

1. Find the statute, *all* that even appear to apply
2. Parse the language of the statute (alternative readings?)
3. Apply the facts as given to the statute (and the alternative readings)
4. How does the legal rule comport with notions of criminal punishment?
5. To what extent will the legal rule guide the jury/judge in their ruling? Is this a good thing?

Statutory Construction

Lenity Doctrine – If statute is unable to be interpreted and could be viewed favorably either to the Gov't or to the individual, statute should be construed strictly against the Gov't. This is to provide individuals fair warning to the ramifications of their actions.

Actus Reus

- Physical or external part of the crime (both conduct and harmful result)
- No crime without actus reus
- Voluntary physical movement → involuntarily breaking a law cannot be a crime
- **MPC §2.01** → Liability based on voluntary conduct or omission to perform an act that is legally imposed by the law of which the actor is capable.
 - No legally imposed duty based on moral duties
- **Missouri §562.011** → requires a “voluntary act”. Bodily movement performed as a result of effort or determination or omission of which actor is physically capable.
- MPC & Missouri have nearly identical *actus reus* statute.

Mens Rea

- **MPC §2.02(2)** → minimum requirements of culpability. Δ not guilty unless he acts with one of the following *mens rea* requirements with respect to each material element of the offense.
 1. Purposefully – conscious object to engage in the conduct or cause the result. Or is aware of attendant circumstances or hopes that they exist.
 2. Knowingly – aware that conduct is of a certain nature. Or if element involves result of conduct, that he is practically certain that conduct will cause such result.
 - When knowledge of the existence of a particular fact is an element of an offense is required, knowledge is established if the Δ is aware of a high probability of its existence. §2.02(7)
 3. Recklessly – consciously disregards a substantial and unjustifiable risk that a material element exists or will result from the conduct. Involves a gross deviation from standard law-abiding conduct.
 4. Negligently – person should be aware of a substantial and unjustifiable risk that the material element exists or will result from conduct. Involves a gross deviation from reasonable person's standard of care.
- **Where no culpability standard provided**, the element is established if the Δ acted *purposefully, knowingly, or recklessly* §2.02(3)
- Where law only establishes that negligence is needed, purposefully, knowingly, and recklessly will also suffice. §2.02(4)
- **Missouri §562.016** →
 1. Purposefully – conscious object to engage in that conduct or cause that result
 2. Knowingly – aware of the nature of his conduct, aware that conduct is practically certain to cause that result

3. Recklessly – consciously disregards a substantial and unjustifiable risk that a result will follow, this disregard is a gross deviation from the reasonable person’s standard of care in the same situation
4. Criminal Negligence – fails to be aware of a substantial and unjustifiable risk that a result will happen and this constitutes a gross deviation from the reasonable person’s standard of care in that situation.
- **No mental state given**, culpable mental state required – assume purposefully or knowingly. §562.021.3
 - Difference from MPC – recklessly assumed in MPC, not in Missouri
- Strict liability crimes need no *mens rea*
 - Exceptions: Statutory rape – necessarily includes “intent” because sex is hard to accomplish without the intent to do so, however a Δ can be convicted of Statutory rape even if they truly believe that the victim was old enough to consent.
 - No ‘mistake’ defenses for Strict liability crimes because no *mens rea* is required.
 - Reason for Strict Liability: Public welfare rationale – some crimes should never be allowed. Regulate ‘dangerous’ products and activities.
- **Willful Blindness** → where a Δ willfully shields himself from information that would make him liable for criminal conduct, he will not have an ignorance defense. (Ostrich defense).
 - Not sure that MPC has such a defense.
 - MO does not have a willful blindness rule
- Doctrine of Transferred Intent → same as in Tort law

Larceny - Theft

- Nonforcible, nonconsensual takings of property
- **MPC** §223.2 (Theft)
 - Moveable Property
 - (1) Unlawfully takes (2) moveable property (3) of another (4) with purpose to deprive
 - Immovable Property
 - (1) Unlawfully transfers (2) immovable property (3) of another (4) with purpose to benefit self or another (5) not entitled to the property
- **Missouri** §570.030.1 → appropriates property, or services, of another with the purpose to deprive him or her of the property, without owner’s consent or by means of deceit or coercion.

Murder

- MPC
 - **Criminal Homicide** §210.1 → (1) purposefully, knowingly, recklessly, or negligently (2) causes death of another human being.
 - **Murder** §210.2 → Criminal homicide is murder where: (1) purposefully or knowingly causes the death of another human being (2) or recklessly does so with extreme indifference to the value of human life.
 - Felony Murder → Recklessness and indifference are presumed where actor engaged in a felony and causes the death of another in furtherance of the felony
 - Murder is a 1st Degree Felony
 - **Manslaughter** §210.3 → Criminal homicide is manslaughter where: (1) recklessly causes death or (2) where causes death under extreme mental or emotional disturbance for which there is a reasonable excuse (subjective). 2nd degree felony.
 - Heat of Passion “defense” is not really a defense → essentially a Δ has a constitutional right to have the “heat of passion” charged to jury so that jury can determine whether to charge Δ with murder or manslaughter – this “defense” moves the crime down the scale of culpability.

