Criminal Law Outline

• Basic Principles and Concepts
  o Hart Article – The Aims of Criminal Law; 4 characteristics of the criminal method
    ▪ Method operates by a series of commands or directions formulated in general terms, telling people what they must or must not do
    ▪ Commands are valid and binding upon those who fall w/in their terms whether or not they have been formulated in advance in a single authoritative set of words
    ▪ Commands are subject to one or more sanctions for disobedience which the community is prepared to enforce
    ▪ Criminal sanctions are distinguished from civil sanctions is the judgment of community condemnation
  o 4 basic elements of crime: actus reus, mens rea, causation, concurrence
  o Sources of criminal law: common law and Model Penal Code
  o Justifications for Punishment
    ▪ People v. Suitte – court looks at 4 main objectives of punishment
      - Deterrence (general and specific)
      - Rehabilitation
      - Retribution
      - Isolation
  o Presumption of Innocence and Proof Beyond a Reasonable Doubt
    ▪ Standard of proof – beyond a reasonable of doubt (level of certainty the fact-finder must reach before ruling for the party w/the burden of proof)
    ▪ In Re Winship – used proof beyond a reasonable doubt in juvenile court; higher standard than civil cases b/c personal liberty is at issue
  o Standards of Review
    ▪ Standard applied to D’s motion for directed verdict at close of prosecution’s case – whether the prosecution has introduced sufficient evidence such that a rational jury could decide that the prosecution has proved its case beyond a reasonable doubt
    ▪ Standard applied by an appellate court when reviewing the evidence supporting a conviction – whether a rational jury could have, on the evidence presented, found D guilty beyond a reasonable doubt
      • If evidence is ambiguous, appellate court should give prosecution the benefit of the doubt
      • Curley v. United States
  o The Role of the Jury
    ▪ Right to a jury trial in criminal cases is guaranteed by the 6th Amendment – usually jury of 12 and verdict must be unanimous
    ▪ Jury nullification – returning a verdict contrary to law
- **People v. Williams** – judge’s decision to dismiss a juror b/c he acknowledged that he would not apply the law as instructed is valid even though the juror was exercising right to jury nullification
  - **Statutory Interpretation**
    - **United States v. Dauray** –
      - Plain meaning – dictionary definition
      - Canons of construction
        - *Noscitur a sociis* – meaning of doubtful terms or phrases may be determined by reference to their relationship w/other associated words or phrases
        - *Ejusdem generis* – where general words follow a specific list, the general words should be limited to things similar to those specifically enumerated
      - Statutory structure – want to be consistent w/the rest of the statute and amendments
      - Avoid absurdity
      - Rule of lenity – if the statute is ambiguous after above analysis, must decide in favor of D
        - Doctrine of last resort: reserved for when there is a reasonable doubt about a statute’s intended scope after resort to above methods of interpretation
  - **Constitutional Limitations on the Power to Punish**
    - **14th Amendment Due Process: Void for Vagueness Doctrine**
      - Duty of legislatures to draft statutes that are clearly understandable
        - Provides fair notice to citizens of what conduct is prohibited
        - Limits police discretion to arrest and jury discretion to imprison people they don’t like
      - **Papachristou v. City of Jacksonville** – statute for vagrancy failed to give fair notice and encouraged arbitrary and erratic arrests and convictions – cast too large a net and increased police discretion
      - **Kolender v. Lawson** – statute was precisely targeted but gave too much discretion to law enforcement in deciding what ‘credible and reliable identification’ would be
        - Gave fair notice that statute existed, but did not give fair notice in terms of what you would have to do in order to abide by the statute
      - **City of Chicago v. Morales** – statute gave police too much discretion in deciding what kinds of loitering violated the statute, no minimal guidelines for enforcing the ordinance
    - **8th Amendment: Cruel and Unusual Punishment and the Principle of Proportionality**
      - **Coker v. Georgia** – to determine whether death sentence for rape was excessive punishment court looks to history and precedent (if
other states imposed death penalty for rape), what juries do w/similar cases, and legislative attitudes; held – disproportionate

- Rule: punishment is excessive if (1) it makes no measurable contribution to the goals of punishment or (2) is grossly out of proportion to the severity of the crime
  - Ramirez v. Castro – 25 to life sentence under 3 Strikes rule for three shoplifting offenses is so grossly disproportionate that it violates the 8th Amendment
  - Ewing v. California – punishment under the 3 Strikes rules is not unconstitutional b/c it is not grossly disproportionate to the crime
    - Solem factors: gravity of offense and harshness of penalty, sentences imposed on other criminals in same jurisdiction, sentences imposed on other criminals is other jurisdictions

- Equal Protection
  - 14th Amendment – prohibits state gov’t from denying any person w/in its jurisdiction the equal protection of the laws
    - State cannot treat people differently based on their race unless it serves a compelling state interest and it is narrowly tailored
  - McCleskey v. Kemp – D had to prove purposeful discrimination in his specific case to sustain an equal protection violation – death penalty affirmed
  - State v. Russell – statute which distinguished b/t cocaine base and cocaine powder was unconstitutional b/c there was no rational basis for the distinction which had disproportionate impact on blacks – arbitrary distinction
    - Federal rational basis test: review of equal protection challenge requires (1) a legitimate purpose for the challenged legislation, and (2) that it was reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose
    - State rational basis test: (1) distinctions must not be manifestly arbitrary but must be genuine and substantial, giving a reasonable basis to justify legislature adapted to peculiar conditions and needs, (2) classification must be genuine or relevant to the purpose of the law, and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve
    - Creates an irrebuttable presumption of fact that if you have a certain amount of the drug, then you are a dealer

