CRIMINAL LAW OUTLINE 2

ACTUS REUS

To be guilty of a crime, Δ must have committed:

1. A voluntary act
   - Required by most jurisdictions
   - Habitual acts count
   - Drunks carried to highways are there involuntarily in most states. Martin.

   NOT voluntary acts:
   a. Reflex, convulsion
      - BUT act is voluntary if Δ knowingly puts himself in a dangerous situation.
         - Epileptic liable for car accident. Decima.
   b. Bodily movement during unconsciousness or sleep
      - Unconsciousness cannot be self-induced
      - Cop shot Δ in stomach, Δ unconscious, Δ shoots cop, Δ not liable. Newton.
   c. Conduct during hypnosis
   d. A bodily movement not done with the effort of the actor

Possession counts, IF:
   - Knowingly procured, OR
   - Was aware long enough to have gotten rid of it
   - Some courts only require that Δ should have known.

2. An omission, if:
   a. Statute punishes the omission, or
   b. Duty to act
      1. Status relationship
         ▪ Δ guilty when sister who was living with him died of anorexia.
            Stone & Dobinson
      2. Contractual duty of care
         ▪ Δ, hired to take care of baby, did not, baby died, Δ liable. Jones.
      3. Δ voluntarily assumes care and secludes helpless person so no one else can help them.
         ▪ Oliver, cocaine spoon
         ▪ Δ injured boyfriend in her home and didn’t call 911. Kuntz.
      4. Actor creates the peril
         ▪ Δ raped girl, who, distressed, fell in creek and drowned, Δ did not save her. Jones.

   o Courts are split WRT respirator
      ▪ Court 1: Dr not liable for disconnecting life-support.
        Disconnecting is an omission, and there is no legal duty to act, so not liable.
      ▪ Court 2: maybe: disconnecting is a voluntary act; not an omission.
        Need clear and convincing evidence of patient’s intent. Cruzan.

   o If no duty to act, some courts still have Good Samaritan statutes which make it a crime not to rescue.
      ▪ But, most courts do not want to punish hospitality.
• Pope: woman not guilty when a guest who was staying in her home abused her child to death in front of her.

MENS REA
In addition to actus reus, must have one of the following for every element of the offense:

1. **Purposely**
   - Element involves nature of conduct: conscious object to engage in conduct of that nature
   - Element involves attendant circumstances: aware of the existence of the circumstances, or believes or hopes they exist.
   - Also “maliciously”
     - Δ ripped gas meter off wall but did not turn off gas. Δ was aware of the circumstances. *Regina v Cunningham*
   - Intent can be conditional: “I will kill you if you resist.” *Holloway.*

2. **Knowingly**
   - Element involves nature of conduct or attendant circumstances: Δ is aware that his conduct is of that nature or that such circumstances exist
   - Element involves result of the conduct: Δ is aware that it is practically certain that his conduct will cause the result.
   - Also “willfully”
   - Subjective test: did Δ actually know (NOT RP standard: loophole for dumb people)
   - Willful blindness/ostrich instruction: deliberate ignorance is enough.
     - Court 1: knowledge is presumed if you refuse to inspect your car. *Jewell, marijuana.*
     - Court 2: No mens rea unless Δ (a) was aware of high probability of illegal conduct, or (b) purposely contrived to avoid learning of the conduct. *Giovanetti, gambling.*

3. **Recklessly**
   - Δ consciously disregards a substantial and unjustifiable risk
   - Given Δ’s circumstances, disregard must be a gross deviation from the standard of conduct of a law-abiding person in Δ’s situation (subjective standard).
   - When statute is silent, minimum is recklessness.
   - Δ must be aware of the risk.
   - Some courts have an objective standard: would RP have realized the risk?

