enforcement
    - May authorize and even encourage arbitrary and discriminatory enforcement
      - Up to complete discretion of police officer to determine what is loitering
      - Requires no harmful purpose and applies to gang members and non-gang members
  - No actus or mens reas needs to be shown according to the statute
  - Facialy vague…vague on its face and not just as applied to DD
- **Papachristou v. City of Jacksonville** – DD had a statute that outlawed beggars, gamblers, jugglers, thieves, wanton persons, persons wandering with no apparent purpose…etc.
  - Ordinance was unconstitutional because it was void for vagueness and promotes arbitrary enforcement of the law
    - Fails to give an ordinary person notice of whether his contemplated behavior is forbidden by the statute
    - Makes criminal activities that by modern standards are normally innocent

**Chapter Four: Rape**

**Actus Reus**
- in rape you look at victim to determine actus reus…consent/or not
- Lack of consent should be objectively manifested so perp can be put on notice

- **State v. Rusk** – DD took her car keys, so Pat went up to his home. She did not make any noise or attempt to leave. She did ask to leave and he said yes only after sex. She claimed that he gave her menacing looks and lightly choked her. Statute have to prove force and lack of consent
  - Lack of consent is established through:
    - Proof of resistance OR
    - Proof that the victim failed to resist because of fear (of death, bodily harm, so extreme it renders her mind incapable of continuing)
  - Up to jury to decide if the essential elements of second degree rape had been established

- **People v. Warren** – carried a woman into the woods. She didn’t scream, fight back, or attempt to flee
  - Failure to resist when it was within her power to do so conveys the impression of consent regardless of her mental state
  - She must communicate in some objective manner her lack of consent

**Mens Rea**

- **Commonwealth v. Sherry** – nurse was at a party with three doctors. They grabbed her and took her to one of the men’s home. She verbally, but not physically protested. Each one raped her, but she was scared and didn’t fight.
  - Court found the evidence was sufficient for a jury to find that DDs had sexual intercourse with the victim against her will
  - She isn’t required to use physical force to resist…any resistance is enough if it demonstrates that her lack of consent is honest and real
  - DDs don’t have to have actual knowledge of her lack of consent, but mistake of fact isn’t a defense since it doesn’t exist here

- **Commonwealth v. Fischer** – had rough sex earlier in the day…later that day, he “forced” her to have sex again and ignored her pleas until she said she honestly didn’t want to have sex
  - Mistake of fact isn’t a defense
  - If the element of DDs belief as to the victim’s state of mind is to be established as a defense to the crime of rape then it should be done by the legislature
  - **Williams**
    - DD’s belief in the victim’s state of mind is irrelevant

**Chapter Five: Homicide**

- **MPC § 210**
  - **210. 2 Murder**
    - When it’s committed purposely or knowingly
    - Committed recklessly under circumstances manifesting extreme indifference to human life
• Such recklessness is presumed if the actor is engaged or an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviate sexual intercourse by force or threat of force, arson, burglary, kidnapping or felonious escape
  - It’s a felony of the first degree

  o 210.3 Manslaughter
    - When it’s committed recklessly
    - A homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there’s reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor’s situation under the circumstances as he believes them to be
    - It’s a felony of the 2nd degree

  o 210.4 Negligent Homicide
    - Criminal homicide constitutes negligent homicide when it’s committed negligently
      - Gross deviation
    - It’s a felony of the 3rd degree

  o 210.5 Causing or Aiding Suicide
    - One may be convicted of criminal homicide for causing another to commit suicide only if he purposely causes such suicide by force, duress, or deception
    - One who aids or solicits another to commit suicide is guilty of a felony of the second degree if his conduct causes such suicide or attempted suicide

**Intended Killings**

**Premeditation**

- murder- unlawful killing with malice aforethought
- manslaughter – unlawful killing without malice aforethought
- The presence of malice is shown through:
  - The intention to kill a human being
  - The intention to inflict grievous bodily injury on another
  - An extremely reckless disregard for human life…depraved/wicked heart
  - The intention to commit a felony during the commission or attempted commission of which death occurs
- Some states and MPC have rejected deliberation and premeditation as basis for deserving the greatest punishment.

- **Commonwealth v. Carroll** – army man’s wife was schizoid. He was assigned to teach school out of town and they argued for hours. He shot her in the head in bed
  - CA statute had first degree murder including any kind of willful, deliberate, and premeditated killing
  - The specific intent to kill needed for murder in the first degree can be found from a DD’s words or conduct or attendant circumstances together with all reasonable inferences therefrom and may be inferred from the intentional use of a deadly weapon on a vital part of the body of another
  - The court finds him guilty
    - No time is too short or too long to frame in one’s mind the scheme of murder…an instant is enough if you have the thought
    - He remembered the gun, took it down and deliberately fired it at his wife
    - A blind or irresistible impulse or inability to control one’s self is not excuse or justification of murder from first to second degree

- **State v. Guthrie** – crazy dishwasher DD stabbed co-worker after he hit DD on nose with dishtowel
  - First degree requires there be some period/time between formation of the intent to kill and actual killing, which indicates the killing is by prior calculation and design…one must kill purposely after contemplating the intent to kill…evidence that one weighted and considered his decision for there to be premeditation
  - Difference between deliberate and impulsive kill
  - To show premeditation:
    - The relationship of the accused and victim and the relationship of the condition at the time
• Whether plan or preparation existed either in terms of the type of weapon utilized or the place where the killing occurred
• Presence of reason or motive to deliberately take life
• Presence of planning activity
• Prior relationship or behavior with the victim that would indicate motive
• Evidence regarding the nature or manner of the killing which indicates a deliberate intention to kill according to a preconceived design

- **People v. Anderson** – he stabbed a 10 year old girl a huge number of times
  - First degree murder wasn’t supported because there was no premeditation
    - No evidence that DD had planned the killing, relationship evidence going to motive, the manner of killing suggested an outburst of violence

- **State v. Forrest** – DD killed terminally ill father with a shot in the head
  - Found guilty of first degree murder…premeditation
  - But sometimes premeditation shows more struggle/tortured conscience…at least in mercy killings where there’s long and careful deliberation

**Provocation**

- **Girouard v. State** – PP’s wife said their marriage was a mistake and barraged him with insults. He stabbed her 19 times with a kitchen knife
  - For provocation to be adequate it must enflame the passion of a reasonable man and cause him to act from passion instead of reason
  - Words, no matter how abusive or taunting is not adequate provocation for a charge of murder to manslaughter
    - Some exceptions that jurisdictions have:
      - Permits words if they convey info of a fact that would create provocation
      - The standard is reasonableness and should not focus on the peculiar frailties of mind
      - Classic cases of provocation…affirmative defense that goes from murder to manslaughter
    - Extreme assault or battery upon DD
    - Mutual combat
    - Illegal arrest of DD
    - Injury or serious abuse of a close relative of DD
    - Sudden discovery of spouse’s adultery

- **Maher v. People** – PP shot man who’d had adulterous intercourse with his wife an hour before in the woods…found out in bar
  - To bring down a conviction to manslaughter as a rule reason should, at the time of the act, be disturbed or obscured by passion to an extent which might render ordinary men, of fair average disposition, liable to act rashly or without due deliberation or reflection, and from passion, rather than judgment
    - Was the provocation enough here for the reasonable man?
    - It’s a question of fact for the jury…reasonable man
  - Under MPC…manslaughter
  - Dissent: Most courts take this view
    - Provocation can only be a justification for manslaughter conviction when the provocation occurs in his presence