- Actus Reus
  - Five loosely related concepts
  - Acting vs. Thinking: The Proscription Against Thought Crimes
    - Wisconsin v. Mitchell – whether a penalty enhancement punishing choosing a victim based on race punishes bigoted thoughts
• Not punishing the thought but the bigoted conduct – enhanced punishment because crime was thought to inflict greater social and individual harm
  o Acting on One’s Own vs. Acting Under State Compulsion: “Situational Offenses”
    ▪ Martin v. State – cannot be punished for being drunk in public when the police removed him from his home and put him in public
  o Acting Voluntarily vs. Acting Involuntarily: The Unconsciousness Defense
    ▪ State v. Decina – even though D was unconscious due to seizure during the act, still criminally liable because he was reckless in operating a car knowing that he was subject to seizures
    ▪ Issue of time frame: majority looks at broad time frame (D knew he could have a seizure when he got in the car) vs. dissent which looks at narrow time frame (D could not recklessly operate a car if he was unconscious at the time)
  o Acting vs. Failing to Act: Liability for Omissions
    ▪ 5 situations where an individual has a legal duty to act
      • Special relationship between D and victim, contractual obligation to act, statutory duty to act, if D creates the risk of harm to the victim, if D voluntarily assumes care of a person in need of help
    ▪ People v. Beardsley – no legal duty to get victim medical attention because D and victim were not married even though D knew victim ingested morphine
    ▪ Commonwealth v. Howard – mother had a legal duty to protect her child from being beaten by mother’s boyfriend; mother acted recklessly which directed resulted in child’s death
    ▪ Commonwealth v. Pestinikas – D entered an oral contract to care for victim, thus their failure to provide food and medical care which caused the death is grounds for criminal liability
    ▪ Generally, no duty to rescue a total stranger, but some states have Good Samaritan laws
  o Acting vs. Having a Status: “Status Crimes”
    ▪ Robinson v. California – statute which criminalizes being a narcotics addict is unconstitutional because it is possible to be convicted without performing any act within the state
    ▪ Powell v. Texas – statute criminalizing being drunk in public is constitutional because it penalizes an act and not the sole fact of being an alcoholic

• Mens Rea
  o Regina v. Cunningham – issue of defining ‘maliciously’; jury should have been instructed to decide whether D foresaw the removal of the gas meter as possibly causing injury but removed it anyway
  o Problems of Statutory Interpretation
- **United States v. Yermian** – issue of whether ‘willfully’ applied to knowing the falsity of the statements AND knowing the jurisdiction; held that b/c of plain language it only applied to knowing the falsity of the statements
- **Holloway v. United States** – whether ‘carjacking w/intent to cause death or serious bodily injury’ requires an unconditional intent to kill or intent to kill or harm if necessary to complete the carjacking; held that Congress intended to criminalize the broader scope of conduct
  - **Intent**
    - **Inferring Intent from Circumstantial Evidence**
      - **State v. Fugate** – intent to kill may be presumed where the natural and probable consequences of a wrongful act is to produce death
      - **Virginia v. Black** – statute was unconstitutional b/c the act of burning a cross was held to be prima facie evidence of the intent to intimidate
  - **Doctrine of Transferred Intent**
    - **People v. Scott** – D can be held criminal liable for the attempted murder for the intended victim who survived and for the murder of the unintended victim who died
  - **The Specific Intent/General Intent Distinction**
    - **People v. Atkins** – voluntary intoxication is only a valid defense when the crime requires specific intent
      - General – crime consists only of an act w/o reference to intent to do a further act or achieve a future consequence
        - Example – rape is sexual intercourse committed by a male upon a female not his wife by force and w/o her consent
        - Limited number of general intent crimes: rape, battery, arson, kidnapping, involuntary manslaughter
      - Specific – crime refers to Ds intent to do some further act or achieve some extra consequence
        - Example – larceny is trespassory taking . w/inten to permanently deprive the owner
  - **Knowledge**
    - **United States v. Jewell** – to act knowingly is to act w/positive knowledge or w/an awareness of the high probability of the existence of the fact in question (willful blindness)
      - Willful blindness to drugs hidden in the car
  - **Strict Liability Crimes**
    - **Morissette v. United States** – if a statute is silent as to mens rea, the ordinary presumption is that a mental state is required for criminal
liability – silence does not necessarily mean that Congress intended that no mental state is required