4. **Negligently**
   - Δ should be aware of a substantial and unjustifiable risk
   - Δ’s failure to perceive the risk, in his circumstances, must be a gross deviation from standard of care of a RP.
   - Is it a specific or general intent crime?
     - Specific: Δ must have actual knowledge of a specific circumstance.
       - Burglary: must prove specific purpose to commit a felony in the building
     - General: Δ only need to desire to bring about the result
- Actor who breaks into a building is guilty of trespass

MISTAKE OF FACT OR LAW
- The general law is that ignorance of the law is NO excuse
- Is a defense if:
  - The ignorance or mistake negatives the mens rea, or
    - Usually NO cultural defense.
  - The statute says it is a defense
- Is NOT a defense if:
  - Δ would be guilty if situation had been as he supposed.
    - Crime reduced to what he supposed.
  - Fact: If Δ thinks she is 18, but she is 16, not a defense if he shouldn’t be doing what he did with an 18 year old either. Prince.
    - Fact: a reasonable mistake as to the victim’s age is NOT a defense to a charge of lewd or lascivious conduct w/ a child under the age of 14. Olsen, trailer, Garcia and 13 year old girl who claimed and looked to be 16.
- Belief that conduct is legal is a defense if:
  - Statute was not reasonably available to Δ, or
  - Δ acts in reasonable reliance on an official statement of the law which is latter invalidated
  - Fact: statute prohibits attacking federal officer, Δ thinks he is not an officer. Defense IF “federal officer” is a material element. Feola.
  - Law: Δ’s mistaken belief that statute does not apply to his conduct is NOT a defense. Δ mistakenly thought he was a peace officer. Marrero.
  - No ex post facto laws: Albertini.

STRICT LIABILITY
Mens rea not required for:
- offenses which constitute violations
  - ONLY fines. No criminal punishment b/c would violate DP.
- Statutes that impose absolute liability
  - Mala prohibitum offenses (regulatory measures)
  - Mislabeling of drugs. Dotterweich.
  - Violations of Narcotic Act: says opium must be sold w/ order form. Sellers sell at their own peril, doesn’t matter if they don’t know are selling illegal drugs. Balint.
  - Pollution
  - Silence does not mean strict liability. Morrisette, junk dealer didn’t know bomb casings belonged to anyone.
    - This silence probably means recklessness.
    - Do not get rid of mens rea when doing so would criminalize a broad range of apparently innocent conduct. Staples, didn’t know his weapon was a “firearm” and so did not register it.
    - So, if statute is silent, courts will consider circumstances and if strict liability would criminalize too much conduct.
- Vicarious strict liability:
  - Employers can be liable for employees even if employer not at fault.
Taverns: bar owners who are unaware and not negligent can be liable for employees who serve minors.
  - Court 1: bar owner liable
  - Court 2: not liable b/c penalty is criminal and violates DP. *Guminga*

Cars: Δ liable for speeding b/c voluntarily enacted cruise control, which then defected. *Baker.*

Drunk: statutes often create strict liability WRT presence of alcohol in driver’s body. *Miller.*

**LEGALITY: LOITERING**
- △ loiters in a place
- Under circumstances that create alarm for the safety of nearby persons or property
  - Circumstances include:
    - Fleeing upon sight of PO
    - Refusing to ID oneself
    - Concealing himself or object
  - PO must first give Δ opportunity to dispel alarm!
- Common law statutes are void for vagueness if:
  - So broad/confusing that citizens don’t know what behavior is punished
  - PO has too much discretion; enforcement is arbitrary or selective.
  - *Chicago v Morales* (gang congregating), *Papachristou* (“nightwalking”)

**RAPE**
- A male who has sex with a female not his wife (wives, men can’t be raped)
- By force or threat of imminent death, serious bodily injury, extreme pain or kidnapping, OR
- He has drugged her to prevent resistance, OR
- She is unconscious, OR
- She is less than 10 years old.
- Actus reus:
  - Most courts require force
  - CA adds duress, is gender neutral
  - MD:
    - Force, and
    - Lack of consent (shown by resistance)
      - Don’t have to show if can show fear by RP. *Rusk*..
  - Resistance
    - An element in some states
    - Implied in force or nonconsent elements in most states
    - LA: “to the utmost”
    - Several states: “earnest resistance”
    - ½ of states: “reasonable resistance”
- Mens rea:
  - Most stats have lack of consent as an element (MPC does not)
Objective standard: consent is not measured by the subjective view of the aggressor. *Sherry*, 3 docs and a nurse. If victim says no, aggressor continues at his own risk.
- Applies to date rape too. *Fischer*.

