CRIMINAL LAW

I. CRIMINALIZATION
   A. Criminal conduct
      1. A determination must be made to apply the criminal law to particular conduct.
      2. In the US, the federal and state constitutions impose some limitations on the
         power of authorities to criminalize conduct
      3. The determination to make conduct criminal is usually a legislative function
         performed by state legislatures or Congress.
   B. Definition
      1. A crime is any social harm defined and made punishable by law.
      2. It is more accurate to define crime in terms of the social harm caused rather
         than the act committed.
      3. Note: One cannot be criminally responsible for conduct which he could not
         reasonably understand to be proscribed.
   C. Classification
      • Misdemeanor – in federal system punishable by not more than one year of
        prison, states can define as they want
      • Felony – could be punishable by up to life and in the case of capital crimes
        and be punishable by death

II. ACTUS REUS
   A. Voluntary Act
      1. D must have committed a voluntary act, or “actus reus.” Actus reas problems
         involve the following: (1) D has not committed physical acts, but has “guilty”
         thoughts, words, states of possession or status (2) D does an involuntary act, and
         (3) D has an omission, or failure to act
         a) State v. Taft - Mr. Taft was accused of driving under the influence and
            the court says that he cannot be convicted of driving under the influence
            unless there was a voluntary act.
         b) People v. Decina - Knowledge of blackouts goes to the intent; The
            voluntary act is the driving. *Act = driving* → When driving he is
            negligent.
      2. Mere presence would not be enough (Kimbrell)(drug case)
         a) When possession is made a crime, the act of “possession” is almost
            always construed so as to include only conscious possession
      3. Reflex or Convulsion – an act consisting of a reflex or convulsion does not
         give rise to criminal liability
         a) EXCEPTION: (People v. Decina) D knew before hand he was subject
            to such seizures and unreasonably put himself in a position where he was
            likely to harm others
            • Knowledge of blackouts goes to the intent
            • The voluntary act is the driving. *Driving → Act*
b) Acts prior to a self-induced state may be enough to meet the act requirement

4. **Omission** – failure to perform an affirmative action
   a) Basis for liability: (the following must be present)
      • *A statute which explicitly makes it a crime to omit the act in question*
      • *There are no other factors giving rise to a distinct legal duty to act*
   b) **Parent/Child relationship ↔ Special Relationship Duty**
      i) *Biddle* – failed to feed her child, however evidence seems to suggest that if she was neglectful, she was equally neglectful to other children, so she wasn’t specifically willful to any particular child

   c) **Statutory Duty** – statutes which impose a duty to take affirmative action in particular situations
      i) *Teixera* – appeals conviction of neglecting to support an illegitimate child; not guilty because failed to show financial ability to support the child
      • Must prove:
        1) parent
        2) knowledge
        3) willfully refused (financial ability)

<< Hypo: you have a different statute that is a good Samaritan statute that requires you to rescue a drowning swimmer. You have someone picnicking by a lake and is an able swimmer and neither hears nor sees the swimmers call for help.

If the picnicker sees but cannot swim and doesn’t come to the rescue. The law doesn’t require you to do something you don’t have the power to do.

Even though cannot swim there might be some other duty to go find help. >>

d) **Contractual Duty** – legal duty arising out of a contract
   i) The prosecution needs to show willfulness and knowledge of the danger, and the D has a chance to show excuse or justification
   ii) *Davis v. Commonwealth* – mother signed over her right to ss and food stamps and was then relying on her daughter to provide suitable care; court feels they have a contractual duty to provide minimal care; the court must consider whether Davis was criminally negligent
      • “criminal negligence” – must be of such reckless, wanton or flagrant nature as to indicate a callous disregard for human life and of the probable consequences of the act
e) **Employer/Employee Duty ↔ Status relationship**
   i) *Moreland v. State* – failed to control the chauffer, thus liable; “intentional neglect not to curb the operator of the car when he was violating the highway law of the state.”

f) **Danger caused by the D ↔ Special Duty**
   i) *Van Buskirk* - the court says that she created the situation of peril when she accidentally bumped him with the car which gave rise to a duty not to abandon him in the road way

g) **Legal Duty**
   i) *Jones v. U.S.* – was being paid to take care of one child and conflicting evidence suggests that she may have been being paid to take care of the other child; court failed to instruct on the necessity of a legal duty so the conviction must be reversed

II. **MENS REA**
   A. Definition – requirement that there be a “culpable state of mind”; intent; knowledge

   B. Exceptions: Some crimes are defined in such a way that the “mens rea” is merely negligence or recklessness
      1) Negligence and recklessness – can be thought of as acting without consciousness or the risk imposed
         • MPC requires that there be a **conscious** disregard of a known risk for an act to be reckless
         • *Gian-Cursio* – chiropractor who practiced natural hygiene; treated patient with fasting; charged with manslaughter; held himself out as someone who qualified
            o Requires:
               ▪ **Objective standard** – “reasonable person” (i.e. what should he have done
               ▪ **Subjective standard** – done in good faith (i.e. intent)
            o Exhibited criminal negligence (in criminal negligence we say “he failed to be aware of a risk that he should have been aware of”
         • *State v. Peterson* – drag race; Peterson charged with manslaughter; set recklessness in motion and can’t just turn it off like a ♻
            o **Manslaughter** requires:
               1) recklessness → awareness
               2) causation
            o Jury will infer that you must have known (Peterson admits that he knew he shouldn’t have done it)
         • *State v. Howard* – shot guy getting in the way of him protecting his friend, then shot the guy
            o murder in 2nd degree (danny)
- murder in second degree can be based on a finding of an intent to kill
  - manslaughter (stan)
  - recklessness because it was a crowded room and there were other bystanders around

<Recklessness
  - Awareness
  - Substantial and unjustifiable
  - Gross deviation

Hypo: Field surgeon in Iraq about to perform emergency surgery on a victim of a car bombing, but the surgeon only has four scalpels and he knows that one is un-sterilized, but he doesn’t know which one.

When you measure the substantiality of the risk, part of it is the likelihood / probability that it will cause harm, but the higher the justification for the conduct you can have a lower degree of risk.

Negligence
You can be unaware of a risk for which you should be aware.