- No defense for strict liability crimes

- **Mistake and Ignorance**
  - **Mistakes of Fact**
    - **Common law or MPC jurisdiction?**
      - **Common law → general/specific intent**
        - If specific intent crime → honest/good faith belief
        - If general intent crime → honest and reasonable
      - **MPC → doesn’t distinguish b/t general and specific intent**
        - Defense if it negates the mental state required for the commission of the offense
        - Legal wrong doctrine – D will be found guilty of the charged offense but only punished at the penalty set for the other, lesser crime
    - **People v. Navarro** – common law jurisdiction; mistake in good faith is a complete defense regardless of whether that believe was also reasonable
      - Theft is a specific intent crime – good faith belief defeats the mens rea element requirement
    - **Bell v. State** – MPC jurisdiction; statute could constitutionally preclude mistake of age as a defense since the conduct would still be illegal
  - **Mistakes of Law**
    - Generally ignorance is not excuse
    - **Official Interpretation of the Law (Entrapment by Estoppel)**
      - **People v. Marrero** – D can only use mistake of law defense if he correctly read the statute and it was later found to be invalid (policy – don’t want D to get off by saying he misread the statute)
      - D relied on his own interpretation and not an official interpretation
      - Dissent – D would have to correctly read the statute and have it later invalidated in order to call upon the mistake of law defense
    - **United States v. Clegg** – D can use mistake of law defense since he relied on official interpretation of the US military
      - Dissent: D was smuggling guns before the military asked for his assistance and there was no official representation that D’s conduct was lawful
    - **State v. Fridley** – mistake of law defense is not applicable to offenses where proof of culpability is not required (i.e. strict liability crimes)
  - **Ignorance or Mistake that Negates the Mens Rea**
- **Cheek v. United States** – good faith misunderstanding of the law does not have to be objectively reasonable in order to negate willfulness
  - Standard for willfulness – voluntary, intentional violation of a known legal duty
- **Bryan v. United States** – ‘willfully’ only requires proof that D knew the conduct was unlawful, not proof that he knew of the statute creating the illegality

### Fair Notice and Due Process (the Lambert exception)

- **Lambert v. California** – due process requires that a person have fair notice of what conduct is considered illegal
  - What will qualify something as a Lambert exception?
    - Whether there was actual or constructive notice
    - Whether D was given a chance to comply
  - Act violated due process since D did not know of her duty to register and there is no proof of the probability of such knowledge and she was not given a chance to comply
- **State v. Bryant** – sex offender registration statute was unconstitutional b/c it contained no provision for notification to out of state offenders that they must register upon entered NC
  - D did not have actual notice from the form filled out in SC since it was ambiguous as to whether it applied to other states

### Causation

- Actual “But-For” Causation
  - But for D’s voluntary act or omission where D had a duty to act, would the social harm have occurred when it did?
- Proximate Causation
  - Whether it is fair and just to hold D criminally liable
  - If D’s conduct is the direct cause → likely to hold D liable
  - If there is an intervening cause →
    - Dependent intervening cause (dependent upon or responsive to D’s voluntary act) → D is proximate cause unless the intervening cause is extremely unusual
    - Independent intervening cause (independent of or coincidental to D’s voluntary act) → D’s is relieved of criminal liability unless the intervening cause is foreseeable
- **Commonwealth v. Rementer** – it is unfair to hold D liable only if his actions are so remote and attenuated from the result – here D’s conduct was an operative link in the chain of events that caused the harm
- **State v. Govan** – D can still be held criminally liable even if a substantial amount of time has passed between the conduct causing the harm and the victim’s death (i.e. gunshot causing quadriplegia resulting in fatal bout of pneumonia five years later)

- **Hendersen v. Kibbe** – failure to instruct on causation was not an error per se b/c the jurors were informed about the causation issue by both parties – in determining that D acted recklessly, jury included a determination that the ultimate harm was foreseeable since recklessness requires D to be aware of and disregard a substantial risk

- **Concurrence**
  - Temporal concurrence – D must possess the requisite mens rea at the same moment of the voluntary conduct which causes the harm
  - Motivational concurrence – mens rea must be the motivating force behind the actus reus
  - **Thabo Meli v. Reginam** – even though the act of hitting victim over the head w/the mens rea of intending to kill him did not result in death at that moment, D is still liable (death occurred when D rolled the body off a cliff believing he was already dead)
  - **State v. Rose** – not sure if death occurred when victim was initially hit by D’s car or when D drove on, dragging the victim under the car – if the unintentional hitting caused the death, then no mens rea at that time, but there was intent to harm when he drove on, dragging the victim

- **Homicide**
  - **Definitional Issues**
    - Murder – unlawful killing of another w/malice aforethought
    - Manslaughter – unlawful killing of another w/o malice aforethought
  - **Categorizing Homicide**
    - **Common law**
      - Malice aforethought is present when
        - An intent to kill (inferred from circumstantial evidence or use of deadly weapon)
        - An intent to commit serious bodily injury
        - An ‘abandoned and malignant heart’ or ‘depraved heart’
        - The felony murder rule applies
      - Voluntary manslaughter – intentional killing that would normally be 2nd degree murder but is reduced b/c of a partial defense (i.e. provocation, diminished capacity)
      - Involuntary manslaughter – brought about the death of another through ‘criminal negligence’ (sometimes defined as gross negligence or recklessness)
      - Vehicular manslaughter – recognized by some states as a separate category of homicidal crime
  - **MPC**
• Criminal homicide – purposeful, knowing, reckless, or negligent death of another
• Murder – when committed purposefully, knowingly or when it is committed recklessly under circumstances manifesting extreme indifference to human life (depraved heart equivalent)
• Manslaughter is criminal homicide when
  o Committed recklessly but w/o extreme indifference to human life
  o Murder committed under extreme mental or emotional disturbance for which there is reasonable explanation or excuse (equivalent to doctrine of heat of passion)
• Degrees of Murder (1\textsuperscript{st} Degree v. 2\textsuperscript{nd} Degree Murder)
  ▪ Default – 2\textsuperscript{nd} degree murder
    • Raised to 1\textsuperscript{st} degree if
      o Involved premeditation and deliberation
        ▪ No particular length of time is required for premeditation
        ▪ Deliberation refers to having a cool head
      o Committed using a means specified in the first degree murder statute (i.e. lying in wait, poison)
      o Occurred during the commission or attempted commission of an enumerated felony
    • Voluntary manslaughter if there are mitigating circumstances → if enough mitigation then can be involuntary manslaughter
      ▪ \textit{State v. Brown} – repeated blows the head cannot, on its own, be evidence of deliberation (to cause death); can support a 2\textsuperscript{nd} degree murder charge
        • Premeditation may be formed in an instant but deliberation requires some period of reflection
      ▪ \textit{State v. Bingham} – manual strangulation (during a rape) which took 3-5 minutes does not indicate a sufficient time for deliberation
        • Strangulation may have been an attempt to quiet not kill
      ▪ \textit{Gilbert v. State} – a mercy killing can be first degree murder since there was a period of calm reflection and a cool head
    • The Doctrine of Provocation (Voluntary Manslaughter)
      ▪ AKA ‘heat of passion’ defense
        • One who kills in response to legally adequate provocation is treated as having acted w/o malice aforethought
      ▪ The Early Common Law’s Approach to Provocation
        • Legally adequate provocation – response to:
          o An aggravated assault or battery
          o Observation of a serious crime against a close relative
- Illegal arrest
- Mutual combat
- Catching one’s wife in the act of adultery