- **State v. Gounagias** – deceased committed act of sodomy on DD and bragged to others. Others made fun of him and after two weeks he lost control and killed him
  - Interval constituted adequate cooling time
  - Courts were unwilling to allow ‘rekindling” or prior provocation (due to teasing)

- **People v. Casassa** – DD dated decedent and she dumped him. He eavesdropped on her and broke into her apt. When she rejected his gift, he stabbed her and then drowned her to make sure she was dead
  - Extreme emotional distress is an affirmative defense with the burden on the DD
- There can be time lapse for this defense
  - First part of test is subjective…viewpoint of a person in DD’s situation
  - Second part of test is objective…reasonable explanation or excuse…how would a reasonable person act feel
  - Ultimate test is not subjective, but objective
  - Court found that the he was under extreme emotional distress, but it was a result of his malevolence rather than an understandable human response
    - Thus he was guilty of second degree murder rather than manslaughter
  - Same as MPC test

- **State v. Elliot** (note) – DD had suffered an overwhelming fear of his brother for years. For no apparent reason, he went to his bro’s house and killed him
  - Court found that instructions on extreme emotional disturbance were required.
    - The defense doesn’t require a provoking or triggering event
    - For heat of passion…just has to prove that the hot blood didn’t have time to cool off at the time of the killing
    - Extreme emotional distress…not committed at hot blood stage, but one that was brought about by a significant mental trauma that caused the DD to brood for a long period of time and then react violently, seemingly without provocation
    - MPC approach

- **Notes on the Reasonable person requirement**
  - Courts said you should look at the age of the one…don’t put head on shoulders of young
  - Some have tried to use gender, especially in battered woman syndrome
    - Some courts accept, others don’t
    - Raised difficult and troubling cases

**Unintended Killing**

- **Involuntary Manslaughter**

- **Commonwealth v. Welansky** – nightclub caught fire, overcrowded, few exits, owner in hospital that night
  - Duty of care for the safety of business visitors invited to premises which DD controlled
  - Court found wanton and reckless conduct through an intentional failure to take such care in disregard of the high degree of likelihood (required) of harmful consequences to them or of their right to care
    - It is enough if the conduct is intended and not the harm
      - Must be an intentional act through commission or omission where there’s a duty to act
    - This is a subjective and objective test
    - Here, the grave dangers to others was apparent to an ordinary man under the same circumstances and DD chose to run the risk voluntarily
    - Omission conditions to incur criminal liability
      - Statute
      - Certain relationships
      - Legal duty by law
      - When you place someone in peril
  - MA has higher std. than MPC
  - MPC…criminal negligence (less than manslaughter)
    - DD acts without awareness of such a risk
    - Substantial or unjustifiable
    - Gross deviation
  - MPC…reckless manslaughter
    - Consciously disregarding substantial or unjustified risk that his conduct will cause that result
    - Gross deviation from the standard of conduct that a law-abiding person would observe in the actor’s situation

- **State v. Williams** – baby died of abscessed tooth which lasted 2 weeks…Parents didn’t realize how sick he was and were afraid if they took him to a doctor that the Welfare Dept. would take him away
Washington law for manslaughter
- Death of a victim is the proximate result of only simple and ordinary negligence (objective std)
  - A failure to exercise the ordinary caution necessary to make out the defense of excusable homicide...kind of caution that a man of reasonable prudence would exercise under the same or similar conditions
  - Here, DDs were sufficiently put on notice and this was simple negligence

- **Commonwealth v. Malone** – 13 year old shot by 17 year old in Russian roulette case. Fired three shots and thought the chamber loaded was not any of the first three
  - PA common law...Found guilty of second degree murder
    - If it’s an act intentionally done in reckless and wanton disregard of the consequences
      - There was malice in the sense of the wicked disposition evidenced by the intentional doing of an uncalled-for act in callous disregard of its likely harmful effects on others
        - Here there’s a 60% chance
      - The lack of motive does not exculpate the accused
  - MPC
    - Murder...extreme indifference to human life
    - Manslaughter...reckless

- **People v. Roe** – Russian roulette...killed best friend’s brother
  - Same as MPC
    - Murder = recklessly under circumstances manifesting extreme indifference to human life

- **United States v. Fleming** – drove car at 100 miles an hour in areas of 45 miles an hour...directed car southbound when traffic was northbound. He lost control of the car and was struck by a car coming in the opposite direction. The passenger of the car died. Blood alcohol was .315
  - Guilty of 2nd degree murder
  - Found malice aforethought through conduct that is reckless, wanton, and a gross deviation from a reasonable standard or care and thus a jury is warranted in inferring that DD was aware of the serious risk of death or serious bodily injury
    - Shown through drunkenness and extreme speeding
    - *Look at footnote on pg. 443*

**Felony – Murder Rule**
**MPC 2.10.2**

- mens rea is imputed...recklessness...extreme indifference

**Notes on the Misdemeanor – Manslaughter Rules**
- In many states a misdemeanor resulting in death can provide a basis for an involuntary manslaughter conviction without proof of negligence or recklessness

- **People v. Stamp** – DD robbed man who while lying on the floor suffered chest pains and died of a heart attack
  - Common law...CA
  - Felony-murder rule isn’t limited to foreseeable deaths...rather one is strictly liable for all killings committed by him and his accomplices in the course of the felony
  - The robber must take his victim as he finds him...doesn’t matter that man was obese and had a history of heart problems

- **People v. Phillips** – chiropractor said he could save girl with cancer of the eye and convinced her not to have surgery
  - Felony-murder rule isn’t appropriate here as it only applies to felonies that are in themselves inherently dangerous to human life
    - Felony-murder takes out the element of malice
      - Malice can’t be found if the DD didn’t subjectively appreciate the peril to which his conduct exposed the girl
- **People v. Satchell** – DD was an ex-felon who shot another in a street fight
  - He was convicted of 2nd degree murder
    - Court reversed because the felony of possession of a concealable weapon by an ex-felon was not a felony inherently dangerous to human life

- **People v. Stewart** – mother of an infant under 2 months went on crack binge for 2/3 days and the baby died from dehydration
  - She was convicted of second degree felony-murder
  - Declined to adopt CA’s approach of a felony dangerous to life…don’t look at abstract
  - They want the trier of fact to consider the facts and circumstances of the particular case to determine if such felony is inherently dangerous in the manner and circumstances committed
    - Wrongfully causing or permitting a child to be a habitual sufferer for want of food or proper care was inherently dangerous to human life in its manner of commission
    - Question of fact to see if it’s inherently dangerous

- **Drug distribution**
  - Some say yes and some say no
  - MPC…not inherently dangerous though violent acts do occur

- **People v. Smith** – mom and boyfriend beat and killed child because she refused to sit on the coach to eat her snack
  - Found it was inappropriate to give the felony-murder rule here…additional limitation
    - The crime of felony child abuse was an integral part of the homicide and thus **merged** with the latter rule
    - To apply the rule, conduct must have an independent felonious purpose

- **State v. Canola** – DD and three co-felons were robbing a jewelry store. Fire was exchanged and the owner and one felon were killed.
  - Did not allow application of the felony-murder rule to hold a felon guilty of the death of his co-felon at the hands of the intended victim
    - **Agency theory**
      - Act must be done by co-felon or someone acting on behalf of co-felon to further the crime
    - **Proximate cause theory**
      - You’re responsible for any killings that is reasonably foreseeable as occurring because the commission of the felony

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**Chapter Six: The Significance of Harm**

**Causation**

- **MPC § 2.03 Causal Relationship Between Conduct and Result; Divergence Between Result Designed or Contemplated and Actual Result or Between Probably and Actual Result**
  - Conduct is the cause of a result when
    - It’s antecedent but for which the result in question would not have occurred and
    - The relationship between the conduct and result satisfies any additional causal requirements imposed by the Code of law defining the offense
  - When purposely or knowingly causing a particular result is an element of the offense, the element isn’t established if the actual result isn’t within the purpose or contemplation of the actor unless
    - The actual result differs form that contemplated only in the respect that a different person or property is injured or that the injury or harm would’ve been more serious that that caused OR
The actual result involves the same kind of injury contemplated and isn’t too remote or accidental in its occurrence to have a bearing on the actor’s liability or on the gravity of the offense.