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C. Strict Liability – Some crimes are defined so as to require no mens rea at all, these are generally punishable only by fine and not by imprisonment
  - *The Queen v. Stephens* - prosecution of someone who is the owner of a quarry
  - *Commonwealth v. Olshefski* - he had a legitimate weigh bill and intentionally drove to police
    - *malum in se* – act + mental state
    - *malum prohibitum* – not wrong within itself, no mental state necessary, you can impose strict liability
      - if you are going to enforce it, it must be expedient and if you allow these types of claims it would be virtually impossible to enforce these types of claims
      - crimes that carry very minor penalties, little or no jail time, low or no fines

D. Intent
  1) General Intent – D desired to commit the act which served as the actus reus

  2) Specific Intent – D, in addition to desiring to bring about the actus reus, must have desired to do something further
    - *Thacker v. Commonwealth* – fired shots through tent; he has been charged with attempted murder;
      - the supreme court says that must have specific intent in this context to kill
- even though he intended to shoot the gun toward the tent; courts say that you can’t transfer intent, must be intent to kill
  - take his stated purpose at face value to shoot out the light
- State v. Nastoff - Did not personally alter the chainsaw, but knew it was modified
  - maliciousness must related to the prohibition in the statute (→ injures or destroys)
    - there is evidence that he intended to use the illegally modified saw, but not to set the fire
    - using the state’s theory would provide a theory of negligence; won’t let the state convert an intentional wrong with an unintentional wrong
<<Malice
(1) purpose or desire to vex, annoy or injur another
(2) an intent to do a wrongful act, regardless of the presence or absence of any desire to inflict harm on another >>

3) Knowledge (Sciente) – the MPC marks a new tendency to distinguish between acting “purposely” and merely “knowingly”
- A person acts knowingly under the MPC w/r/t the nature of his conduct or the surrounding circumstances, if he is “aware” that his conduct is of a certain kind or that certain circumstances exist; aware that it is practically certain that his conduct will cause that result
- State v. Beale – D was absent from store and it was left in his wife’s care; sold stolen property despite police questions → D himself must have believed that the goods were stolen i.e. subjective test
<<Knowledge
- subjective – whether or not he actually believed the items were stolen (actual knowledge)
  - objective – whether or not a reasonable person in his position would believe that they were stolen

Court prefers an subjective over an objective standard
- If we apply an objective standard we would have to use a reasonably intelligent standard, but then the people below avg would be penalized>>

- U.S. v. Jewell - sees the compartment, but doesn’t look in the compartment → willful refusal to ascertain for certain what he suspected i.e. willful blindness
  - model penal code says that if you are aware of high probability that can be a substitute for knowledge
Kennedy doesn’t like the willful blindness doctrine in part because of its bias to visual means of acquiring knowledge.

4) **Willfulness** – MPC takes position that to have acted willfully, it is not necessary that he acted “purposely”; it is sufficient that he acted “knowingly” unless the statute indicates otherwise

- *Fields v. United States* – failure to produce documents; he suggests that willful should require a motive of bad purpose; the court says evil or bad purpose is not a part → willful
- *Cheek v. United States* – didn’t file taxes because he believed them to be unconstitutional; D’s views about the validity of the tax statutes are irrelevant to the issue of willfulness
  - Must show that there was *Intentional violation of a known legal duty*
  - Court says that if he sincerely believes that wages are not income then subjectively he doesn’t know that it is a legal duty (note: two different claims, wins on this one)

5) Transferred Intent –

- *Gladden v. State* – missed and shot a 12 year old → “the intention follows the bullet”

E. Unlawful Conduct –

- *United States v. Rybicki* – unknowingly threatened two IRS agents
  - if the govt proved that rybicki didn’t know they were irs agents, then he would be justified in using a reasonable amount of threat → justification
  - what makes his behavior criminal is the fact that they are agents
  - not the intended circumstances that makes the conduct criminal it is the intent to commit harm/battery

III. HOMICIDE

A. Taking a life

1) Where birth process has not even begun the courts are reluctant to consider the fetus a human being for homicide purposes

2) court says as long as the infant is subsequently born and lives for a period of time and dies as a result
   - *Cuellar v. State* – convicted of intoxication manslaughter; affirmed; considered still born
   - If the infant is born alive, the D can be guilty of common law murder even though his acts may have taken place before the birth

B. When Life Ends

- One cannot murder a person who is already dead
- Conflicting opinions about whether brain death vs. heart death
C. Elements of Murder

- Actus reus (conduct by the D)
  - Must be either an affirmative act of an omission where there was a duty to act
  - Participating in events leading up to assisted suicide not sufficient

- Corpus delicti (proof of death)
  - Murder does not absolutely require that a corpse be found

- Mens rea (a culpable mental state)
  1. Intent to Kill
  2. Intent to commit grievous bodily injury
  3. Reckless indifference to the value of human life
  4. Intent to commit any of certain non-homicide felonies

- Proximate cause (a causal link between the D’s act and the death)
  - There must be a causal relationship between the D’s act and the victim’s death

D. Intent-to-kill murder – one has the desire to bring about another’s death

  1. Substantial certainty of death – does not actively desire to bring about another’s death, but knows with substantial certainty
     - King v. State – Man wanted to shoot the tires of another’s car while driving on the hwy, kills the passenger of the other car; showed depraved indifference
     - State v. Hokenson - Drugstore robbery with bomb that killed police officer; → State did not even need this reasoning b/c the state says that they proved that the homicide was committed recklessly under circumstances manifesting extreme disregard to human life
       - Until the bomb is detonated, the court might say that it is still part of a continuous transaction and the Δ is still liable, no matter how far removed from the scene of the crime.