- Purpose, knowledge, negligence, or recklessness
- Court 1: Reasonable mistake as to consent is a defense.
- Court 2: Reasonable mistake as to consent is NOT a defense. This is a sort of strict liability on consent. *Sherry, Fischer*.
- Court 3: requires proof of recklessness WRT consent. Alaska. This favors the aggressor.

- 1st degree: bodily harm, not an acquaintance
- 2nd degree: acquaintance rape
  - NY:
    - 1st degree when by force, or victim is incapable of consent because physically helpless, or is under 11
    - 2nd degree: victim is under 14
    - 3rd degree: victim is under 17
  - WI:
    - 1st degree: causes pregnancy or bodily harm, or with weapon
    - 2nd degree: force or threat of force, causes injury to sex organ or mental anguish, person is drugged, person is unconscious
    - 3rd degree: simply without consent
    - 3rd degree: sex with minors is in a separate offense

HOMICIDE

Criminal homicide
- Purposely, knowingly, recklessly or negligently causes death
- Is murder, manslaughter or negligent homicide

Murder
- purposely or knowingly
- Recklessly (FMR)
  - Circumstances manifesting extreme indifference to the value of human life
    - Presumed when actor is engaged in, accomplice to, or attempts to commit, flight after robbery or attempted robbery, rape, arson, burglary, kidnapping, or felonious escape
- 1st degree felony.
- Malice aforethought
  - Some courts require premeditation (time to plan and reflect) for 1st degree
    - *Guthrie* nose case, WV: A must have had time to reflect.
    - How to prove meditation:
      - Planning activity, prior relationship, nature of killing shows preconceived design.
    - Distinguishes b/tw degrees of murder
  - Some courts do not require premeditation for 1st degree murder. *Carroll*. 
o Provocation defense
  ▪ Words not enough. *Girouard, wife told husband she wanted a divorce, he stabbed her 19 times. Guilty of 1st degree murder.*
  ▪ Some courts say cooling off time kills provocation defense. *Bordeaux.*
  ▪ Sexual infidelity
    ▪ Must be intercourse, and sudden. *Dennis.*
    ▪ Must be married. *Turner.*
  o 1st degree: premeditated
  o 2nd degree: no premeditation, or recklessly
    ▪ if Δ does not intend to kill, but has a “wicked disposition” or callous disregard, and death could reasonably have been anticipated, guilty of 2nd degree murder. *Wanton and reckless disregard for risk, Malone, Russian poker.*
    ▪ *Fleming: drunk driving*
  o Act OR omission
    ▪ Father convicted of murder when didn’t feed son because “just didn’t care.” *Burden.*
  o Egregiously drunk driving can be murder if Δ was aware of risk of harm. Knowingly.
    - CA: killing a fetus is murder
    - PA: 2nd degree murder is accomplice murder,
    o 2nd degree murder has EED defense

Manslaughter
- Recklessly
- A killing which would be murder, but extreme emotional disturbance.
  ▪ Reasonableness determined by viewpoint of a person in the actor’s situation under the circumstances he believes them to be. (Subjective)
- 2nd degree felony
- No malice aforethought required
- Extreme emotional disturbance defense:
  ▪ Subjective AND objective test. *Casassa, Victor and Victoria, his disturbance was not objectively reasonable.*
    ▪ Subjective: was the person emotionally disturbed?
    ▪ Objective: was the disturbance reasonable under the circumstances?
  ▪ A does not have to be provoked (killing does not have to be sudden). *Elliott.*
  ▪ Psych evidence of mental state probably admissible. *Klimas.*
- Voluntary manslaughter:
  ▪ Sudden and intense passion from provocation
  ▪ Unreasonable belief that murder would be justified, that, if reasonable, would justify.
- Involuntary manslaughter: Unintentional killing
Recklessness or gross negligence
- Intend the conduct but not the harm
- Gets you if you knew or should have known
- “wanton or reckless” (depraved heart)
- drunk driving
  - Welansky: bar owner was wanton and reckless for keeping club in a state of fire hazard.
  - Williams: Native American parents did not seek medical help for gangrenous baby tooth. Guilty.
- CA et all has vehicular manslaughter as a separate crime
  - Misdemeanor Manslaughter Rule
    - FM for misdemeanors
      - Misdemeanor results in death → involuntary manslaughter
        - Do not need to prove recklessness or negligence
      - Must establish proximate cause
      - Court 1: common law definition: must prove negligence (no MMR)
      - Court 2: unlawful act doctrine: only must prove that unlawful act caused death.