- When recklessly or negligently causing the a particular result is an element of an offense, the element isn’t established if the actual result isn’t within the risk of which the actor’s aware or in the case of negligence, of which he should be aware unless:
  - The actual result differs from the probably result only in the respect that a different person or property is injured or affected or that the probable injury or harm would’ve been more serious or extensive than that caused OR
  - The actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a just bearing on the actor’s liability or on the gravity of the offense.

- When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element isn’t established unless the actual result is a probable consequence of the actor’s conduct.

### Foreseeability and Coincidence

- **Actual**
  - But, for
- **Proximate**
  - Foreseeability
  - Natural and probable consequences
  - Sufficiently direct cause

- **People v. Acosta** – DD led officers on a chase…helicopters in the air collided due to pilot negligence…this had never occurred before
  - It was the actual cause…but for
  - Proximate cause was found since it is a possible consequence which might have been contemplated
  - However, there was no mens rea
    - There was no malice and no reasonable juror could find a conscious disregard for a risk which is barely objectively cognizable (no murderous mens rea)
      - Maybe depraved heart if two police cars got hit
    - Maybe charge him on criminally negligent homicide

- **People v. Arzon** – set fire to a coach….another independent fire broke out….combined to create a serious fire on the 5th floor of an abandoned building and a fireman died due to the hazardous condition
  - An individual is criminally liable if his conduct was a sufficiently direct cause of the death, and the ultimate harm is something which should have been foreseen as being reasonably related to his acts
  - Here, its foreseeable that firemen would respond to the situation and be exposed to life-threatening danger
  - Indicted for murder in the 2nd degree
  - **People v. Kibbe**
    - Abandoned robbery victim on the side of the road in freezing weather…he’s killed by a passing truck
    - There’s both actual and proximate causation here and they are liable
    - DD’s actions were the sufficiently direct cause of the ensuing death
  - **People v. Stewart**
    - Victim operated on for a stab wound…doctor performed an unrelated hernia procedure from which he died
    - Chain of events formed a link which actually brought about the death
    - Here death was obscure and not really foreseeable

- **People v. Warner-Lambert Co.** – explosion at gum chewing factory. They used two potentially explosive substances which they had been warned about…no hard proof of what caused the explosion
  - Not held responsible for the conditions….not foreseeable and no actual cause (don’t know what started it)
    - Nightclub owner was held liable
      - maybe that it’s a vicarious liability + proximate cause instead of direct responsibility
- **Hall v. State** – DD struck several blows to decedent’s head. Judge didn’t allow questions designed to show that victim received incompetent treatment
  - If the wound caused death indirectly through a chain of natural effects and causes unchanged by human action, such as blood poisoning, he who inflicted the wound or injury is responsible

- Omissions can be a cause if there’s a duty to act
  - Ex: intruder pushed child in pond….baby-sitter doesn’t rescue…she can be held liable

**Subsequent Actions Intended to Produce the Result**

- **People v. Campbell** – DD encouraged decedent, who’d slept with his wife, to kill himself. He gave him his gun and left
  - DD had no intention to kill and can’t be liable
  - Hope alone isn’t the degree of intention requisite to a charge of murder
  - Common law
  - Not direct cause

- **People v. Kevorkian** – assisted in two women’s suicide who suffered from great pain and had sought his help…they pulled the plug on suicide machine themselves
  - He was not an active participant in the suicide, but was involved in the events leading up to the suicide – i.e. providing the means
    - Did not participate in the final overt act – firing the gun
    - Thus not guilty of murder (should be charged with assisted suicide)
    - Common law = no assisted suicide
    - Not the direct cause

- **People v. Duffy** – DD provided a gun to an intoxicated and despondent decedent who wanted to kill himself. DD urged him to blow himself which he did…didn’t leave the room
  - He was convicted of manslaughter in the second degree for recklessly causing the death
  - One who knows one is contemplating suicide and prods the person to do so and provides the means can certainly be said to have consciously disregarded a substantial and unjustifiable risk that his actions would result in the death of the person

- **Stephenson v. State** – DD subjected women to sexually perverse acts for days on end. She took poison to commit suicide without his knowledge or presence
  - Found guilty of second degree murder
  - When suicide follows a wound inflicted by the DD his act is homicidal, if deceased was rendered irresponsible by the wound and as a natural result of it
    - Basically, she was irresponsible due to shame and humiliation and it’s his fault
    - This is not limited to a physical wound
  - He set the casual chain in motion and she was in his custody and control

**Subsequent Actions that Recklessly Risk the Result**

- **Commonwealth v. Root** – deceased challenged DD to car race…tried to overtake him and hit truck
  - Not guilty of involuntary manslaughter
  - Deceased was aware of the dangerous condition and took the risk upon himself…DD’s actions were not sufficiently a direct cause
    - Not direct cause

- **People v. Kern** – group of white kids assaulted black men with bats and threatened to kill them. One tried to escape by running across the highway and was struck by a car and killed
  - DDs were convicted of second-degree manslaughter
    - And it’s a directly foreseeable consequence
    - They started chain of events
      - Intervening cause doesn’t relieve them of duty
- **State v. McFadden** – drag race...other vehicle lost control and hit third vehicle that had child
  - DD was convicted of two counts of involuntary manslaughter
    - Court held that DD himself committed the crime of involuntary manslaughter by recklessly engaging in a drag race so as to proximately cause the collision
      - Foreseeability and recklessness, DD can be held proximately responsible
    - Other racer’s voluntary and reckless participation doesn’t bar DD from being convicted of involuntary manslaughter
    - They say Root is wrong

- **Commonwealth v. Attencio** – brothers spent the day drinking wine, played Russian roulette, DD passed to his bro and he put it to his head and killed himself
  - Convicted of manslaughter
  - Duty to not take part or cooperate with him in the game (though not to stop him)
    - Concerted action shows wanton and reckless conduct