  2. In most states, the mens rea requirement for murder is satisfied if the d intended not to kill but to do serious bodily injury to the victim

E. Felony Murder – intent to commit a felony (a felony unrelated to homicide) is sufficient to meet the mens rea requirement for murder

- Nearly all courts and legislatures now restrict application of the felony murder doctrine to certain felonies which are:
  - Inherently dangerous to life or health (preferred test)
  - Felonies which were felonies at common law
  - Felonies which are malim in se rather than malum prohibitum

- People v. Phillips – chiropractor treats girl with cancer of the eyes and dissuades her form having eye removed, suggests can cure her with $700 treatment, convicted on felony murder theory → conviction reversed because the only felony committed was grand larceny

- State v. Mayle - original crime took place in McDonald’s in OH; Until they reach a place of safety, then it is still a part of original transaction
• **People v. Wilson** - Mr. Wilson is at the apt of his estranged wife and ends up killing someone else in the apt and breaks into the bathroom where she is hiding and he kills her
  - Prosecution is trying to get around the intent element by saying that because there was a burglary with a death then it was ok
  - The court has to throw out the conviction
  - **Merger doctrine** – refers to concept that only felonies independent of the homicide can support a felony murder instruction; felonies that are an integral part of the homicide are merged in the homicide

<< MPC Article 210. Criminal Homicide p. 152-153

**Murder**

1) causing the death of another **purposefully or knowingly** (knowingly - awareness that your conduct is substantially certain to bring about a result → practically certain)
2) **recklessly** (– consciously disregarding a risk that you are aware of when) + **extreme indifference** - presumed – FM

*note that MPC does not create different degrees of murder; some jurisdictions use premeditation, specific means, FM

FM = felony murder

The MPC does not use the term “voluntary manslaughter” it incorporates the equivalent

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<<Under MPC there is no misdemeanor manslaughter, under the common law there is misdemeanor manslaughter even for misdemeanors that are not inherently dangerous>>

F. **First Degree Murder** – most common statutory requirement for first-degree murder is that the killing have been “premeditated and deliberate”

- Traditional view is that no substantial amount of time need elapse between formation of the intent to kill and execution of the killing
  - **State v. Schrader** - there is no question that he had intent to kill → premeditation; court cites cases that show that premeditation can occur in the blink of an eye

- Most modern courts require a reasonable period of time during which deliberation exists

- **Midgett v. State** - the court says the evidence suggest that there is intent to abuse, not to kill, he apparently afflicting pain and probably wanted to continue that type of physical abuse; if he doesn’t care whether he lived or died then we are talking about depraved heart

- **State v. Forrest** – killed his ill father → since he thought about this for a significant amount of time before hand then there was significant intent to constitute premeditation

G. **Second Degree Murder** – Murders that are not first degree are second degree

- No premeditation
- There may have been premeditation but the D’s intent was not to kill, but to do serious bodily injury
- D does not intend to kill but is recklessly indifferent to the value of human life
• Killings committed during the course of felonies other than those specified in the first degree murder statute (i.e. typically felonies other than rape, robbery arson and burglarly)

H. Voluntary Manslaughter – deemed not sufficiently heinous to be treated as murder, but still too blameworthy to go completely unpunished; contains a general intent to kill; 

**provocation ↔ voluntary manslaughter**

1) Requirements for voluntary manslaughter
   • Acts in response to a provocation that would be sufficient to cause a reasonable person to lose his self-control
   • He in fact acts in a “heat of passion”
   • The lapse of time between provocation and the killing is not great enough that a reasonable would have “cooled off” (i.e. regained his self-control)
   • He had not in fact “cooled off” by the time he kills

2) MPC: “committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor’s situation under the circumstances as he believed them to be”

3) Cases
   • State v. Guebara - he has a anti-social personality disorder, smoked 1 ½ joints of marijuana
     o heat of passion ↔ subjective test
     o legal adequate provocation ↔ objective

<< Voluntary manslaughter
   • Evidence of an emotional state constituting heat of passion
   • Sufficient provocation

- At common law adultery, serious assault and batter, false arrest, mutual combat qualified, injury to close family members as **adequate provocation**.
- At common law, mere words could not constitute provocation>>

• State v. Dumlao - shot his mother and law; paranoid personality, he’s jealous → sufficient to require the trial court to give instruction on manslaughter rather than first degree murder
• State v. Hardie – tried to scare her with revolver he thought was broken; no reasonable person who point a loaded or unloaded gun at a person with the purpose of frightening a person (the social utility is very low)
  o criminal negligence – failure to perceive a risk that the D should have perceived under the circumstances
• State v. Bier – accidentally shot his wife → court said what he did was a gross deviation from the standard of care we would expect an ordinary person so exercise under similar circumstances
• **People v. Stamp** – died of heart attack during hold up; → No. When we are talking about felony murder and causation, foreseeability is not relevant. Even if this is a freak occurrence, the felony murder doctrine holds all the felons strictly liable for any deaths that occur during the course of killing
  - whether or not he received good medical attention, etc may not be the determining factor
  - “The doctrine is not limited to those deaths which are foreseeable. Rather a felon is held strictly liable for all killings committed by him or his accomplices in the course of the felony.”

• **State v. Sauter** – stabbed in fight, but died because didn’t find the wound
  - “Only if the death is attributable to the medical malpractice and not induced at all by the original wound does the intervention of the medical malpractice constitute a defense.” P. 534

• **Letner v. State** – shot caused driver to jump out of back;
  - Court says it has to be a natural and probable consequence of the D’s conduct → Walter’s jumping out of the boat would qualify

I. Involuntary Manslaughter – If grossly negligent conduct results in the accidental death of another person

**VII. CAUSATION**

A. Generally – the link between the act and the harmful result
  1. Prosecution must show that the act was the “cause in fact” of the harm
  2. that the act was the proximate cause (or “legal” cause according to MPC) of the harm

• **Campbell v. State** – co-felons held up taxi and tried to shoot driver who returned fire;
  - **Agency Theory** – “as they all act in concert for a common object, each is the agent of all the others, and the acts done are therefore the acts of each and all” p. 540
  - **Proximate cause Theory** – “but for”
  - NOTE: courts will say that if a co-felon accidentally shoots himself then he will not be held liable

• **People v. Caldwell** – one agent choose to shoot as a part of crime sequence;
  - extreme indifference for human life (ex: In a crowded mall)
  - felony murder doctrine does not apply, but we are going to hold the surviving felons liable because they are accomplices

• **Lewis v. State** – adult had been playing Russian roulette with kid, but put the gun away; → He terminates his own participation and he terminates the game
• **State v. Peterson** –
  o <<we don’t import tort concepts into criminal law, but courts will talk about the legal equivalent of legal cause or proximate cause
  o statute designed to protect motorists, passengers, by standers from reckless drivers \(\rightarrow\) precisely the risk that the prohibition against street racing was designed to protect
  o important whether the passenger in the car is actively influencing or being passive, determines whether he’s reckless or not>>

**VIII. ATTEMPT AND KINDRED PROBLEMS**

A. Attempt

1. In General
   a) **Moffett v. State** - Defendant and 14 year old companion entered apartment and tied up victim, holding her at knife point, forcing her to write a suicide note. They had brought sleeping pills and wine. The victim escaped. \(\rightarrow\) Attempted murder does not have involve the potentially death producing act. It is enough that the defendant have the intent to commit the crime and takes a direct act towards its commission **beyond mere preparation**.
      - Had sufficient control over the victim to effectuate plan but for fortuitous circumstances.
      - Had burglary when entered apartment because had entry + felonious intent; attempted murder when gained control over victim.