- Mere words rule – generally mere words are not enough to constitute legally adequate provocation
- **People v. Ambro** – exception to mere words rule when there is a series of provoking statements regarding a wife’s infidelity, threats to take away D’s children, and goading D to kill her
  - Overruled – currently a wife’s confession of adultery does not constitute adequate provocation

### The Modern “Reasonable Person” Test

- Reasonable Person test elements – both subjective and objective elements
  - D actually acted in the heat of passion
  - The heat of passion was provoked by an act or event that would have provoked a reasonable person in D’s shoes to lose self control
  - D did not have sufficient time to cool off
  - A reasonable person in D’s shoes would not have had sufficient time to cool off
- Must be a connection between provocation, passion, and killing
  - Provocation is what actually provoked the killing and that the person killed is either the provoker or someone acting in concert with the provoker
- **People v. Berry** – given the length of time over which the series of provoking events occurred, D could still have been in the heat of passion after 20 hours of waiting for victim
  - Question of ‘cooling off’ is a jury question

### Who is “The Reasonable Person”

- Reasonable person is a person having the power of self control to be expected of an ordinary person of D’s age
- **Commonwealth v. Carr** – the sight of lesbian sex is not legally adequate provocation to mitigate murder to manslaughter; test is whether a reasonable person confronted with the events would have become impassioned to the extent that his mind was incapable of cool reflection

- The Model Penal Code’s Extreme Emotional Disturbance
  - Murder can be mitigated to manslaughter when it is committed under extreme mental or emotional disturbance for which there is a reasonable explanation
  - Reasonableness is determined from D’s viewpoint under the circumstances as D believes them to be
  - More subjective than modern reasonable person test
State v. Dumlao – MPC allows jury to take D’s particular characteristics into account and define reasonableness for his point of view
  - MPC does not require provocation to emanate from the victim
  - Having a cooling off period b/t provocation and murder does not negate the defense – distinguish from common law heat of passion doctrine

  - Depraved Heart Murder
    - Usually treated as 2nd degree murder
    - Malice will be implied when D acted w/gross recklessness and an extreme indifference to human life
      - D realized his actions created a substantial and unjustified risk of death and yet committed the act anyway
      - Distinguish – homicides involving only gross negligence or simple recklessness can only be punished as involuntary manslaughter

  - Commonwealth v. Malone – pulling the trigger of a gun loaded with only one bullet three times created a substantial risk of death and thus D exhibited a depraved heart

  - State v. Davidson – since D could have reasonably foreseen that her dogs would attack someone, her conduct in failing to contain the dogs can sustain a 2nd degree murder conviction since her recklessness displays an indifference to human life
    - Recklessness – realization of imminent danger and conscious disregard of that danger

  - Involuntary Manslaughter
    - Most jurisdictions require criminal negligence (gross negligence or recklessness)
      - Minority – only require simple negligence
      - Difference b/t recklessness and negligence – whether D was aware of a substantial and unjustified risk and chose to disregard it (recklessness requires awareness of risk)

    - Commonwealth v. Welansky – standard of wanton or reckless conduct – if an ordinary person in the same situation would realize the gravity of the situation in keeping the exit doors locked, D can be held criminally liable

    - State v. Williams – simple negligence is the failure to exercise ordinary caution (that which a man of reasonable prudence would exercise under the same or similar conditions)
      - Since Ds were put on notice during the critical time of the child’s illness when an ordinarily prudent person would have sought medical care, they can be held liable

  - The Felony Murder Rule
- Common law felony murder rule – person who kills during the commission or attempted commission of a felony has committed 2nd degree murder
  - Can be elevated to 1st degree murder if it occurs during an enumerated felony (often rape, robbery, arson, kidnapping)
  - Covers accidental deaths

- **People v. Stamp** – a felon is strictly liable for all killings committed during the felony regardless of whether the killing is willful, deliberate and premeditated or merely accidental
  - Malice aforethought is inferred on the basis of committed a felony inherently dangerous to human life

- Inherently Dangerous Felony Limitation
  - **People v. Patterson** – inherently dangerous to life – offense carries a high probability that death will result
    - Limits the number of felonies that would qualify under common law felony murder rule
  - **Hines v. State** – drinking while hunting at night can turn illegal possession of a firearm by a convicted felon into an inherently dangerous felony