- **Negligent Homicide** §210.4 → Criminal homicide is negligent homicide where (1) negligently causes death.
- Missouri
 - **Murder**
 - First Degree §565.020 → (1) knowingly causes (2) death of another person (3) after deliberation on the matter.
 - Deliberation = cool reflection on the matter for any period of time (can be brief)
 - Second Degree §565.021 → (1) knowingly causes (2) death of another person with (3) purpose of causing serious injury actually (3) causes death.
 - Purpose to cause serious injury, actually causes death
 - Felony Murder §565.021.1.2 → (1) Commits or attempts to commit a felony (2) and in the perpetration of the felony (3) another person is killed as a result
 - In Missouri, Felony Murder is considered 2nd Degree murder
 - **Manslaughter**
 - Voluntary §565.023 → (1) causes death of another person (2) under circumstances that would constitute 2nd Degree Murder (3) except death is caused under influence of ‘sudden passion’ arising from (4) adequate cause
 - Involuntary Manslaughter (First Degree) §565.024.1 → (1) recklessly (2) causes death (3) while driving intoxicated and criminally negligent.
 - Involuntary Manslaughter (Second Degree) §565.024.2 → (1) Causes death of any person (2) while acting negligently

Felony Murder – as seen above. Δ must be engaged in an inherently dangerous activity when death occurs to bring about the felony murder doctrine. Example – Felon owning a gun, gun accidentally discharges while felon is at home cleaning the gun and kills someone. Not felony murder because Δ was not engaged in an inherently dangerous activity.

- *Inherently dangerous activity* → reasonable probability that death will result from the activity
- Causation – must be some connection between ‘death’ and ‘felony’
- Felony murder has the ostensible purpose of deterring those engaged in felonies from killing negligently or accidentally. (*Fuller*)

California (Traditional Approach) → Murder = unlawful killing of a human being with malice aforethought

- Malice Aforethought
- 1st Degree murder: willful, deliberate, premeditated (and FM)
- 2nd Degree: all other murder
- Voluntary manslaughter: no malice = sudden quarrel or heat of passion
- IM: in course of unlawful act or lawful act w/o “due caution and circ”

MPC → Homicide = with Purpose, Knowledge, Recklessness or Negligence, causes death of a human being

- Murder = P, K, or R with “extreme indifference
- Manslaughter = r or p/k w/ extreme mental or emotional disturbance
- Neg Homicide = homicide with negligence

Missouri → Murder =

- 1st degree → (1) k (2) cause death (3) person (4) after deliberation
- 2nd degree → knowledge without deliberation, purpose to seriously injure and someone dies or felony murder
- VM = 2nd with “sudden passion arising from adequate cause”

IM = R cause of death (1st) or N cause death (2nd)

Missouri

RAPE (§566.030)

Sexual intercourse + forcible compulsion

Forcible Compulsion = includes use of secretive administration of drugs/alcohol which impairs V so that they are incapable of making informed consent to sexual intercourse.

1ST DEGREE STATUTORY RAPE (§566.032)

Sexual intercourse with V <14 years old

2ND DEGREE STATUTORY RAPE (§566.034)

Δ > 21 years old ; V <17 years old

SEXUAL ASSAULT (§566.040)

Sexual intercourse + knowledge of no consent

1ST DEGREE SEXUAL MISCONDUCT (§566.090)

Deviate sexual intercourse with same sex or purposefully subjects V to sexual contact without consent

2ND DEGREE SEXUAL MISCONDUCT (§566.093)

Exposure of genitals where Δ knows that the conduct will likely cause affront/alarm

Sexual intercourse in public place in presence of 3rd person

Sexual contact in the presence of a 3rd party where Δ knows the conduct will cause affront/alarm

Hypo: Jim and Jenny at a park – no one else is around. Jenny sees Bill walk by (her secret lover) – she goes over to Bill and puts her hand down his pants. They walk away together. Is Jenny guilty of 2nd degree sexual misconduct?

3RD DEGREE SEXUAL MISCONDUCT (§566.095)

Δ solicits or requests sexual conduct from V under circumstances in which Δ knows his request is likely to cause affront/alarm

Hypo: Hunchback of Notre Dame approaches a dirty prostitute, asks for sex. This causes affront. He did not know that asking a dirty prostitute for sex would cause alarm. Is he guilty?