2. Perpetrating Act
   a) **People v. Rizzo** - Defendants planned to rob payroll clerk—were driving around looking for him when apprehended by Police. \(\rightarrow\) For attempt there must be a reasonable likelihood of success of the crime but for the interference.
      - An act “tending towards the commission of the crime” must be one that would be normally expected to bring about the result. No opportunity, no crime. Several elements of crime missing.
      - Dangerous proximity test
      - Bad intentions alone not punishable.
      - Similar test—probable desistance test—no attempt as long as could still change mind
      - Attempt where has taken last proximate act—everything needed for crime done—all jurisdictions recognize as attempt.

<<Attempt
1. Dangerous Proximity (What is left to do?)
   \(\rightarrow\) tending toward the commission
2. Last Proximate cause
3. Probable Distance
4. Substantial Step (What has already been done?)>>
b) **Young v. State** - Police followed a suspected bank robber as he cased several banks. He attempted to hide his presence at one bank, put on a disguise, surgical gloves, took a scanner and a gun and attempted to enter the bank but found it closed. → The correct test for determining attempt is supplied by the model penal code: an act or omission which is a substantial step in the course of conduct leading to the commission of the crime is enough.

- Allows intervention at much earlier stage than dangerous proximity test allows.
  - Dangerous proximity asks what is left to be done
  - Substantial step asks what is already done

3. **MPC Criminal attempt**

- Need intent +
  - (a) Conduct which would constitute the crime if circumstances were as the defendant believes them to be, or
  - (b) Does or omits to do anything with the purpose of causing a particular result which is an element of the crime or with the belief that it will result without further conduct on his part. or
  - (c) Purposefully does or omits to do an act which under the circumstances as he believes them to be is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.
    - Substantial step is strongly corroborative of criminal intent
      1) Lying in wait, searching for or following victim
      2) Enticing or trying to entice victim to place of commission
      3) Reconnoitering place of commission
      4) Unlawful entry of place of commission
      5) Possession of materials which are specifically designed for crime or which can serve no lawful purpose under circumstances
      6) Possession, collection, or fabrication of materials at or near place of commission with no lawful purpose under circumstances
      7) Soliciting innocent agent to engage in conduct constituting element of crime
    - In some jurisdictions and MPC, attempt is the same class of offense as the substantive crime, other jurisdictions lesser offense.

4. **Impossibility**

- Claims of “factual” impossibility almost never succeed, claims of “true legal” impossibility always succeed, and claims of “factual impossibility related to legal relationships” formerly succeeded frequently, but are much less likely to do so today.

  a) **Factual Impossibility** – Act if completed would have been illegal (ex: pickpocket who reaches into an empty pocket) → **not successful**
State v. Mitchell - Defendant fired into the room where he believed that the victim was sleeping, aiming for the spot where he thought he was sleeping. The victim was instead sleeping upstairs. → It is not important that the victim was not in any danger; the defendant had the present capacity to murder the victim and would have succeeded but for fortuitous circumstance.
   ▪ Did last proximate act towards commission of crime.
   ▪ Factual impossibility—but for circumstances unknown to defendant crime would have been committed—physical impossibility.

People v. Rojas - Police arrested thief of electrical conduit that was delivered to Rojas as planned—arrested when attempted to unload. → attempt to receive stolen property even though property no longer stolen b/c had attempt and believed was doing so.
   ▪ Court saying factual impossibility b/c if circumstances had been as he believed them to be would have completed crime

b) Legal impossibility - No law to break (ex: law attempting to break repealed)
   ▪ Booth v. State - Booth arranged to purchase stolen coat—but transfer was set up by police who had captured thief. → no attempt when property no longer stolen b/c legal impossibility of committing crime. If the act carried out would not be a crime, then the attempt is a not a crime.

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United States v. Oviedo - Oviedo sold what appeared to be heroin to undercover agent and more was found hidden in TV set. Turned out to be uncontrolled substance. → evidence of intent is not
enough; objective acts performed must be unique enough to mark the conduct as criminal in nature.

a) Distinction between legal and factual impossibility makes no sense in these cases
   i) legal impossibility because acts not a crime
   ii) Factual impossibility because objective was a crime.

b) Where intent more certain, actions become less ambiguous. Where unequivocal evidence of truth of allegations—easier to find intent.
c) Even with objective evidence, still need subjective factors—i.e. shoot at someone—still need intent..

c) Hybrid cases—success of crime depends solely on legal status of item—i.e stealing book that turns out to be your own

d) MPC—belief is determinative—brings in more cases that might have slipped through cracks

<Attempt
- tending toward commission
- MPC – Substantial Step
- Specific Intent to Kill

Murder
- Express Malice →
- Implied Malice →
- Felony Murder → Kidnapping >>

5. Intent
   a) People v. Guerra - Kidnapped two fellow security guards, told them he would not hurt them, but gun discharged anyway, one guard died and one escaped → For attempted murder, felony murder or implied malice may not substitute for a specific intent to murder.
      o Attempt specific intent crime
      o without telling the jury that he had to have specific attempt then the jury could have convicted on a theory of another type of malice
  * jury must be instructed on that particular element