**Attempt**

- **MPC § 5.01 Criminal Intent**
  - Guilty of attempt to commit a crime, if, acting with the kind of culpability otherwise required for commission of the crime, he
    - Engages in conduct that would constitute the crime if the attendant circumstances were as he believes them to be OR
    - When causing a particular result is an element of the crime, does or omits anything with the purpose of causing or with the belief that it’ll cause such result without further conduct on his part OR
      - (attempt to bring about that result)
      - less strict than substantial step
    - Purposely does or omits to do anything which, under the circumstances 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
  - Conduct Which May be Held Substantial Step Under Subsection (1)(c). Conduct shall not be held to constitute a substantial step under Subsection (1)(c) of this Section unless it’s strongly corroborative of the actor’s criminal purpose. Without negating the of other conduct, the following, if strongly corroborative of the actor’s criminal purpose, shall not be held insufficient as a matter of law
    - Lying in wait, searching for, or following the contemplated victim of the crime
    - Enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission
    - Reconnoitering (inspecting) the place contemplated for the commission of the crime
    - Unlawful entry of a structure, vehicle or enclosure in which it’s contemplated that the crime will be committed
    - Possession, collection or fabrication of materials to be employed in the commission of the crime, are specifically designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances
    - Soliciting an innocent agent to engage in conduct constituting an element of the crime
  - Conduct Designed to Aid Another in Commission of a Crime. A person who engages in conduct designed to aid another to commit a crime which would establish his complicity under Section 2.06 if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime isn’t committed or attempted by such other person
    - Do something to aid the crime even if it isn’t committed

- Renunciation of Criminal Purpose. When the actor’s conduct would otherwise constitute an attempt under Subsection (1)(b) or (1)(c) of this Section, it’s 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. The establishment of such defense doesn’t, however, affect the liability of an accomplice who didn’t join in such abandonment or prevention
  - Within the meaning of this Article, renunciation of criminal purpose isn’t voluntary if it’s motivated, in whole or in party, by circumstances, not present or apparent at the inception of the
actor’s course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation isn’t complete if it’s motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar object or victim.

- **MPC §5.05 Grading of Criminal Attempt, Solicitation and Conspiracy; Mitigation in Cases of Lesser Danger; Multiple Convictions Barred**
  - **Grading.** Except as otherwise provided in this Section, attempt, solicitation, and conspiracy are crimes of the same grade, and degree as the most serious offense which is attempted or solicited or is an object of the conspiracy. An attempt, solicitation or conspiracy to commit a felony of the first degree is a felony of the second degree
  - **Mitigation.** If the particular conduct charged to constitute a criminal attempt, solicitation or conspiracy is so inherently unlikely to result or culminate in the commission of a crime that neither such conduct nor the actor presents a public danger warranting the grading of such offense under this Section, the Court shall exercise its power under Section 6.12 to enter judgment and impose sentence for a crime of lower grade or degree, or in extreme cases, may dismiss the prosecution
  - **Multiple Convictions.** A person may not be convicted of more than one offense defined by this Article for conduct designed to commit or to culminate in the commission of the same crime.

- **Causation is a material element of any defense**
- **Attempt is being punished though his actions didn’t produce any harm**
- **In attempt harm is doing of the act itself, the actual result**
- **MPC…attempt – punishment serves to deterrence and demonstrates moral culpability**
  - Not a lot of following
  - Lowers the intent requirement a smidgeon
- **Common law…harm is the actual result needed at punishment…don’t punish harm at same level**

- **Smallwood v. State** – guy with HIV didn’t use condom when raping women
  - Conviction for attempted murder is reversed
  - There must be an intent to murder….here you can’t show that death would’ve been a natural and probable result of his conduct…can’t show specific intent (purpose to produce the prescribed result)
    - Here only possible that you’ll get it and possible that you’ll die
    - Additional words showing intention of death would be enough

- Can’t have attempted felony murder or attempted involunatry manslaughter
  - Need specific intent, but can’t have that with these bc involuntary mean you’re unaware

- **Common law**
  - **Mens rea**
    - Must intend the act, the result, and the circumstances
  - **Actus rea**
    - **Dangerous proximity test**
      - To constitute criminal intent, as opposed to mere preparation, the accused must’ve taken the last step which he was able to take along the road of his criminal intent…Eagleton is very slightly further
      - Point of no return where repentance is impossible…last act possible
      - Procuring and loading the pistol isn’t enough, but firing it is
    - **Substantial test step + equivaclocity**
      - **MPC**
        - Requires an act constituting a substantial step in the course of conduct intended to result in the crime and that the act be strong corroboration of the DDs criminal purpose, although it need not establish purpose by itself
    - **Equivocality test**
      - Test for determining what acts suffice for attempt (once intent is proved), looking not to how far the defendant has gone but how clearly his acts bespeak his intent
When the act speaks for itself… overt acts
- Can’t use things like a diary or confession to prove his intent
- McQuirter v. State

- **People v. Rizzo** – four men planned to rob a payroll. The rode in the car looking for him, and went to different buildings where he was to be. Two officers arrested them at one of the banks, though payroll guy wasn’t there. The men hadn’t seen the man they intended to rob, he wasn’t anywhere they stopped.
  - They were found not guilty
  - Law considers only those acts as tending to the commission of the crime which are so near accomplishment that in all reasonable probability the crime itself would’ve been committed, but for timely interference…there must be a **dangerous proximity** to success
  - May have been convicted under MPC

- **State v. Duke** – detective chatted with guy on child sex chat room. They arranged to meet up and guy was then arrested at pickup location.
  - Attempted sexual battery charge was reversed on the grounds that the overt acts of DD were all planning and didn’t go far enough toward their consummation to constitute an attempt at sexual battery
    - Dangerous promixity… time for renunciation
  - Could be charged under MPC

- **McQuirter v. State** – black guy followed woman down the street and watched her from across the street when she went into another’s home….chief of police claimed he said he was going to have the first woman that came by and he’d kill her if she yelled
  - **Equivocality test**
  - Found guilty of attempt to commit and assault with intent to rape
  - Intent is to be determined by the jury
    - They can consider social conditions and customs founded upon racial differences, such as that the victim was white and DD was a negro

- At common law, abandonment wasn’t allowed
- But since dangerous proximity isn’t really used, it’s now an affirmative defense

- **United States v. Jackson** – unindicted co-conspirator recruited DD to rob bank. On the way to the bank, DDs were stopped and in the truck were guns, handcuffs and masks
  - Convicted of attempted bank robbery
  - DDs took substantial steps, strongly corrabative of the firmness of their criminal intent toward the commission of the crime…**same as MPC**
    - Items had no lawful purpose
    - Emphasis is on what the actor has already done, not what remains to be done
    - Less of a hurdle for prosecution than res ipsa approach
  - It’s conspiracy…all you need is intent

- **United States v. Harper** – set-up bill trap and planned to rob technicians of the money when they came to fix it
  - Convicted of conspiracy, but not attempt
    - Robbery was in the future and DDs never made a move toward the victims of the Bank to accomplish the criminal portion of their intended mission
      - Hadn’t taken a step of such substantiality that, unless frustrated, the crime wouldn’t have occurred…**dangerous proximity test**
    - A different result under the MPC

- **United States v. Joyce** – meet with undercover agent, but didn’t buy cocaine
  - Renunciation
  - Reversed conviction
    - Whatever intention he had to buy coke was abandoned prior to the commission of a necessary and substantial step to effectuate the purchase
    - All that there was a discussion….he never opened the package
- **State v. Davis** – DD paid undercover cop to kill girlfriends’ husband.
  - Mere solicitation unaccompanied by an act moving directly toward the commission of the intended crime, isn’t an overt act constituting an element of the crime of attempt
  - Payment was a mere act of preparation failing to lead directly or proximately to the consummation of the intended crime
  - In order to establish intent
    - The DD must have the intent
    - The DD must have taken a substantial test toward the commission of the crime
    - The DD must have failed in the commission of the crime