Schulhofer

SEXUAL ASSAULT

1. Physical force to compel V to submit to sexual penetration
 2. Sexually penetrates V who he knows to be <13
 3. Aggravated Sexual Assault → violates #1 while using a weapon or causes serious bodily harm to the V
- What is “serious bodily harm”? Sex with virgin can sometimes cause serious bodily harm.

SEXUAL ABUSE

1. Sexual penetration while knowing that he has no consent. Consent = actual words or conduct indicating affirmative, freely given permission.

Consent cannot be given when:

1. V helpless/defective/mentally incapacitated
2. V is 13-16 years old + Δ ≥ 4 years older
3. V is 16-18 + Δ is parent, guardian, or has disciplinary authority over V
4. V detained in prison/hospital, and Δ has disciplinary authority over V

5. Δ gets consent by threatening to injure person other than V or commit other criminal offense, accuse anyone of criminal offense, expose V's secret, take or withhold official action, violate right of the victim or inflict any other harm that would not benefit the Δ
6. Δ is providing professional treatment – think doctor
7. Δ gets consent by telling V that sex is for medical purposes
8. Δ gets consent by convincing the V that sexual intercourse has already happened or by telling V that they are in danger of physical injury or illness.

Inchoate Crimes

Criminal Attempt

MPC

§5.01.1 → Δ guilty of attempt if

1. Δ purposefully engages in conduct that would constitute the crime if the attendant circumstances were as he believed them to be. (Factual impossibility)
2. When causing particular result is an element of the crime, Δ does/omits something with purpose of causing or with belief that it will cause the result without further action on his behalf.
3. Δ takes a substantial step in a course of conduct planned to culminate in a commission of crime

Missouri

§564.011

With purpose of committing crime takes a substantial step towards commission of the crime. Substantial step → conduct that is strongly corroborative of the firmness of the Δ's purpose to complete the commission of the offense.

1. Begin to run into the problem of how far a Δ must go to indicate criminal attempt. Line drawing problems.
2. No renunciation in Missouri – if you attempt, and then try to stop the commission of the crime, it won't help in the liability portion of the trial.
3. Factual/Legal impossibility doctrine subsumed in 'attempt' definition §564.011.2

Conspiracy

MPC §5.03

1. Δ guilty of conspiracy where (1) has purpose of promoting/facilitating commission (2) agrees with others that one or more will engage in criminal conduct (3) or agrees to aid others in the planning or commission of such crime
2. Don't have to know identities of all people in criminal conspiracy to be convicted
3. Numerous offenses that are the object of the same agreement constitute one conspiracy
4. To convict Δ of conspiracy to commit a 1st or 2nd Degree felony – State must allege and prove an overt act was committed by Δ
5. Renunciation → affirmative defense that Δ thwarted success of the conspiracy after conspiring to commit the crime.

Missouri §564.016

1. Δ guilty of conspiracy where (1) Δ has purpose of promoting/facilitating commission (2) agrees with others that one or more of them will engage in criminal conduct (3) overt act in pursuance of the conspiracy is proven
2. Δ doesn't need to know identity of others in the conspiracy circle to be convicted (§564.016.2)
3. Numerous offenses that are the object of the same agreement constitute one conspiracy

4. Renunciation → Δ cannot be convicted if after conspiring, he works to prevent the accomplishment of the crime

Pinkerton Liability (Common law) → once a person enters into a conspiracy, he is liable for the conspiracy and the commission of all crimes that took place as an *accomplice*. It is a form of accomplice liability that travels through D's actions as a conspirator.

1. substantive offense committed by 1 conspirator was
 - a. not done in furtherance of conspiracy
 - b. did not fall in scope of unlawful project
 - c. was merely a part of the ramifications of the plan that could not have been foreseen as necessary/natural consequence of the agreement.
2. applies where:
 1. where substantive crime is goal of conspiracy. Example, narcotics conspiracy and a corresponding substantive crime of possession/distribution. Also, where substantive offense differs from precise nature of the ongoing conspiracy, but facilitates the implementation of its goals.
1. Pinkerton also covers attempt. Covers those offenses that were discussed, and *also* those offenses that were reasonably foreseeable.
2. Once someone enters into a conspiracy, those co-conspirators become your agents, people should be held legally responsible for the actions of their agents
3. MPC and Missouri don't have the Pinkerton liability

Since Conspiracy involves premeditation, there can be no conspiracy for 2nd degree murder – which involves heat of the moment killing. Conspiracy involves the same *mens rea* as the underlying crime.