B. Solicitation
   1. State v. Blechman - Solicited another to burn his house to commit insurance fraud → It is not necessary the substantive crime be committed to be guilty of solicitation.
      o Acting of soliciting is itself a crime
      o Not the same thing as attempt—more remote.
      o Must be inducement for other party to act—either words or conduct or both
○ Not necessary for solicitee to say yes
  ○ Yes—have common criminal purpose—rises to conspiracy

<<
- Solicitation falls short of attempt because the act isn’t committed
- If person agrees, then you have conspiracy
- If the person takes a substantial step, then you have an attempt
- Inciting another to commit a crime is sufficient for liability

Solicitation
Inciting → intent
(At common law) to counsel, incite or solicit another to commit either a felony or a misdemeanor, certainly so if the misdemeanor is of an aggravated character, even though solicitation is of no effect, and the crime counseled is not in fact committed

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i) << MPC
  (1) If with purpose of facilitating or promoting commission of crime, encourages or requests another to engage in specific conduct which would constitute the crime, attempt or which would establish his complicity in its commission or attempted commission.
  (2) Immaterial whether communication fails if conduct was designed to effect communication, or that other immune from prosecution,
  (3) Affirmative defense that after solicited, persuaded the other not to do so or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation
    (a) Still liable if crime committed
  (4) Defense to both solicitation and conspiracy that if the crime were committed the defendant would not be guilty of the offense or as an accomplice.

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C. Abandonment
- If all parties abandon the plan, this will be enough to start the Statute of Limitations running. Since it may be difficult to tell at what point abandonment occurred, the court will generally presume that the Statute of Limitations has run if there has been no overt act performed by any conspirator within the applicable limitations period.
- Abandonment will not serve as defense to the conspiracy charge itself. The common-law view is that the conspiracy is complete once the agreement is made; therefore abandonment is logically irrelevant.
- The MPC allows defense of “renunciation of criminal purpose” which is discussed in the context of withdrawal by a single person.

1. Stewart v. State - Went to rob a gas station, demanded clerk’s money, then abandoned when two police officers pulled in. → Guilty of attempted robbery because there was overt act towards the crime’s commission and criminal intent. Abandonment at this point is no defense.
Jurisdictions that do recognize abandonment as a defense only recognize it when it is voluntary and complete—not when abandoning b/c of unanticipated difficulties, resistance, or greater chance of being caught.

2. **Commonwealth v. McCloskey** - Decided to escape from prison, climbed wall and snipped wire before changing mind and going back to work. Later confessed.

→ When abandons in preparation stage, no attempt.

<<MPC specifically adopts renunciation as a defense p. 415

- Affirmative defense if the actor has abandoned his attempt
- The defendant must have a true change of heart and is relinquishing his decision to go through with the crime, not because of circumstance, but because D has really had a true change of heart
- Must be complete
- Once , a substantial step such as obtaining a weapon if he qualifies for voluntary and complete renunciation he will still have a defense>>

**IX. CONSPIRACY**

**A. Common Law** – an agreement between two or more persons to do either an unlawful act or a lawful act by unlawful means. The prosecution is required to show the following elements

- **Agreement**: An agreement between two or more persons
- **Objective**: To carry out an act which is either unlawful or which is lawful but to be accomplished by unlawful means
- **Mens rea**: A culpable intent on the part of the D.

- exception: Wharton’s Rule—can’t be convicted of conspiracy; where impossible under any circumstances to commit the substantive offense without cooperative action—i.e. adultery
- separate offense distinct from substantive offense—may be convicted of both

**B. Cases**

- **United States v. Payan** - Defendant exported stolen tractors to Mexico—driver found at border with fraudulent invoices. Charged with transport of stolen goods under aiding and abetting theory and conspiracy to transport stolen goods. → Wharton’s Rule does not apply where aiding and abetting used to convict of substantive offense—only where impossible to commit substantive offense alone.
  - Only applied in absence of legislative intent to the contrary—clear that intended aiding and abetting to also allow conviction of conspiracy.
  - Aiding and abetting implicit in all charges
  - way statute is worded is key
    - crime to sell or buy controlled substance—need cooperative action
    - crime to sell, distribute, or offer to sell controlled substance—may contemplate presence of 2nd person but not require it
  - crime may require presence of 2nd person—i.e. murder but not require cooperative endeavor.
Third party exception rule—Once have 3rd party—i.e. 2nd in duel—agreement does not merge with substantive crime, group danger concerns kick in i.e. large scale gambling vs. two people wagering on card game.

Even if practically necessary to enlist others to complete crime—look at what is abstractly required.

Wharton’s rule grounded in double jeopardy concerns.

**Gebardi v. United States** - Man and woman convicted of conspiracy to violate Mann Act by transporting the woman across state lines for purposes of sexual intercourse. → no conspiracy where evidence of legislative intent that the woman go unpunished.

- Mere acquiescence not enough to aid and abet in own transport.
- Wharton’s rule can’t apply b/c one person could violate act if woman not consenting.
- Agreement with another (i.e. madam) would be punishable conspiracy.
- Case about statutory construction → where a statute is designed to protect one of the parties of the transaction and the transaction may include consent then the consenting party is not punishable as a member of the conspiracy.

**People v. Swain** (Conspiracy is a SPECIFIC INTENT crime) - Swain and others involved in drive by shooting of 15 year old boy—convicted of conspiracy to commit 2nd degree murder. → Can’t have conspiracy to commit an unintentional killing. Implied malice occurs in hindsight while conspiracy occurs even before attempt—inchoate crime.

- Conspiracy to commit murder requires specific intent to kill.
- For conviction need:
  - Intent to agree
  - Intent to commit object offense

In order to have a conspiracy you have to find a dual intent.

- Intent to agree
- Intent to commit the object offense.

**Pinkerton v. United States** - Brothers attempted to defraud the IRS—only one brother did acts constituting substantive offense. → one party in the conspiracy is liable for all acts committed in furtherance of the conspiracy, no matter which member of the conspiracy actually committed the acts.