- The ‘Res Gestae’ Requirement
  - 2 elements
    - Felony and homicide must be close in time and distance
    - Must be a causal connection b/t felony and homicide
  - **People v. Bodely** – felony murder liability continues during the escape of burglar from the crime scene until he reaches a place of temporary safety
    - The homicide is committed in perpetration of the felony if the killing and the felony are parts of one continuous transaction
  - **King v. Commonwealth** – a death not caused by an act in furtherance of the felony does fall w/in felony murder rule
    - Only acts causing death which are committed by those involved in the felony can be the basis for a conviction
    - The act causing death must result from some effort to further the felony
    - There must be some act attributable to the felons which caused the death

- Should the Common Law Felony Murder Rule Be Abolished?
  - **People v. Aaron** – Michigan abolished common law felony murder rule – but there is still a 1st degree statutory felony murder rule

- Sexual Offenses
  - Introductory Material
- Statutory rape → strict liability crime
  - Sexual intercourse w/ a person under a certain age
  - Consent and mistake of age are not defenses
- Forcible rape → general intent crime
  - Unlawful sexual intercourse w/ a woman against her will
  - Consent may be a defense
  - Traditionally, P had to prove that there was no consent AND force or threat of force
  - Currently → no consent + force + resistance
- Time frame issues – how closely in time does the force/resistance have to occur in relation to the rape
- Mens rea – only intent required is the intent to have sex
  - Forcible Rape
  - Element of Force or Threat of Force
    - Most jurisdictions have eliminated the resistance requirement
    - **Rusk v. State** – insufficient evidence to prove that D’s actions of taking her car keys and lightly choking P created a reasonable fear that she would be harmed if she resisted
      - Must be evidence that V resisted and her resistance was overcome by force or that she was prevented from resisting by threats to her safety - overruled
    - **State v. Alston** – threats of force that were unrelated to the rape itself are insufficient to establish the requisite force
    - **Commonwealth v. Berkowitz** – look to the totality of the circumstances to establish sufficient force (age of parties, mental and physical conditions, positions of authority or dominance, presence of duress)
      - Forcible compulsion includes physical, moral, psychological, and intellectual force
      - Objective standard – look to how a reasonable person would have responded to the force
  - What Counts as Consent?
    - Most jurisdictions recognize a mistake defense – D’s mistake as to victim’s consent must be honest and reasonable in order to be a complete defense
    - **In re John Z.** – withdrawal of consent nullifies any earlier consent and subjects the male to forcible rape charges if he persists
      - Forcible rape occurs during consensual sex when: (1) victim expresses an objection, (2) victim attempts to stop the act, and (3) D forcibly continues despite the objection
  - Statutory Rape
    - MPC approach
• Similar to common law: presumes rape is a ‘he’ acting upon a ‘she’, martial immunity
• Difference from common law: intercourse includes oral and anal penetration, focuses on D’s conduct instead of V’s lack of consent, does not require proof of resistance
• Rejects the idea of strict liability in rape context – allows mistake of age defense
  ▪ Many states have moved towards limitations on strict liability nature of statutory rape
    • Some allow mistake of age defense when V is w/in a certain age range
  ▪ Garnett v. State – statutory rape is a strict liability crime and therefore mistake of age is not a defense – mens rea requirement was expressly rejected by the state legislature
  ▪ State v. Yanez – child molestation is a strict liability crime; plain language of statute does not include a mens rea element

• Theft Offenses
  o Theft – theft crimes are specific intent crimes
    ▪ Larceny
      • Elements of larceny
        o Trespassory – involves someone else’s possession w/o their consent
        o Taking
        o And carrying away
          ▪ Asportation – assertion of control over and some mov’t of the item no matter how slight
            o Of property
            o From possession of another
            o W/intent to permanently deprive owner of it
              ▪ This is the specific intent element
    ▪ Larceny by Trick
      • Elements of larceny by trick
        o Employee or agent (generally drops out)
        o Obtains custody of a thing
          ▪ When an employer delivers property to an employee to use, keep, or make a delivery
          ▪ When owner loses or mislays property and someone else finds it
          ▪ Owner delivers property to another as part of a transaction to be completed in the owner’s presence
            o Through deceit
            o And takes custody
            o W/intent to permanently deprive owner of it
    ▪ Embezzlement
• Elements of embezzlement
  o Intentional
  o Conversion – act that seriously interferes w/owner’s ability to use the property
  o Of the property of another
  o By someone who is already in lawful possession
• Distinguished from larceny by trick (where initial taking is through deceit, not lawful possession)
  ▪ False Pretenses
    • Elements of false pretenses
      o False statement of fact
      o That causes victim to
      o Pass title of property to D
      o D knows the statement is false and
      o Thereby intends to defraud the victim
• Distinction → gains both possession and title through deception
• Often involves exchanging counterfeit money
  o Aggravated Theft
    ▪ Burglary
      • Elements of burglary at common law (‘at night’ element has been removed in all states)
        o Breaking and
        o Entering
        o Of a dwelling house
        o Of another
        o At night
        o W/the intent to commit a felony therein
      • United States v. Eichman – D cannot be prosecuted for burglary if he did not enter w/in the four walls of the structure
        o Elements of burglary: (1) entry; (2) of a structure; (3) w/the knowledge that the entry is not licensed; (4) w/the intent to commit a crime w/in the structure
      • State v. Thibeault – burglary requires that the entry be w/knowledge that there is no license to enter; initial entry must be trespassory
        o Elements: entry of a structure w/knowledge that the entry is not licensed and w/intent to commit a crime w/in the structure
  ▪ Robbery
    • Elements of robbery
      o Theft plus
        ▪ Taking from person or his immediate presence
        ▪ Accomplished by use of force or fear
• Distinguished from burglary – have to prove theft instead of just intent to commit a crime therein