Accomplice Liability (Aiding & Abetting)

- Aiding & Abetting is not a crime. It is a form of liability that makes accomplices liable for the actions of those who commit the crime.
- Must have more than mere presence

Three theories of 'aiding and abetting' liability:

1. Agency – all agents are responsible for the killings of their accomplices
2. Proximate Cause – Δs are responsible for all killings that are the *result* of events that were set in play by the Δ
3. Accomplice - Δ are responsible for the killings of their accomplices *and others* unless killings were justified

MPC §2.06(3)(a)(ii) → person is an accomplice of another person in the commission of an offense if with the purpose of promoting/facilitating the commission of the crime he aids or attempts to aid such other person in planning or committing it.

Missouri

Justification → negates social harm of an offense (public benefit, moral forfeiture of life, lesser harm to society)

Excuse → negates moral blameworthiness of the actor for causing the harm

Defenses

Burdens of Production and Proof

MPC §1.12 → Δ = burden of production (not proof) on affirmative defense, State = burden of disproving defense beyond a reasonable doubt

Missouri §556.051-6 → (1) something on which the Δ has burden of injecting the issue: Δ has burden of production (2) affirmative defense: Δ has burden of production AND proof by a preponderance of the evidence.

Self-Defense Doctrine

MPC §3.04

1. Self defense is justifiable where Δ believes force is (1) Immediately necessary (2) to protect himself against (3) unlawful force by another person (4) at that moment.

- Subjective test of reasonableness - Δ 's mindstate at that moment. No *reasonable* provision.

2. DEADLY FORCE justified where (1) Δ believes (2) such deadly force is necessary to protect himself against (3) death, serious bodily harm, kidnapping or sexual intercourse compelled by force or threat.

Exceptions

1. Δ provoked use of force against himself
2. Δ knows he can avoid necessity of using force by *retreating*
 - a. Don't have to retreat from one's home or place of work normally
 - b. *Law enforcement* officers do not have an obligation to retreat

Missouri §563.031

1. Δ is justified in using PHYSICAL FORCE on another when (1) Δ reasonably believes (2) force to be necessary (3) to defend himself or a 3rd party from what Δ reasonably believes to be (4) imminent unlawful force

Exceptions:

1. Δ was initial aggressor
 2. Actor *withdraws* from confrontation + communicates this withdrawal effectively
 3. Actor is a *law enforcement* officer
 4. Actor is *justified* under another provision of this law
2. Δ is justified in using DEADLY FORCE against another where (1) reasonably believes deadly force necessary to protect himself or another from (2) death, serious physical injury, rape/sodomy, serious physical injury through robbery, burglary or arson.

Battered Women Syndrome Defense

BWS may be entered into evidence to prove the Δ 's reasonable belief that self-defense was necessary to protect from an immediate unlawful force or serious bodily injury.

Necessity ('Choice of evils')

No *human element* to the necessity defense

Affirmative Defense

MPC §3.02 → Δ justified where he (1) believes action necessary to (2) avoid a harm or evil to himself or another (3) that is greater than the harm sought to be prevented by the law making conduct illegal

Exception: Where Δ was reckless or negligent in bringing about the situation which required a 'choice of evils' or in determining the necessity of his actions - Δ has no justification.

Missouri §563.026 → Δ justified where (1) necessary as an emergency measure (2) to avoid public or private injury (3) which is about to occur (4) and which is of such gravity that avoiding the injury outweighs desirability of avoiding injury sought to be prevented by statute defining crime charged according to ordinary standards of intelligence

Exceptions:

1. Situation developed through fault of Δ → ("developed through no fault of the actor")
2. Felony or murder are never justified

Duress

Has a *human element*

MPC §2.09 (Affirmative defense)

- Δ is justified where he (1) was coerced (2) to engage in activity (3) by a threat of unlawful force to his person or another that (4) a reasonable firmness in the situation would have been unable to resist
- Exception: Not available if Δ recklessly put himself in this situation

Missouri §562.071 (Affirmative defense)

- Δ justified where he was (1) coerced (2) by use of or threatened imminent use of (3) unlawful physical force on him or 3rd party (4) which a reasonable firmness in his situation would have been unable to resist
- Exceptions:
 - Murder
 - Δ recklessly placed himself in the situation
- Subjective test

Impossibility Defense

3 Conceptual Categories:

1. Factual Impossibility → Where Δ intends to commit crime, but for some reason it is factually impossible to commit that crime at that moment, Δ will still be held liable. Example: Δ has forcible sex with a dead woman, believes her to be intoxicated and unconscious. Δ still guilty of rape, even though she was dead – because had the facts been the way that Δ believed them to be, he would be guilty.
2. Pure Legal Impossibility → Ignorance of the law is no excuse, can't make your own law for purposes of criminal liability. If you thought you were committing a crime, but it turns out that it wasn't a crime – it's not a crime.
3. Hybrid impossibility (= factual) → where something is a crime, the mistake about the V's status does not exculpate D from guilt