- Not liable for acts not in furtherance of conspiracy. I.e. agreement to defraud IRS, killing IRS agents not within plan,
o Liable if reasonably foreseeable as a natural consequence of the conspiracy—within scope of plan.
  ▪ Agreement “by any means”—must be within context
    • Not likely that would encompass killing auditor if agreement tax fraud by any means
    • Robbery—greater range of foreseeable consequences

o **People v. Lauria** - Lauria ran a phone answering service with the knowledge that some of his customers were prostitutes. → One who supplies goods or services for what he knows is a criminal purpose is only guilty of conspiracy if intent to further the criminal purpose is also present. Knowledge not enough here.
  o May be shown through direct evidence that the supplier intends to participate in the activity
  o May be implied based on a special interest in the activity or the aggravated nature of the crime itself.
    ▪ I.e. stake in the enterprise—higher rates, disproportionate volume of business
    ▪ No legitimate use for the goods or services
      • Higher standards for those who supply controlled or dangerous goods than those who supply innocuous goods
  o Court says states theory seems to be that since he knew that prostitutes were using the answering service then he was conspiring, but the court says that mere knowledge is not enough
  o There are times when intent could be used for knowledge: when there could be no lawful purpose of what you are doing

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(5) Community of interest—where multiple suppliers and defendant in center—need something to tie suppliers together to have single conspiracy—must see selves as part of single conspiracy “hub”—otherwise just have series of conspiracies.

(6) Vertical relationship—each link in the chain is necessary for conspiracy to succeed—guilty of conspiracy i.e. distributor, drug seller, customer—distributor does not have to know customer to have conspiracy.

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o **People v. Sconce** - Sconce hired Garcia to kill another, Garcia got a hit man and plotted how they would kill the victim. Sconce then later called the whole thing off. → Withdrawal from conspiracy is a complete defense only where there has not been an overt act (or when asserted in conjunction with the running of the statute of limitations).
  1) Once there is overt act, liable for conspiracy and those acts already done, not liable for target offense and acts after withdrawal.
    ▪ Notice to all parties—some jurisdictions say that for withdrawal to be effective, all parties to conspiracy must be notified
      • May not know other parties, but if have fair notice that other involved have to notify them.
• Some courts require that the withdrawing party dissuade others from pursuing the criminal objective.
• Overt act does not have to be criminal—just show that conspiracy at work—i.e. exchanging money.

2) Common law rule
3) Withdrawal starts statute of limitations running
   o if you have reached the overt act stage it is too late to withdraw
   o To prove the agreement you do not have to show anything that has been written down
   o To have an agreement you must have (1) intent to agree and (2) intent to further or promote some criminal objective
     o Overt act does not have to be criminal or significant, just something to show that we have gotten beyond the bare agreement stage
       o Ex: if he has given him money, going to stake out location
       o Almost any lawful act can be considered an overt act for purposes of a conspiracy
       o As long as there are subsequent conversations to show that the conspiracy is at work
       o Overt act can look sinister or innocent
     o The Pinkerton rule establishes there will be no liability for subsequent acts of the coconspirators
       o But if it is not done before effective withdraw, there is liability for conspiracy

C. MPC
ii) MPC defense of Renunciation
   (1) Affirmative Defense (complete defense) that after conspiracy thwarted success of conspiracy under circumstances manifesting a complete and voluntary withdrawal from conspiracy
      (a) Withdrawal does not require thwarting
   iii) MPC Duration of Conspiracy
      (1) Until criminal objective achieved or until all abandon criminal purpose
      (a) If all abandon—not same thing as renunciation—still liable
      (2) Abandonment presumed if no overt acts during statute of limitations
      (3) Individual may abandon and terminates conspiracy with respect to him only if and only if he tells others he conspired with of abandonment or tells law enforcement
         (a) Not same thing as renunciation—still liable for conspiracy
            (i) Insulated from prospective acts in some jurisdictions if the Pinkerton rule is recognized
            (ii) If don’t know of 3rd party, don’t have to notify but do have to notify if know of, even if don’t know identity.

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o United States v. Feola - Defendants attempting classic narcotics “rip-off”—assaulted prospective buyers to relieve them of cash—turned out to be federal
agents. → If knowledge that the men were federal officers is not required for conviction of the substantive offense, greater knowledge is not required for the conspiracy where such knowledge does not alter the agreement or the blameworthiness of the acts.
  o The federal officer requirement of the statute is purely jurisdictional—the conduct is unlawful no matter who the victim is.
  o Making those who conspire to assault know that the victims were federal officers would remove protection from undercover officers.
  o Most cases jurisdiction a separate statute; here jurisdictional facts rolled into substantive law

Rule of Consistency - where all others are acquitted, the remaining defendants can not be convicted of conspiracy
  o Marquiz v. People - Marquiz enlisted two others to kill girl. Separate trials; neither of others convicted of conspiracy → The rule of consistency does not apply where the co-conspirators are tried in separate trials
    o With separate cases, inconsistent verdicts are inherently inconsistent with findings of guilt
MPC—unilateral theory of conspiracy—do not need two for agreement
  o If same trial—need at least two to be guilty—if not under MPC unilateral theory
    o A co-conspirator plea-bargains or gets immunity—rule of consistency doesn’t apply b/c jury could still find two guilty minds
      ▪ Same thing if one co-conspirator a fugitive from justice
      ▪ Other co-conspirators identities do not have to be known for jury to find a conspiracy.
  o Some non-MPC jurisdictions have abolished rule of consistency
    o Don’t want to compound injustice if mistake or extend leniency
    o If guilty verdict is mistake still have appeals process protection.

  o People v. Foster - Foster asked another to help him commit a robbery. The other agreed with no intention of going through with it and tipped off police → Since not clear that legislature intended to adopt MPC unilateral theory of conspiracy, bilateral theory requiring the actual agreement of two or more participants still applies
    o IL has a broad solicitation statute that covers much of the same stuff as unilateral theory.
      ▪ Would not cover where undercover cop approaches defendant, but MPC would

MPC definition of conspiracy
  ▪ With the purpose of promoting or facilitating the crime
    • Agrees with other person(s) that they or one or more of them will engage in conduct which constitutes the crime, attempt, or solicitation. OR
    • Agrees to aid other person(s) in the planning or commission of the crime, attempt, or solicitation
• If knows that others he has conspired with have brought in others, guilty of conspiracy with others even if don’t know identity
• Only guilty of one conspiracy if multiple crimes are the object of the same agreement or continuous conspiratorial relationship
• Overt Act—Unless conspiracy to commit 1st or 2nd degree felony, no conspiracy unless overt act in pursuance of the felony by defendant or member of conspiracy.
  • Common law only need agreement
  • Some states require act + intent
• MPC—not focusing on group danger as much as on danger of one person with an agreement to commit a criminal act
  
  o Solicitation if ripens into conspiracy—solicitation usually merges into conspiracy charge
    • Can be convicted of both conspiracy and attempt
  o MPC—no Pinkerton rule, must use aiding and abetting to get for substantive crime or attempt