- **United States v. Church** – wanted to kill wife so he could get custody of son…hired undercover cop as hit man
  - DD was found guilty of the attempted premeditated murder of his wife
  - DD gave cop partial payment, flight money, map of wife’s house, photos and approved the weapon use
  - Cop “killed” her, DD paid agent and identified wife’s body from pic
  - DDs detailed planning and payment and hiring constitute a substantial step toward commission of the crime and establishes the requisite overt act amounting to more than mere preparation….DD couldn’t have done more but kill her himself

**Impossibility**

- **People v. Jaffe** – DD bought cloth he thought stolen, but it had been restored to the owners and thus bought lawfully
  - Legally impossibility
  - Purchase can’t constitute the crime of receiving stolen property, knowing it to be stolen, since there could be no such thing as knowledge on the part of the DD of a nonexistent fact, although there might be a belief on his part that the fact existed
  - Consummated act is not a crime
  - His crime consisted of three elements: the act, the intent, and knowledge of existing condition (attendant circumstances not fulfilled)
    - No proof to establish the third
    - Under circumstances, one of the elements of the crime is missing
  - Pickpocket cases
    - Don’t have to prove anything in pocket to be convicted
    - Act completed would be illegal
    - Though factually impossible, not legally impossible
  - Different result under MPC…what the actor believed at the time

- **People v. Dlugash** – first guy shot at decedent…2-5 minutes later, DD fired 5 more shots at decedent’s head and face
  - To sustain a homicide conviction, it must be established beyond a reasonable doubt, that the DD caused the death of another person
    - Can’t be established here
    - Legal impossibility to murder a dead man
    - Unlawful killing with malice aforethought
  - But, can modify the judgment to reflect the offense of attempted murder
    - Result must be intended and desired…no defense for impossibility

- **United States v. Berrigan** – father smuggled letters in and out of prison…but warden actually knew about it
  - Since warden knew about it, it’s not criminal
  - It’s legally impossible (element of crime is missing) and it’s a defense in this case
  - Attempting to do that which is not a crime is not attempting to commit a crime

- **United States v. Oviedo** – cop bought “heroin” which passed field test, but later found to be a common drug
  - Legal and Factual Impossibility…wasn’t selling heroin…look at it ex ante
The objective acts without any reliance on the accompanying mens rea must mark the conduct as criminal in nature…doesn’t happen here
  - Look at conduct, not mens rea

**Chapter Seven: Group Criminality**

**Complicity**
- **MPC 2.06: Liability For Conduct of Another**
  - A person is guilty of an offense if it is committed by his own conduct or the conduct of another for which he’s legally accountable
    - One is legally accountable for another’s behavior when:
      - Acting with the kind of culpability that’s sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct OR
      - He is made accountable for the conduct of such person by the Code or the law defining the offense OR
      - He is an accomplice of such other person in the commission of the offense
        - A person is an accomplice of another in the commission of an offense if
          - With the purpose of promoting or facilitating the commission of the offense, he
            - Solicits such other person to commit it OR
            - Aids or agrees or attempts to aid such other person in planning or committing it OR
            - Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so OR
            - His conduct is expressly declared by law to establish his complicity
  - When causing a particular result is an element of the offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that’s sufficient for the commission of the offense
  - One who’s legally incapable of committing a particular offense himself may be guilty thereof if it’s 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
  - Unless provided otherwise by code or law defining the offense, one isn’t an accomplice in an offense if:
    - He’s the victim of the offense
    - The offense is so defined that his conduct is inevitably incident to its commission or
      - He terminates his complicity prior to the commission of the offense And
      - Wholly deprives it of effectiveness in the commission of the offense OR
      - Gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense
  - An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense hasn’t been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted

- American law punished accomplishes the same as principals
- However, an accessory after the fact is generally subject to a lesser punishment

**Mens Rea**

- **Principle**
  - **Common law**
    - 1st. actually committed
    - 2nd degree...helped with the crime…presence, but not actually committing the crime
    - Accessory before the fact
    - Accessory after the fact
    - Have to commit the principle
  - **MPC**
- **Principle**
  - Accomplice…treated the same as principle
  - Accessory after the fact
  - Don’t have to commit the principle to convict the accomplice

  - Specific intent is generally required to hold a person liable as an accomplice….that is he must actually intend his actions to further the criminal action of the principal

- **Actions of the Principle**

  - **Hicks v. United States** – Indian who told white man to take off his hat and die like a man…friend was threatening to kill white guy
    - Common law rule
    - Acts or words of encouragement and abetting must be used with the intention of encouraging or abetting the principal…up to prosecutor to prove this
      - Mere presence is insufficient
    - If, however, there has been evidence of a previous conspiracy btwn the two before, the abetter would still be guilty even if it became unnecessary for him to act (presence may have been enough)
      - However, there was no previous conspiracy and thus he’s not guilty

  - **Wilson v. People** - Wilson boosted Pierce through a transom of a drugstore then called police with Pierce inside, but took whiskey bottles Pierce handed him
    - Wilson isn’t an accessory before the fact
    - He provoked the formal, but not the substantive part of the crime
    - Common law…no intent

  - **State v. Gladstone** – undercover agent tried to buy pot, DD didn’t have any, but volunteered another who would be willing to sell it
    - The vital element – a nexus between the accused and the party whom he’s charged with aiding and abetting in the commission of a crime – is missing
      - No communication btwn the two stating one would help the other in selling pot…didn’t encourage other to sell pot
    - Might be different if it’s a more serious crime…stricter view…foreseeability or harm is higher
      - *United States v. Fountain*…note case
      - *More serious crime…lowered the mens rea*
    - MPC would rule same way….need purpose of promoting or facilitating the commission of the crime

  - **People v. Luparello** – DD told his friends he wanted info about his ex at any cost….lured man with info out and killed him….DD wasn’t present
    - Common law…CA
    - DD was convicted of murder (would be a different result under Gladstone/Hicks/MPC)
    - Don’t have to have the mens rea of the crime committed (only perp must have this), only equivalent mens rea for accomplice liability…found through intentionally encouraging or assisting or influencing the nefarious act
    - Abettors should be responsible for the criminal harms they have naturally, probably and foreseeably put in motion…broad view of criminal rule
      - Like felony-murder….foreseeability
    - Vicarious liability
      - Doesn’t matter if you didn’t encourage that exact result…the actor committed the murder and it can be imputed to him
      - Not liable for acts intended, but also those that are foreseeable….natural and reasonable test

  - **Roy v. United States** – Roy referred police informant to another to buy a gun. The other guy didn’t sell him a gun, but robbed the officer
    - Common law….extension of Luparello
    - Roy’s conviction for armed robbery was overturned
An accessory is liable for any criminal act which in the ordinary course of things was the natural and probable consequence of the crime that he advised or commanded, although such consequence may not have been intended by him:
- Ordinary course of things refers to what may reasonably ensure from the planned events, not to what may conceivably happen
- This isn’t in the ordinary course of things…not an outcome within a reasonably predictable range

**Attendant Circumstances**
- Predicate circumstances that cause criminal liability to attach
- To attach complicity, you must have the same mens rea as what the law comes for