• **Crocker v. State** – three elements of robbery
  o Felonious intent
  o Force or putting in fear as a means of effectuating the intent
  o By that means taking and carrying away the property of another from his person or in his presence

• **Miller v. Superior Court** – the element of ‘immediate presence’ and use of force can be supplied after D has gained possession of the victim’s property
  o Dissent: this would transform robbery from the crime of taking to one of taking OR retaining property

• **Defenses**
  o **Introduction**
    - Case in chief defense – when D argues that prosecutor failed to meet its burden of proof on at least one essential element of the crime; just has to raise a reasonable doubt
  o **Mistake defenses**
    - Affirmative defense – D admits gov’t established a case in chief but argues that D should be acquitted for another reason
      - Justification defense – D claims he did the right thing or took the most appropriate action under the circumstances
        o Focuses on justness of D’s action
        o If D is justified, then accomplices are not guilty
      - Excuse defense – D’s act is presumed to be wrongful but D asks to be excused for another reason
        o Focuses on individual D and whether he is blameworthy or culpable
        o Has no effect on accomplice liability
  o **Usual evidentiary standard: preponderance of the evidence**
  o **Justification Defenses**
    - Self Defense
      - D must have an honest and reasonable belief that he is threatened w/imminent threat of unlawful force
        o Must believe that force against the perpetrator is necessary to repel the threat and the force is proportional to the threat
        o Belief does not have to be correct
      - Elements of self defense claim: (1) necessity, (2) imminence, (3) proportionality
    - **Culverson v. State** – D does not have to actually be in imminent danger of death or bodily harm, but must have an honest and reasonable belief that he is; also no duty to
retreat if reasonable belief that D is about to be attacked w/deadly force
  o Majority rule in US: no retreat required before using deadly force
  o May be hard for a jury to determine whether a person reasonably believed there was an available avenue of escape
  o Cannot use self defense if you are the first aggressor unless you have communicated your withdrawal

- **People v. Goetz** – use an objectively reasonable person standard in determining whether D’s belief that he was in danger was reasonable; reasonableness is based on the circumstances facing D in his situation
- **State v. Simon** – reasonableness should be judged from an objective standard – reasonable belief implies a belief and existence of facts that would persuade a reasonable man to that belief
- **State v. Stewart** – battered wife could not claim self-defense when she killed her sleeping husband b/c she was not in imminent danger
  o 2 pronged test for self defense
    - Subjective standard to determine whether D sincerely and honestly believed it was necessary to kill in order to defend herself
    - Objective standard to determine whether D’s belief was necessary – whether a reasonable person in D’s circumstances would have perceived self defense as necessary
  o Jury must weigh evidence in light of how a reasonable person suffering from BWS would have perceived and reacted in view of the prolonged history of physical abuse
- **State v. Wanrow** – necessity of self defense is to be evaluated in light of all facts and circumstances known to D, including those occurring substantially before the killing; jury should also use a subjective standard for judging D’s reasonable belief

- **Imperfect Self Defense**
  - Crime may be mitigated from murder to voluntary manslaughter if
    o Belief that force is necessary is honest but unreasonable OR
    o If attacked w/nondeadly force but respond by escalating to deadly force
  - Jury may convict D of a lesser included offense if D cannot prove all elements of full self defense
• MPC – when actor is reckless or negligent in the belief about the necessity of force, any justification defense is lost against prosecutions based on that recklessness or negligence

Defense of Others
• When a person uses force against another in order to defend a 3rd party he thinks is in imminent danger of attack
• Elements: (1) 3rd person under imminent attack, (2) necessity, (3) proportionality, and (4) D must honestly and reasonably believe that force used was necessary to protect the 3rd person
• Old common law approach
  o Act at peril rule – permitted use of force for defense of others only if 3rd person would have been permitted to use force to defend himself
  o Status rule – defense was only available if D was in a particular status relationship w/the 3rd party
• People v. Young – right to defend another should not be greater than such person’s right to defend himself (decided under old common law approach w/act at peril rule)

Defense of Habitation
• Use of deadly force is not permissible for simple defense of property
• Original common law – allowed deadly force if occupant reasonably believed the force was necessary to prevent an imminent unlawful entry
  o Modified approaches: (1) deadly force can only be used when there is a reasonable belief that such force is necessary to prevent imminent unlawful entry AND intruder intends to commit a felony or cause injury to one inside the dwelling; (2) if reasonable belief that such force is necessary to prevent entry and intruder intends to commit a forcible felony or kill or cause grievous bodily injury to the occupant or another inside
• People v. Brown – entry onto an unenclosed porch does not equal entry into a dwelling – nature of the structure’s composition was not such that a reasonable person would expect some protection from unauthorized intrusions

Defense of Property
• People v. Ceballos – defense of property is not a justifiable defense for using a trap gun to defend a garage from possible burglary
  o Statute limited use of deadly force to prevention of an ‘atrocious’ felony
Preservation of life is valued more than the protection of property

- Deadly force may be justified when a person is attempting to prevent a felony or is attempting to apprehend a fleeing felon
- **People v. Quesada** – use of deadly force is not permitted to prevent the burglary of an unoccupied home and therefore it is not justified to apprehend such a criminal