X. Aiding and Abetting

A. Cases
  o People v. Beeman - Convicted of robbery, false imprisonment, burglary, assault with intent to commit a felony, and destruction of telephone equipment in robbery of a relative through aiding and abetting theory. Knew friends were going to go through it; said he would not say anything → Knowledge alone is not sufficient for conviction; there must also be an intent to further the criminal purpose
    o If have knowledge + intent, punishable as if were the perpetrator under most aiding and abetting state statutes
  o State v. Hoselton - Hoselton stood at edge of barge while friends entered and stole some items; went back to car after saw them with goods; never received any property → Defendant must have both knowledge of the criminal act and an intent to further it
    o Lookout—one who by prearrangement keeps watch to avoid detection—punishable as a principal in the first degree (but classified as principle in 2nd degree).
      • The court has consistently held that lookouts are aiders and abettors, principals in the second degree.
    o Statement that he “guessed he was the lookout—but just didn’t want to be down there” was no unequivocal proof of being lookout.
  o Courts require more than mere knowledge + presence
    • Need action toward furthering crime—assist, encourage, lookout
    • Even if use willful blindness doctrine—can only use to impute knowledge—still need something more.
    • W/o knowledge of criminal purpose, inadvertent aid giving not enough
    • Once have agreement to serve as lookout, even if opportunity to warn never arises, or slips up—still liable.
If thinks friends are only trespassing, then return with stolen goods, but have agreement to warn—aider and abettor of trespass 1st trip, aider and abettor of theft 2nd trip.

State v. Foster – after gf murdered gave friend knife to hold him there; guy had occasion to stab him; D charged with kidnapping and being an accessory to the criminally negligent homicide → the substantive crime is the kidnapping at knife point and therefore the intent was there and it was foreseeable that his using the knife was a foreseeable consequence

- Mr. Foster’s act of negligence is giving the knife
- holding the victim at bay with a knife makes it foreseeable

<<Aiding and abetting
- Knowledge
- Intent to aid
- Intent to promote/commit the crime >>

State v. Linscott - D and others went to drug dealers house to rob him

- To argue this as felony murder you would just have
- To argue this as felony murder you would just have to prove that they were committing the robbery
- In cases where the underlying crime is not inherently dangerous the felony murder rule won’t help.

<<Aiding and Abetting Liability

1) Actor must have knowledge of the purpose of the other participants
   - Intent to promote of facilitate the commission of the crime (may depend on the other crime, if the other crime doesn’t require intent then as long as the actor shares the mens rea that is required for the other crime then it is sufficient

2) Mens rea → negligent
3) Intent – primary crime, foreseeable consequences
4) Circumstances – Lack of Consent
   - Reckless disregard (ex: If aider and abetter takes word for her being 21, or if she is extremely intoxicated, then he is in reckless disregard of her lack of consent) >>

State v. Vaillancourt - Indictment charged that defendant accompanied friend and stood and watched as friend attempted to break into house → Knowledge and mere presence not enough—must have some degree of active participation

- Turns on meaning of “accompany”—could construe as meaning presence + further connection (i.e. moral support/encouragement, alleging w/purpose of facilitating not just w/ knowledge)
- Most courts say knowledge + mere presence not enough, but accompaniment for moral support is.
- aiding and abetting by omission to act: must have a duty to act for omission to be culpable.
- If the theory is going to be that accompanying someone is enough for aiding and abetting then you have to find out what that purpose was.
- **People v. Genoa** - Gave undercover cop money to buy cocaine → Underlying crime must have been committed for defendant to be convicted under aiding and abetting statute
  - Unsuccessful attempt to aid can be the basis for liability if the principal commits the underlying offense.
  - MPC attempts to aid enough—but still have problem w/ Genoa situation
  - Would be conspiracy under MPC
  - Solicitation if he approached officer
  - MPC attempt rules: Conduct designed to aid another in Commission of a Crime:
    - Person who engages in conduct which would establish complicity under MPC rules if the crime were committed, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by the other person.
      - As matter of law aiding and abetting = substantial step
  - Common law jurisdiction requires a bilateral

- **People v. Brown** - Babcock has idea to rob car dealership, friends agree. Babcock is lookout while they kick in door. After kicking in door get cold feet. Convicted of Attempted burglary. → Voluntary abandonment would have been excuse to substantive crime, but still guilty of attempt that occurred prior to abandonment
  - Problem: IL statute says “before the commission of the offense”—should not “before or during”
  - From policy perspective should be allowed to withdraw.
  - MPC renunciation defense for attempt not clearly liable b/c says culminates in “his commission”—conduct not intended to culminate in Brown’s commission of burglary but rather Babcock’s.

***Pinkerton makes coconspirators liable for crimes committed by the conspirators if the consequences are foreseeable.***

- **State v. Williams** - Hicks shot and wounded another, friends drove him to country and lied to Police as to his whereabouts, victim did not die until next day. → Can only be accessory after the fact once the crime is completed—murder is not completed until the death
  - Elements of Accessory after the fact:
    - Principal actually committed the offense.
    - Accused knew offense had been committed by principal.
    - Defendant helped principal in some way to escape or avoid punishment.
  - Could have been accessory after the fact to other crimes—such as assault with intent to kill.
  - Accessory after the fact—separate offense from the substantive crime—so can be convicted of lesser offense than principle.
  - Mistaken belief—no knowledge of crime, no conviction.
  - Multiple crime—jury does not have to agree on which crimes defendant knew of as long as knew of one.
  - Cannot be both aider and abettor and accessory after the fact
- Cannot assist self in avoiding arrest and detection.
  - Completed felony here different than felony murder rule
    - Felony murder—can be elementally complete but still “ongoing”
    - Here looking for whether or not elements are complete.