FELONY MURDER RULE
- If A, while in the process of committing a felony, accidentally kills someone, the killing is murder.
- Intent to commit the felony is imputed to murder.
- Recklessly under circumstances manifesting extreme indifference to human life.
  - If A is engaged in,
    - Attempts to commit,
    - is an accomplice in,
    - or flees after committing or attempting to commit
  - Robbery
    - Rape
    - Arson (A sets fire to house, people inside die. Serne.)
    - Burglary
    - Kidnapping
    - Felonious escape
  - And death results
    - There is a rebuttable presumption of recklessness
      - Death does not have to be foreseeable. A robs a man at gunpoint, man dies of heart attack. A guilty of FM, as long as victim’s physical condition is not the only factor of death. Stamp.
      - NO FMR in MI et al. Must prove mens rea for the killing.
      - Need three things at common law:
        - 1. Inherently dangerous
          - Must courts only allow FMR for inherently dangerous felonies.
          - Other felonies only get the MMR.
• Is it inherently dangerous? *Hansen.*
  o Court 1: look at elements in abstract. If it is possible
    the crime is not dangerous, no FMR. *Satchell.*
  o Court 2: look at case facts. More likely that is
dangerous.
• Courts are split on if drug distribution is inherently
dangerous.
  o 2. Murder separate from felony
    ▪ Merger doctrine: for FMR to apply, felony must be separate from
      the killing.
    ▪ (MPC does not have this; it has a list of felonies)
    ▪ Ex: FMR can’t apply to felony child abuse if child died of child
      abuse (malnutrition). *Smith.*
  o 3. Causation: a) but for and b) PC
    ▪ a) But For:
    ▪ b) PC: result must be natural and probable consequence of A’s
      conduct.
      ▪ If intervening act causes victim’s death, causation fails.
- Killings NOT in furtherance of the felony:
  o Court 1: agency theory
    ▪ FMR applies if killing is done by felon or co-felon acting in
      furtherance of the killing.
    ▪ FMR does not apply if killing is by intended victim, PO,
      bystanders. *Canola,* victim shot a co-felon. Co-felons not
      liable.
    ▪ Co-felon not liable for unanticipated action of co-felon
      (such as stabbing rape victim) not in furtherance of the
      common purpose.
  o Court 2: proximate cause theory
    ▪ FMR applies to any death that was proximately caused by the
      felony.
  o Court 3: NY. PC + higher caution standard.
  o Court 4: NO FMR so neither theory
- Accomplice liability
  o When 2+ people work together to commit a felony, one of them kills,
    others may be guilty of FM.
    ▪ If killing is intentional, must be in furtherance of the felony
      ▪ Otherwise is an intervening action
    ▪ If killing is unintentional, must be in furtherance AND have PC.

**GUN BATTLES**
- Court 1: FMR: provoking gun battle gets malice based on recklessness
- Court 2: vicarious liability: A liable if co-felon started the gun battle which ended
  in the death
- Court 3: co-conspiracy
CAUSATION

1. But For, AND
   - Substantial factor also satisfies But For

2. Proximate Cause
   a. Purposely or Knowingly
      i. Transferred intent counts
      ii. Result can’t be too remote or accidental (can’t be completely unforeseeable)
   b. Recklessly or negligently
      i. Transferred intent counts
      ii. Result can’t be too remote or accidental (can’t be completely unforeseeable)
         - more results unforeseeable for recklessness and negligence
         - Court 1: drag race, Δ not guilty b/c victim chose to race. Root.
         - Court 2:
           - drag race, Δ guilty b/c should have foreseen risk. McFadden.
           - Δ as chased man, trying to beat him, man ran onto highway, killed by car. Δ liable b/c sufficiently direct. Kern.