### Necessity

- See chart from class
- Idea that sometimes the greater good is served by breaking the law rather than obeying it
- **Elements under common law approach:**
  1. harm sought to be avoided was greater than the harm likely to be caused by breaking the law;
  2. legislature has not determined the matter in a way that goes against D;
  3. causal connection b/t D’s illegal act and the harm sought to be avoided (must be reasonable for D to believe that his illegal act would abate the threatened harm);
  4. no effective legal alternative was available;
  5. D was seeking to avoid a clear and imminent danger;
  6. D was not at fault for creating the dangerous situation
- **Elements under MPC approach:**
  - conduct that the actor believes to be necessary to avoid a harm or evil to himself or others is justified provided that
    1. harm sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged;
    2. neither MPC or other law defining the offense provides exceptions to defenses dealing w/the specific situation involved;
    3. a legislative purpose to exclude the justification claimed does not plainly appear
    - Difference from common law: (1) MPC has no imminence requirement; (2) possible to use defense of necessity to murder

- **United States v. Schoon** – elements of necessity can never be met in cases of indirect civil disobedience – congressional policies are not a cognizable harm, single act of disobedience is unlikely to abate the evil b/c the act is indirect, and there will always be a legal alternative – petitioning Congress
- **Commonwealth v. Hutchins** – necessity is not an available defense to medical use of marijuana b/c the alleviation of D’s symptoms does not outweigh the potential harm to the public of D’s cultivation
  - Balance harms and then look to the following factors: (1) D faced w/clear and imminent danger;
(2) D can reasonably expect that his action will be effective as a direct cause of abating the danger; (3) no legal alternative is available; (4) legislature has not precluded the defense

- **United States v. Oakland Cannabis Buyers’ Coop** – medical necessity is not an available defense to violation of the Controlled Substances Act – statute reflects a congressional determination that marijuana has not medical benefits worthy of an exception

- **In re Eichorn** – necessity defense is available to a homeless man who violated an ordinance by sleeping in a public place

  o **Excuse Defenses**
    - Under some circumstances, even though D has broken the law and was not morally justified in doing so, D should still not be punished b/c he lacks moral responsibility for her actions
    - **Duress/Coercion**
      - D claims he was threatened by another w/physical force unless he committed a specific crime
      - Elements under common law: (1) D acted in response to an imminent threat of death or serious bodily injury; (2) D had a reasonable fear that the threat would be carried out unless he committed a specific crime; (3) D had no reasonable opportunity to escape the threatened harm
      - **MPC approach:** excuses criminal conduct that was coerced by the use of, or threat of use of, unlawful force against the actor’s person or a 3rd person such that a person of reasonable firmness in his situation would have been unable to resist
        - Difference from common law: MPC is not limited to threats of death or serious bodily injury, no explicit imminence requirement (although incorporated into whether a person could resist it), defense to homicide is possible
      - Difference b/t necessity and duress
        - Necessity: response to a dire situation
        - Duress: response to a threat from a specific individual to commit the act that constitutes the crime

- **United States v. Contento-Pachon** – threats to D’s family were sufficiently imminent and D has not opportunity to escape b/c he was being watched at all times – D also surrendered to authorities at the first chance by submitting to X-rays (followed common law)
  - Possible fourth element – D must submit to proper authorities after attaining a position of safety
- **State v. Hunter** – if the underlying felony was committed under duress, D should not lose the defense of duress to a felony murder charge if one of his threateners killed another during the felony
  - Defense is not available if D willfully or wantonly placed himself in the situation in which it is probable that he will be subject to compulsion or threat

- **Insanity**
  - See chart
  - Possible tests for insanity
    - M’Naghten test: (1) D suffered from a mental disease; (2) causing defect in his reasoning powers; (3) resulting in D lacking the ability at the time of his actions to either know that his act was wrong OR understand the nature and quality of his act
      - Limitations: (1) doesn’t distinguish b/t those who know right from wrong but cannot control their behavior; (2) expert testimony is limited, jury hears limited information
    - Irresistible impulse test: (1) D suffered from a mental illness; (2) causing him to be unable to either control his actions OR conform his conduct to the law
      - Limitations: impulse is misleading b/c the inability doesn’t have to come about suddenly
    - Durham test: (1) D suffered from a mental disease or defect; (2) and his crime was a product of it (but for the disease, D would not have committed the crime)
      - Limitations: problems w/causation
      - Benefit: eliminated right/wrong dichotomy
    - MPC/ALI test: (1) D suffered from a mental disease or defect; (2) resulting in D lacking substantial capacity to either appreciate the wrongfulness of his conduct OR conform his conduct to the law
      - Benefits: ‘lacking capacity’ does not have to be absolute, just substantial; ‘appreciate’ is more than just knowing the conduct is wrong

- **United States v. Freeman** – uses MPC test; remanded to decide if toxic psychosis brought on by narcotics addiction was sufficient to establish insanity under the new test
Court emphasized that repeated criminal conduct or addition could not, on its own, be the sole basis for finding a mental disorder

- **State v. Crenshaw** – no reversible error to instruct jury as to knowing the difference b/t right and wrong as the ‘legal’ as opposed to ‘moral’ right and wrong
  - Legal wrongs are a reflections of society’s moral wrongs

  **Diminished Capacity**
  - Evidence of mental illness to mitigate or eliminate criminal liability
  - Mens rea variant – mental disease or defect not amounting to insanity can show that D lacked the required mental state
    - Case in chief defense b/c it is attacking an element of the crime
  - Partial responsibility variant – D is less blameworthy b/c of mental disease or defect not amounting to insanity than others charged w/the same crime