**United States v. Xavier** – two brothers saw enemy at grocery store. One brother found guy who gave bro #2 gun who then used it to shoot enemy
- Depending on what the statute asks for, you need that intent for those attendant circumstances
- Bro #1 wasn’t liable for aiding and abetting ex-felon’s possession of a firearm…didn’t have knowledge that bro was an ex-felon
  - Here guilt depends on the status of the person possessing the firearm…so must know their status to be guilty yourself…otherwise don’t share in the criminal intent of the principal…no mens rea
- Attendant circumstance is a material element of crime, an accessory isn’t liable for aiding or abetting unless he’s aware of the attendant circumstances
- MPC requires mens rea for every element
  - Up to jury

**Result**
- each accomplice is acting with the requisite intent wanting the same result

**State v. McVay** – boiler producing steam by which vessel was propelled burst and killed many
- Intentionally be negligent
- All found guilty of manslaughter, including one who beforehand told captain and engineer not to worry about it
- At common law, accessory before the fact was who is absent during the crime, but command another to command a crime…acts with the purpose to forward the criminal act
  - He’s charged with causing other’s to be grossly negligently
  - Intentionally aid a negligent act
- MPC 2.03
  - Lower burden
    - Acts with the purpose of promoting or facilitating the commission of the offense…promote the actual crime…hard case to make
- Similar to Wollensky case…nightclub
  - Using complicity liability as a theory when actually trying to charge for gross negligence
  - This is a big extension or complicity theory…to procure someone who then acted grossly negligently

**People v. Russell** – gun battle btwn 3 men…one guy killed though we don’t know who’s gun fired the shot
- MPC
- Need same intent needed as to results
- All were charged with 2nd degree murder…extreme indifference…recklessness
- Court found that each had the mental culpability required for depraved indifference murder and they intentionally aided and encouraged each other to create the lethal crossfire
- Under MPC you need purpose
  - Agree to tacitly engage in gun battle…community of purpose….created a zone of danger…act on anyone of them is imputable to the others
  - Use 2.04 or 2.064
    - Since it’s depraved indifference murder and all easily charged with acting recklessly and all can be charged
    - Unlike common law, now you don’t need principals

**Voluntary Act of Accomplice Liability**

**Wilcox v. Jeffery** – jazz magazine writer who went to concert and wrote about it…musicians who were not supposed to be in UK
- Any aiding is enough
Found guilty for unlawfully aiding and abetting
- Court finds that his presence was not accidental…he paid to attend the concert and knew that they were not supposed to be there
  - Mere presence isn’t enough, but he knew about it…it’s an attendant circumstance
  - Mental intent for complicity…purpose to furthering the solicitation of the crime

State ex rel. Attorney General v. Tally Judge – judge’s sister-in-law was seduced, so he stopped telegram that warned seducer he was being hunted…impeachment proceeding
- She acts with that requisite mens rea
- You don’t have to be sole cause of the act if you aided the criminal act/just made it easier for the principal to accomplish the end intended
- If accomplice is being charged for complicity there must be some sort of concert (for accessory outside the scene of the crime)
- Need but, for causation for principal, but not accessory

State v. Hayes – DD wanted to rob warehouse and solicited Hill, who was a relative of the owners. Hill actually opened the window and passed a turkey out. Hill was principal and his intent was to entrap DD
- Common law
- If criminal intent is imputed/derivative, then DD can’t be liable…since there wasn’t criminal intent in the principal
- Different under MPC

Vaden v. State – undercover cop kills 4 foxes…guy who piloted and promoted the activity was charged.
- MPC same
- The excuse that may exonerate agent isn’t available to an accomplice
- The excuse is personal to agent
  - They use justification in the case

Taylor v. Commonwealth – girlfriend helped BF steal his son.
- Her accessorial ability wouldn’t be undercut by BF’s excuse
- Defense of legal excuse is personal to BF and unavailable to girlfriend
- Policy oriented rationale
- Under MPC 2.06
  - She’s guilty as an accomplice

**Conspiracy**

MPC 5.03 Criminal Conspiracy
- Definition of Conspiracy. A person is guilty of conspiracy with another person to commit a crime if with the purpose of promoting or facilitating its commission he:
  - Agrees with such other person or person 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
  - Agrees to aid another in the planning or commission of such crime or of an attempt or solicitation to commit such crime
- Scope of Conspiratorial Relationship. If a person guilty of conspiracy, as defined by Subsection (1) knows that a person with whom he conspires to commit a crime has conspired with another to commit the same crime, he’s guilty of conspiring with such other person, whether or not he knows their identity to commit such crime.
- Conspiracy with Multiple Criminal Objectives. If a person conspires to commit a number of crimes, he’s guilty of only one conspiracy so longs as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship
- Overt Act. No person may be convicted of 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
- Renunciation of Criminal Purpose. It’s an affirmative defense that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of this criminal purpose
Duration of conspiracy

- Conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned by the DD and by those with whom he conspired And
- Such abandonment is presumed if neither the DD nor anyone with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation And
- If an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and his participation therein.

- Krulewitch v. United States – enticed women to go to Miami to be a prostitute…after all three parties were arrested, prostitute offered hearsay evidence
  - Common law
  - Did not allow info…found out info after conspiracy
  - Hearsay is frowned upon because you have right of confrontation (6th amendment) and it’s tried to a jury, who can’t determine what is prejudicial/fact/accurate
  - Exception to hearsay in conspiracy
    - Person making the statement is unavailable as a witness AND
    - Some indicator of trustworthiness
  - The aim of the conspiracy already happened and hearsay about preventing detection and punishment isn’t allowed
  - Enhanced activity that group danger poses
  - Here conspiracy before crimes occurs, not after

- Abandonment….gave up on the conspiracy….none of the conspirators is engaging in any action to further the conspiratorial objectives
- Renunciation….one member is trying to renunciate and use it as a defense….actor must take affirmative action to announce his withdrawal to all the other conspirators…some courts and MPC require him to renounce and stop the crime

- Pinkerton v. United States – two brothers conspired for IRS violations….only one actually committed the violations…the other was in jail and didn’t know about it…but they had discussed it in the past
  - Found there to be a continuous conspiracy…no evidence of the affirmative action on part of bro which is necessary to establish his withdrawal from the conspiracy
  - It’s a general partnership….business law idea….what one partner does affects/binds the others
    - You just need an agreement and an overt act….the overt act of one binds them all and all substantive acts of one bind the rest….don’t need any new agreement specifically directed to that act
      - The criminal intent to do the act is established by the formation of the conspiracy…each conspirator instigated the commission of the crime
      - The substantive offense was done in furtherance of the conspiracy
    - Does this mean all acts? Including killing the IRS agent?
      - No, that’s not what they agreed on….substantive act must be in the scope or reasonably foreseen
      - It’s not retroactive…can’t be charged with stuff after you enter the conspiracy
  - Most states and MPC don’t follow Pinkerton, but federal courts do

- State v. Bridges - friends use guns to keep people at bay when fight is occurring. But friends use guns and kill onlooker
  - Common law…Luparello std.
  - Guy in fight was convicted of murder (not conspiracy but substantive crime)
  - Though he didn’t conspire to kill them and it was not within the scope of the conspiracy, it was reasonably foreseeable as the necessary or natural consequences of the conspiracy
  - This is more than recklessness…wouldn’t be enough for accomplice liability, but enough for conspiracy
    - Might have also been able to use the felony-murder rule
  - Under this theory….if you’re at all part of the conspiracy, you’re held liable for the substantive crime
- United States v. Alvarez – agents killed due to unintended turn in events in a drug deal/bust in a hotel
  o 3 dealers who took no part in the shooting were liable for 2nd degree murder
  o Extension of Pinkerton
    ▪ Say they only had minor roles in drug deal…but court disagreed
    ▪ What limits are there?
      • Must be in furtherance of the conspiracy
      • Reasonably foreseeable, though not originally intended
      • More than a minor participant
  o MPC – conspirators are liable for the substantive crimes of their co-conspirators only when the strict conditions for accomplice liability are met