3. Strict liability offenses: result must be a probable consequence.
   - Causation is a material element of all crimes that must be proven BRD.
   - PC: unforeseeability is measured differently in different jurisdictions
     o Court 1: highly extraordinary results are not foreseeable. Possible results are foreseeable. Acosta, felon fleeing from police, choppers collide. Foreseeable.
     o Court 2: sufficiently direct connection b/tw conduct and result; foreseeable.
       - Arzon, couch fire, liable even though there was another cause (a 2nd fire)
       - Warner-Lambert, gum factory, not liable b/c superseding explosion. But if Δ created dangerous conditions and could have foreseen the danger that was the superseding cause, Δ liable in Court 1. Deitsch.
     o Medical malpractice is usually foreseeable.
       - Exception: if hospital is grossly negligent, cuts off Δ’s liability.
   - And ASSISTED SUICIDE
     o Causing suicide is criminal homicide (manslaughter) if
       - Purposely
       - Causes suicide by force, duress or deception
     o Aiding or soliciting suicide
       - Purposely
       - Aids or solicits another to commit suicide
       - Conduct causes suicide or attempted suicide: 2nd degree felony
         - Does not cause: misdemeanor
     o If no duress, probably not guilty. Basnaw.
- Court 1: encouraging someone to kill themselves is not murder if victim pulls trigger; it is manslaughter.
  - Duress required! Kevorkian not guilty.
- Court 2: assisted suicide is murder. Duress required.
- Court 3, NY: duress NOT required. Manslaughter if person intentionally causes or aids another to commit suicide.

And Subsequent act by VICTIM
- But For and PC must be satisfied
  - Victim killed herself after Δ kidnapped and raped her. Δ guilty b/c suicide was a natural and probable result of Δ’s mistreatment of victim, Stephenson.
- Court 1: Δ liable if urges and encourages
  - Russian roulette, Δ guilty b/c urged and encouraged victim. Attencio.
- Court 2: Δ only liable if deprives victim of free will.
  - Free will is intervening cause that breaks causal chain. Lewis.

And Subsequent act by 3rd PARTY
- Putting someone in the line of fire
- But For: Yes
- PC: probably not b/c 3rd party did not kill. Manslaughter maximum.

ATTEMPT
- Mens rea required for the substantive crime
  - Purposely engages in conduct which would constitute the crime if the circumstances were as he believes them to be, or
  - Does or omits something with the purpose of causing the result of the crime, or
  - Does or omits something which, under the circumstances as he believes them to be, is a substantial step towards commission of the crime.
- A substantial step is strongly corroborative of the actor’s criminal purpose
  - Lying in wait or looking for victim
  - Trying to get victim to go to crime scene
  - Unlawfully entering crime scene
  - Possession of stuff to be used in the crime that has no lawful purpose in the situation
  - Soliciting an innocent person to do part of the crime
  - Setting bill trap

Renunciation is a defense if actor
- Abandons effort to commit the crime
  - Court 1: no abandonment defense
  - Court 2 and MPC: complete defense

- 2 elements:
  - Actus reus: an act in furtherance of the crime. Preparation not enough!
    - Court 1: dangerous proximity test.
• Δ must come dangerously close to success. Last act not required.
• Abandonment defense allowed
• No attempted robbery when didn’t find person intended to rob. Rizzo. MPC would say guilty b/c substantial step.

- Court 2: equivocality test
  - 1. Must have criminal purpose
  - 2. must have substantial step (court a)
    o moving towards bank with ski mask and pillowcase
    o states vary a lot. Drug sales, solicitation (Church)
  - Court b: step must be strongly corroborative. Mandujano.
    - Mens rea: intent to commit acts, which, if carried out, would be a crime.
    - Recklessness and negligence ONLY if result is an element of the crime.
    - Must have specific intent of the substantive crime
      - Δ w/ HIV not guilty of murder b/c only intended to rap. Smallwood.
    - Conditional intent counts: “I will kill you if you don’t give me your wallet.” She gives wallet, does not kill her. Specific intent and attempted murder.
    - Intent does not extend to the circumstances. If Δ is unaware of victim’s age but attempts sex, Δ guilty of attempted statutory rape.