- **Other Defenses**
  - **Black Rage**
  - **The Cultural Defense**
    - **People v. Aphaylath** – trial court should have allowed expert testimony about Laotian culture and the difficulty in assimilating to American culture

- **Attempts**
  - **Introduction**
    - Common law – act done w/intent to commit a crime but failing to effect its commission
    - MPC – requires a substantial step towards the culmination of the commission of the targeted offense (focuses on what D has done, rather than on what remains to be done)
    - Elements of attempt
      - Specific intent to commit the crime (even if a general intent crime)
      - An overt act in furtherance of that intent
  - **The Actus Reus Requirement**
    - **People v. Rizzo** – D did not attempt the crime of robbery b/c he was not presented with opportunity to actually commit the crime
      - Only acts which are so near to the crime’s accomplishment that in all reasonable probability the crime would have been committed but for timely interference
    - **People v. Staples** – drilling holes through an office floor was sufficient to establish an attempt to rob the bank vault below
      - Acts went beyond mere preparation – began the breaking element of burglary
• MPC – examples of a substantial step, pg 1194: lying in wait, searching for or following the contemplated victim
  o The Mens Rea Requirement
    • People v. Harris – to sustain a conviction for attempted murder there must be demonstrable intent to kill – intent to commit serious bodily harm is not sufficient for attempt even though it would be sufficient to convict for murder
    • State v. Hinkhouse – sustained conviction of attempted murder when D purposefully did not disclose his HIV status and refused to use a condom except w/the woman he intended to marry
      • Pattern of behavior demonstrated that D was not acting on impulse or w/o the intent to harm b/c he had been warned that such behavior would be like murder
      • Attempt: D intentionally engages in conduct which constitutes a substantial step towards commission of the crime
  o The Defense of Impossibility
    • United States v. Thomas – rejects legal/factual impossibility distinction and adopts MPC approach – victim did not need to be alive in order to convict D of attempted rape
      • MPC – D is guilty of attempt if he
        o Purposefully engages in conduct which would constitute the crime if circumstances were as D believed them to be
        o Does or omits to do anything w/purpose of causing a result that is the element of the crime
        o Does or omits to do anything which, under the circumstances as he believes them to be, is a substantial step in a course of conduct planned to culminate in the commission of the crime
  o Defense of Abandonment
    • Generally not a defense
    • MPC – withdrawal may be a defense IF it was fully voluntary and the attempt was completely abandoned
• Accomplice Liability
  o Accomplices must intentionally assist the principal actor in committing the crime
  o Pace v. State – mere presence is not enough to convict D as an accomplice – also look to whether there is a duty to act
  o State v. Parker – person can aid or abet by inaction (i.e. lookout) – look to actions surrounding the crime and knowledge that the crime was occurring
• Conspiracy
  o Introduction
    • Crime is the agreement itself
    • Collective criminality poses special dangers
- **Conspiracy** – agreement by two or more people to commit either one or more criminal acts, or one or more acts that are non-criminal but are corrupt, dishonest, fraudulent, immoral, and in that sense illegal
- **Common law** – jury can infer agreement from circumstantial evidence
  - Some jurisdictions require an overt act in furtherance of the conspiracy to demonstrate its existence
- **MPC approach** – merges conspiracy w/completed crime
  - Rationale – person entering a conspiracy has demonstrated a firm commitment to criminal activity and poses a greater threat of actual social harm
  - Conspiracy must have an actual crime as its object
- **Wharton’s rule** – look to see whether the definition of the crime requires two or more people to actually commit it
  - **The Agreement**
    - **State v. Pacheco** – cannot convict D of conspiracy when he agreed to commit a crime w/an undercover agent who only feigned agreement – required genuine bilateral agreement
      - Unilateral agreement is inconsistent w/rationale behind common law – greater danger of group criminal activity
        - But is consistent w/rationale behind MPC approach – D has firm commitment to criminal activity
  - **The Pinkerton Rule**
    - **United States v. Mothersill** – each party to a continuing conspiracy may be vicariously liable for substantial criminal offenses committed by a co-conspirator during the course and in the furtherance of the conspiracy, notwithstanding the party’s non-participation in the offenses or lack of knowledge thereof
      - Must prove that the crime was a reasonably foreseeable consequence of the conspiracy
      - Only applies to conspirators playing more than a minor role
      - Applies when crime was also a goal of the conspiracy and when the crime differs from the precise nature of the conspiracy but still facilitates the implementation of the conspiracy’s goals
  - **The Shape and Boundaries of Conspiracies**
    - **Kotteakos v. United States** – spokes in a wheel – should not have been charged as one, large conspiracy b/c individuals were only linked by one man’s connection to all of them
      - Other parties are disadvantaged by the prosecution being able to try all parties together in one courtroom
    - **United States v. Bruno** – chain of events – jury could find there was one conspiracy b/c each group must have known that the conspiracy did not end with their individual transaction
  - **Special Defenses to Conspiracies: Withdrawal and Impossibility**
- **United States v. Read** – withdrawal can become a complete defense when coupled with defense of statute of limitations; D has burden of producing evidence that he withdrew and then prosecution has burden of disproving that evidence beyond a reasonable doubt
  - Still liable for acts occurring before the withdrawal if they are w/in the statute of limitations
- **United States v. Recio** – impossibility is not a valid defense to conspiracy – conspiracy related dangers will exist even when the object of the conspiracy is frustrated