Actus Reus

- Interstate Circuit, Inc. v. United States – hold distributors liable for conspiracy with movie theatre chain
  o Common law
  o Without an express agreement, you can be held liable for conspiracy…it can be inferred and circumstantial
    ▪ In criminal law, you’d need the reasonable doubt standard
  o Inference and circumstantial is enough to get it to court….still must prove beyond a reasonable doubt
  o Actus reus of conspiracy is the agreement to perform an unlawful act

Overt Act Requirement
- not needed at common law…agreement was enough
- MPC…overt act…lessened for serious offenses (not needed for 1st and 2nd degree)

- Mens Rea

- People v. Lauria – undercover cop pretended to be a prostitute and used answering service
  o Common law
  o Both the elements of knowledge of the illegal use of the goods or services and the element of intent to further that use must be present in order to make the supplier a participant in a criminal conspiracy
    ▪ Intent may be inferred from knowledge, when the purveyor of legal goods for illegal use has acquired a stake in the venture
      • There was no proof that he charged inflated rates for the answering services
    ▪ Intent may be inferred from knowledge when no legitimate use for the goods or services exists
    ▪ Intent may be inferred from knowledge, when the volume of business with the buyer is grossly disproportionate to any legitimate demand, or when sales for illegal use amount to a high proportion of the sellers’ total business.
  o An inference of intent drawn from knowledge of criminal use properly applies to the less serious crimes classified as misdemeanors…positive knowledge without more doesn’t establish an intent to participate in the misdemeanor

Chapter Eight: Exculpation: Concepts of Justification and Excuse

- Justification and excuse are distinct for our purposes
  o Justification
    ▪ You accept responsibility, but deny it was bad
    ▪ Self-defense
  o Excuse…you admit it was bad, but deny responsibility
    ▪ This is the one that’s personal to the individual
    ▪ The insanity plea

- MPC 3.01: Justification as an Affirmative Defense
  o Justification is an affirmative defense

- MPC 3.02 Justification Generally: Choice of Evils (Necessity)
Conduct which the actor believes necessary to avoid a harm or evil to himself or another is justifiable, if
- The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented
  by the law defining the offense charged and
- When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or
  evils or in appraising the necessity for his conduct, the justification afforded by this section is unavailable
  for any offense for which recklessness or negligence, suffices to establish culpability

- **MPC 3.04 Use of Force in Self-Protection**
  - The use of force upon or toward another person is justifiable when the actor believes that such force is
    immediately necessary for the purpose of protecting himself against the use of unlawful force by such
    other person on the present occasion
    - Limitations on Justifying Necessity for Use of Force
      - The use of force isn’t justifiable
        - To resist an arrest which the actor knows is being made by a peace officer.
        - The use of force isn’t justifiable under this Section unless the actor believes that such
          force is necessary to protect himself against death, serious bodily harm, kidnapping or
          sexual intercourse compelled by force or threat; nor is it justifiable if
          - The actor with the purpose of causing death or serious bodily harm, provoked
            the use of force against himself in the same encounter or

- **MPC 3.09 Mistake of Law as to Unlawfulness of Force or Legality of Arrest; Reckless or Negligent Use of
  Otherwise Justifiable Force; Reckless or Negligent Injury or Risk of Injury to Innocent Persons**
  - The justification defense is unavailable when
    - The actor’s believe in the unlawfulness of the force or conduct against which he employs
      protective force or his belief in the lawfulness of an arrest which he endeavors to effect by force is
      erroneous; and
    - His error is due to ignorance or mistake as to the provisions of the Code, any other provision of
      the criminal law or the law governing the legality of an arrest or search
  - When the actor believes that the use of force upon or toward the person of another is necessary for any of
    the purposes for which such belief would establish a justification under 3.03 but the actor is reckless or
    negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is
    material to the justifiability of his use of force, the justification afforded by those Sections is unavailable
    in a prosecution for an offense for which recklessness or negligent as the case may be, suffices to
    establish culpability
  - When the actor’s justified under 3.03 in using force upon or toward another person, but he recklessly or
    negligently injures or creates a risk of injury to innocent person, the justification afforded by those
    Sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons

- **United States v. Peterson**
  - Standard
    - Right of self-defense only arises when the necessity begins and ends with the necessity and never
      must the necessity be greater than the force employed defensively is deadly…it must be
      proportionate…use same force that you fear
    - Threat must be
      - Deadly
      - unlawful and immediate
      - imminent peril or serious bodily harm
      - MPC adds rape and kidnapping
    - Belief must be subjective (must honestly believe this) and objective (reasonable under the
      circumstances)
  - MPC
    - Test is purely subjective
    - If you negligently or recklessly formed the belief, you can be charged with a lower offense

- **People v. Goetz** – man on subway shot 4 boys who “asked” for $5
  - NY statute
A person may use deadly physical force upon another person if he reasonably believes that such other person is committing or attempting to commit a kidnapping, forcible rape, forcible sodomy or robbery AND

Person believes the use of physical force upon another is necessary to defend himself from what one reasonably believes to be the use or imminent use of unlawful physical force by such other person

Issues DD can raise to support belief in his potential harm
- Physical attributes
- Prior experiences
- Relevant knowledge he had about the attacker

Most commentators believe that the jury was wrong…they didn’t follow NY self-defense law
MPC…pure subjective standard…though reckless belief would get you to manslaughter
- Example of college girl in the loop who turns around and shoots
- Charged with a lesser offense
  - Maybe recklessness or negligence with belief formed
- Under both MPC and common law, won’t permit you to raise a self-defense standard

- **State v. Kelly** – decedent beat and humiliated wife for seven years….when attacked in public, she killed him with scissors
  - Allowed expert to testify that she was a battered woman and suffered from battered woman syndrome
  - Depends on whether it’s relevant to DD’s claim of self defense and whether the proffer meets the standards for admission of expert testimony
  - Shows her state of mind and whether she reasonably believes that such force is necessary to protect herself
    - Also goes to why she didn’t leave him during the contrition cycle
  - Requirements for expert testimony
    - Can’t be common knowledge
    - Intended testimony must concern a subject that’s beyond the ken of the average juror
    - Field testified must be a state of the art such that an expert’s testimony could be sufficiently reliable
    - The witness must have sufficient expertise

- **State v. Norman** – abused by her husband for 25 years. He beat and burned her…she tried to kill herself and he tried stopping paramedics from treating her…she shot him in the head while he was sleeping
  - Common law
  - Didn’t allow self-defense claim because she wasn’t in imminent harm
    - Imminent peril must be immediate danger, such as must be instantly met, such as cannot be guarded against by calling for the assistance of others or the protection of the law
    - Can’t show that she had reasonable grounds that a felonious assault was imminent or that it might result in her death or great bodily injury…he was sleeping
      - A subjective belief of what might be inevitable at some indefinite point in the future doesn’t equate to what she believes to be imminent
  - MPC relaxes the imminence requirement…if it’s inevitable, in the near future, immediately necessary, that’s enough

- **Robinson v. State** (note)
  - Even when the batterer is absent or asleep…where torture appears interminable and escape impossible, the belief that only the death of the batter can provide relief may be reasonable in the mind of a person of ordinary firmness.