- Sentencing:
  - MPC and Court 1: reduced
  - Court 2: same punishment unless death or life imprisonment

- Impossibility
  - MPC and Court 1: NO impossibility defense
  - Court 2: legal impossibility is a defense
  - Court 3: acts must strongly corroborate culpability. Oviedo.
  - Δ tried to commit the crime, but due to the circumstances, no substantive crime is committed.
  - Factual:
    - NEVER a defense: GUILTY.
    - Tires to pick pocket but wallet empty
    - Δ shoots victim who was already dead. Dlugash.
  - Legal:
    - Even if the facts were as Δ thought, no crime would be committed. Jaffe, cloth.
    - Δ misinterprets statute.

ACCOMPlice LIABILITY (COMPLICITY)
- Δ is guilty of the conduct of someone for which he is legally accountable
  - Δ acts with the mens rea of the crime and causes someone else to engage in conduct of the crime
  - Δ is an accomplice:
- w/ purpose of promoting the crime, he
  - solicits person to commit it, or
  - aids or agrees or attempts to aid other person in
class or committing it, or
  - has a legal duty to prevent the crime but does not
- Who is NOT an accomplice:
  - Victim
  - Terminates his complicity before the crime occurs and
    - Thwarts it or
    - Alerts the authorities

- 1. Actus reus
  - an act that aids, encourages, or abets
    - failure to intervene not enough!
    - Solicitation enough
    - Omission: mother is guilty if fails to protect her child from abuse
      by 3rd party. *Stanciel.*
    - Causation: do not need But For, if accessory’s conduct might have
      caused the crime. *Judge Tally*, telegram.
- 2. Mens rea
  - Must have Purpose: intent to assist in the commission of the crime
  - Who:
    - MPC and Court 1: ∆ must be there with the purpose of aiding or
      encouraging. *Hicks*, presence not enough.
    - Court 2: only the principal needs the mens rea.
  - Undercover cops:
    - Court 1: accomplice can’t be charged if the principal is a cop who
      doesn’t have the mens rea. *Vaden*, fox hunting.
    - Court 2: accomplice is liable.
  - When a principal has an excuse:
    - Court 1: accomplice is not excused. Woman who helped boyfriend
      abduct his son is guilty even though boyfriend is not guilty b/c it is
      his son. *Taylor.*
    - Court 2: girlfriend is not guilty; excuse applies to her too.
- 3. A crime must be committed! (by the principal)
- Crime beyond the intended (target) crime, by the principal:
  - Court 1: ∆ liable for all unintended crimes that are the natural and
    probable consequences of the target crime.
    - Must be reasonably foreseeable. *Roy* (∆ sent victim to a gun
      salesman who robbed him). *Luparello* (∆ hired thugs to find ex-
      girlfriend and they murder someone).
  - Court 2: ∆ only liable for convictions that are within the are which the ∆
    procured, counseled, commanded, or encouraged.
  - MPC and Court 3: no liability for these crimes: MUST have Purpose.
- **Purpose of promoting or facilitating the crime**
- Agrees that at least one of them will engage in conduct which constitutes a crime, attempt, or solicitation or
- Agrees to help other person(s) plan or commit the crime, attempt, or solicitation
- One person must commit an overt act in furtherance of the conspiracy
- **Renunciation:** must thwart conspiracy
  - Same for common law (abandonment)
- **Does not need to know identity of the other co-conspirators.**
- **Actus reus**
  - Agreement to commit a crime
  - Court 1: one person must commit overt act in furtherance of the conspiracy
  - Court 2: less than a substantial step is required.
    - Most states do not require overt act for serious offenses.
  - Proof:
    - Circumstantial evidence of separate actions. *Interstate Circuit, 10 theatres case.*
    - Hearsay exception:
      - Court 1: statement by one co-conspirator against another are admissible if statement shows an agreement. *Krulewitch.*
      - Court 2: only admissible if there is independent proof that Α is involved in a conspiracy. *Glasser.*
- **Mens rea**
  - 1. intent to agree
  - 2. Purpose of promoting the crime
- Can be charged w/ substantive crime AND conspiracy
  - No other inchoate crimes do this.
- **Punishment**
  - MPC and Court 1: punished as severely except for most serious offenses
  - Court 2: graded w/ 5yr prison max
- **Co-conspirator liability**
  - Federal courts and Court 1: all co-conspirators are guilty of conspiracy if anyone conspirator commits an overt act that is unreasonably foreseeable as the natural consequence of the conspiracy. *Pinkerton, Also Bridges, birthday shootout.*
  - MPC and Court 2: co-conspirators liable for crimes of other ONLY when have purpose (satisfy accomplice liability requirements).
- No causation needed in conspiracy! Only for the principal.

**EXCLUDATION**
1. Prosecution failed to prove an element
2. Justification
   a. Δ took the better of 2 actions
   b. Self-defense, Necessity
3. Excuse

JUSTIFICATION

Self-Defense
- Actor must believe force is immediately necessary to protect himself from (subjective standard)
- The use of unlawful force
- Force NOT justified if:
  - Actor can retreat
  - Actor provoked the force
- Peterson:
  - A must believe he is in imminent peril of death or serious bodily harm
  - belief must be objectively reasonable under the circumstances. (majority, Goetz).
- If belief is completely unreasonable:
  - MPC and Court 1: negligent homicide
  - Court 2: involuntary manslaughter
  - Court 3: No defense.
- Dudley and Stephens: boat cannibalism case. No self-defense b/c did not know if threat was imminent; could have been rescued in 5 minutes.

Necessity
- Conduct actor believes necessary to avoid a harm is justifiable if:
  - He chose the lesser evil
  - He was not reckless or negligent in creating the situation
  - Does not require imminence
- NY: conduct must be an emergency measure to avoid an imminent injury
- Court 1: courts look at circumstances to see if granting the defense would encourage people to escape prison (etc) instead of going to the PO. Unger
- Court 2: A must make a bona fide effort to surrender or return as soon as no longer in danger. Lovercamp.
- Marijuana for medicinal purposes:
  - Court 1: no necessity justification
  - Court 2 and US SC: necessity allowed
- Civil disobedience:
  - Indirect (breaking one law to draw attention to another): necessity defense never allowed b/c actor doesn’t pick the non-criminal alternative.
  - Direct (challenging the law they want to change; a sit-in at a segregated diner): necessity might be allowed.
- Dudley and Stephens: boat cannibalism case. No necessity b/c the lesser evil is killing one’s self, the greater evil is killing another.

EXCUSE
- A did all he could have been expected to do.
- NO intent.
- 1. Involuntary actions: A had no control over bodily movements.
- 2. Deficient but reasonable actions: duress
- 3. Irresponsible actions: insanity, infancy

**Duress**

- A coerced by use or threat to use unlawful force against himself or another person
- a person of reasonable firmness in his situation would not be able to resist (objective standard)
- no defense if A recklessly or negligently put himself in the situation
- can use to defend homicide
- Toscano
  - Threat must be imminent, threat of death or serious bodily harm
    - One must go to the PO if possible
- Most states do not allow to defend homicide

**Insanity**

1. Cognitive: lacks substantial capacity to appreciate the wrongfulness of his conduct, OR
2. Volitional: lacks capacity to conform his conduct to the law. Irresistible impulse test.
   - Court 1: M’Naughten, cognitive:
     - A must be suffering from mental disease
     - A either doesn’t know the nature of the act he is doing, or
     - A doesn’t know it is wrong.
     - This is a substantial capacity test (not complete control)
   - Court 2: Irresistible impulse test, volition:
     - A as unable to control his conduct
   - Court 3: requires BOTH prongs. Green
3. 3 kinds of insanity:
   - 1. Insane so can’t stand trial
     - some courts will give antipsychotics
   - 2. Insane so can’t be convicted (insane at time of offense)
     - 3. Insane so can’t be executed (no cruel and unusual punishment)
     - at least one court will give antipsychotics.
   - What happens after acquittal?
     - Court 1: judge decides if mental institution
     - Court 2: mandatory, automatic commitment
     - Court 3: “guilty but mentally ill”: jury says must get psych treatment in prison.