**Defenses**
- the prosecutor hasn’t proved one of the elements of the crime
- I did kill, but it was justified
  - Self-defense
- A particular conduct was bad, but deny responsibility
  - It wasn’t my act
I was mentally irresponsible

**Justification**

- **People v. Unger** – inmate left an honor farm. He said it was because he was assaulted and sexually assaulted. The day he left, his life was threatened on the phone. He didn’t report the death threat because he feared retaliation.
  - He’s allowed to present a defense of necessity
    - He was forced to choose between two admitted evils by the situation which arose from the actual and threatened homosexual assaults and fears of reprisal
    - The IL statute says:
      - He’s without blame in developing the situation and reasonably believed such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct
      - In addition to this statutory definition, there was some case law on this, which said that a prisoner who escapes must show:
        - That he’s faced with imminent death, rape, or bodily injury
        - There’s no time for complaint to authorities or such complaints would be futile
        - No time or opportunity to resort to the courts
        - No evidence of force used towards prison personnel or other innocent persons in the escape
        - Prisoner immediately reports to the proper authorities when he’s attained a position of safety
        - These go to weight and credibility of defense and are relevant considerations, but don’t need all of them
  - Could you make an excuse case?
    - Can argue compulsion…no moral choice was left to him
      - Escape or be killed
      - Court doesn’t accept this…he wasn’t deprived of his free will
  - If someone helps someone against an attack, he isn’t an accessory to murder…they get the justification, but not the excuse (it’s personal)
  - MPC…rule the same way

- **Lopez**…excuse is personal

- **Commonwealth v. Hutchins** – charged with growing pot and tried to claim necessity since he was a victim of progressive systemic sclerosis
  - They did not allow the defense
    - The importance to the DD wouldn’t clearly and significantly outweigh the potential harm to the public were we to declare that the DD’s cultivation of pot and its use for his medicinal purposes may not be punishable
    - Dissent
  - Supreme Court said you can’t raise the defense of necessity

- **United States v. Schoon** – DDs protested US involvement in El Salvador. They tried to use the necessity defense contending that their acts in protest of American involvement in El Salvador were necessary to avoid further bloodshed in that country
  - Court rejected the necessity defense
  - Necessity defense allows us to act as individual legislators when a real legislator would do the same thing under those circumstances
  - To invoke the necessity defense:
    - The were faced with a choice of evils and chose the lesser evil
    - They reasonably anticipated a direct causal relationship between their conduct and the harm to be averted
    - They had no legal alternatives to violating the law
The court said the immediacy was lacking, their actions wouldn’t abate the evil, and other legal alternatives existed.

They held that the necessity defense is inapplicable to cases involving indirect civil disobedience:
- There’s no direct relationship to the harm
- They do so to repeal a law or change a government policy
- They violate a law because it’s unconstitutional or otherwise improper, but because doing so calls public attention to their objectives

**Principles of Excuse**
- **2.09 Duress**
  - coerce
  - unlawful
  - person of reasonable firmness
- incapacity of knowledge or choice
  - involuntary actions
  - deficient but reasonable actions
    - kill what you think is an animal, but it’s a person in animal clothing
  - volitional deficiency
    - duress
  - Cognitive deficiency
    - Insane

- **State v. Toscano** – chiropractor filled out fraudulent insurance claim for a medical report. He said his family’s life was threatened if he didn’t comply. He received no money for his actions
  - Common law had to be immediate, threat of death and at common law only directed at you
  - NJ…modified to MPC std.
  - Court says he has enough evidence that a jury ought to be able to consider if his defense is reasonable
    - To excuse a crime, the threatened injury must induce such a fear as a man of ordinary fortitude and courage must justly yield to
    - Apprehension of immediate serious bodily harm has been considered sufficient to excuse capitulation to threats
    - Deprived of free will by external pressure
    - MPC…coerce, unlawful force,, person of reasonable firmness…permits murder
    - C/K…present, imminent, pending…not murder
    - Want to look and see if there’s a voluntary act…then don’t get to duress

**Legal Insanity**
- excuses actor’s criminal behavior because he was unable to control his behavior or unable to appreciate the consequences of his behavior (didn’t know right from wrong)
- MPC…no person as a result of mental disease or defect shouldn’t be executed
- 8th amendment…cruel and unusual to kill the insane…can’t understand why they’re being killed…offends legal standards….conception of morality…fairness/justice/law
- no deterrence
- It used to be prosecution’s burden to prove sanity, now it’s burden on DD to prove insanity by clear and convincing evidence

- **Ford v. Wainright** -
  - SC…eight amendment’s proscription of cruel and unusual punishment bars execution of the insane
    - Offends humanity…uses morality arguments
    - Don’t have the mental capacity to understand the nature of the death penalty and why it was imposed on them
  - Psychologists would meet with prisoner and make recommendations to governor, who would then decide to execute or not
    - SC held this unconstitutional….Prisoner must be afforded an opportunity to present evidence and argument before an impartial officer or board independent of the executive branch
      - Courts reluctant to turn this over to medical profession….want jury
- **M’Naghten’s Case** – DD killed the secretary to the prime minister. He said he had delusions that people persecute and follow him and want to kill him.
  - Found not guilty on the reason of insanity
  - Test
    - Need a mental disease or defect (but intoxication doesn’t count) that causes you to be unaware or not realize the nature or quality of the act
    - Stricter test (courts went back after Hinkley)
- **The King v. Porter**
  - It’s useless for the law to attempt, by threatening punishment, to deter people from committing crimes if their mental condition is such that they can’t be in the least influenced by the possibility or probability of subsequent punishment
- **Blake v. United States** – 21 year history of mental problems and being out of institutions…electric shock…drinking problems…killed wife #2, robbed banks whom he’d had trouble with
  - Follow the MPC standard
    - Lacks substantial capacity to either appreciate (more than knowledge/awareness, but understanding) the criminality (wrongfulness) of his conduct or to conform his conduct to the requirement of the law
      - Mental disease and defect
      - Lacks substantial capacity to either appreciate (understand) the wrongfulness
  - DD just has to show insanity, but PP has to prove insanity
- **United States v. Lyons** – After suffering from painful ailments, various narcotics were prescribed for the pain and he became addicted to the drugs. He wanted to present experts who would testify that his drug use affected his brain and as a result he lacked substantial capacity to conform his conduct to the law
  - Reversed Blake
  - Go back to old M’Naghten standard
    - Only time you’re not guilty is when you’re unable to be aware of your conduct
      - Not the case here
    - The volitional prong of the insanity defense – lack of capacity to conform one’s conduct to the requirements of the law – doesn’t comport with current medical knowledge
- **State v. Green** – Chattanooga guy who killed officer. Years of mental problems. Those that saw him right after death said he seemed sane
  - SC said no reasonable jury could find him anything but insane
  - No evidence that at the time he shot the officer, he was able to conform his conduct to the dictates of the law
  - His history shows that he didn’t drop into a psychotic condition upon shooting the officer
  - While DDs acts were consistent with sanity at the time of the killing they were not inconsistent with insanity
  - Prosecution didn’t prove it’s burden