<<Accessory after the fact:
  - Principle felon must actually commit
  - The accused must know that the principle actually committed the felony
  - The accused must have done something to aid the person

>>

- State v. Truesdell - 12 year old son shot ex-husband → Even though juvenile cannot commit a felony, accessory after the fact is a separate and distinct crime which does not require the conviction of the principal

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b) Other Parties to Crime situations
  i) not liable for simple failure to report crime to police, guilty mind w/o actual aid
  ii) Agreement not to prosecute in exchange for restitution
      (1) At common law—compounding the felony, frustrates criminal justice system
      (2) MPC continues but an affirmative defense if amount did not exceed amount due as restitution (no extortion).

c) MPC
  i) legally accountable for conduct of another
      (1) with requisite mental state, causes innocent or irresponsible person to engage in such conduct.
      (2) Legally required or Statute defining offense makes him responsible
      (3) If he is the Accomplice of the other person
          (a) With purpose of facilitating or promoting offense,
              (i) Solicits another to commit it
              (ii) Aids or agrees or attempts to aid the other in planning or committing offense
              (iii) Has a legal duty to prevent commission of offense and fails to make a proper effort to do so.
          (b) Law expressly declares that conduct establishes complicity
          (c) Not an accomplice
              (i) If victim of offense
              (ii) Offense is defined so that conduct is inevitability incident to offense
              (iii) Terminates complicity prior to commission of offense
                  1. Wholly deprives it of effectiveness in the commission of the offense or
                  2. Gives timely warning to law enforcement or
                  3. Otherwise makes a proper effort to prevent the commission of the offense
              (iv) May be convicted even if perpetrator has not been convicted, prosecuted, or was convicted of a different offense or degree of offense or is immune to prosecution or has been acquitted
ii) If causing a particular result is an element of the offense, an accomplice in the conduct causing the result is an accomplice in the commission of the offense, if in causing the result, he acts with the kind of culpability necessary for the commission of the offense.

iii) A person legally incapable of committing the offense himself may be guilty if it committed by another person for which he is legally accountable unless such liability is inconsistent with the provision establishing his incapacity.

iv) Hindering Apprehension or Prosecution (equivalent to Accessory after the Fact but no longer need actual commission of felony)

1) If with purpose of hindering the apprehension, prosecution, conviction or punishment of another for crime
   a) Harbors or conceals the person
   b) Provides or aids in providing a weapon, transportation, disguise, or other means of avoiding apprehension or effecting escape
   c) Conceals or destroys evidence of the crime or tampers with a witness, informant, document, or other source of information, regardless of its admissibility in evidence
   d) Warns the person of impending discovery or apprehension, except where warning is an effort to bring the person into compliance with law
   e) Volunteers false information to a law enforcement officer

2) Misdemeanor unless know unless know of conduct which constitute 1st or 2nd degree felony then 3rd degree felony

v) Aiding Consummation of Crime

1) Offense if purposely safeguards proceeds from crime or convert to negotiable funds.

vi) Compounding

1) Misdemeanor for accepting benefit for failure to report offense or information related to offense. Unless amount did not exceed that which the actor believed due as restitution for harm caused by the offense.

XI. RESPONSIBILITY MODIFYING CIRCUMSTANCES

A. Ignorance or mistake of fact - “Ignorance of the law is no excuse.” The law is more nuanced than the maximum would suggest.

1) State v. Cude - Defendant failed to pay for car repairs. Returned at night and retrieved car with a duplicate key → Larceny requires an intent to steal, defense that defendant believed he had a right to take car
   a) Here the mistake is about the law of possessory rights. Because he had a mistake about a different law which is different from the one that he violated if the mistake about the different law then that is a mistake that is relevant to liability
      - Mistake about law of property rights, not law of larceny negated the required mental state for larceny

2) People v. Marrero - Defendant was a guard at federal prison in Ct. Believed gun dealer and other guards that he was entitled to carry a gun in NY City. Law said exception for peace officers defined to include “guards at state prisons or other penal facilities.” → Mistake of law only available where there is a mistake
in the law itself and not an error in interpretation or where specific intent is negated

- 3 possible readings of statute: any state prison guard, any prison guard within state, any prison guard.
  - Mistake of law—error of legislature in writing.
- Ambiguous statute—mistaken belief must be founded on official statement of law
  - Basis for mistaken belief not an official statement of law—gun dealer not state official charged with carrying out law, must follow law.
  - Still no defense if had gone to attorney or law professor under NY law
- Court trying to prevent exception from swallowing rule
- **This offense is mala prohibita and does not require any specific intent.**
  - you don’t’ want to encourage people to misinterpret the statute
  - The courts says when there is a mistake in the law itself, if he has acted in reliance on that law, then his mistake should be a defense because the law is wrong.

3) **People v. Weiss** - Officers believed they had lawful authority to detain Lindbergh baby case suspect, later charged with kidnapping → defense that officers believed in good faith that they were acting with lawful authority
  - Trying to prevent all mistaken arrests from being crimes—but broader implications than court acknowledges.
  - Turns on definition of intent in kidnapping—if intent is just to confine or imprison then guilty, if intent must be to confine or imprison without lawful authority then not guilty
  - The court says that is you don’t treat it as a circumstance then you expose the police to liability for kidnapping
  - The court isn’t saying that they aren’t guilty, but that the jury should have had the opportunity to apply the statute

4) **Lambert v. California** - Lambert was living in LA when convicted of forgery. Arrested on suspicion of another offense, she was charged with violating an LA statute that required that all convicted felons must register with the chief of police → Ignorance of the law is a defense where defendant committed the crime passively—due process requires notice of the offense.
  - This is a malum prohibitum offense which does not require intent (not a knowing violation)
  - The court says if they are going to uphold this ordinance they should construe it that when she was arrested the police should have given her the opportunity then and there to register
  - In this case unconstitutional because she is prosecuted for an offense for which she has no notice.
The court seems to be saying that in 1957 that was not very common for felons to have to register with the state. → If the avg person would have know then it is fair to expect knowledge

5) Long v. State - Defendant went to AR b/c of health, got AR divorce, came back to DE on same day divorce granted, few weeks later remarried. Defendant claims that his good faith belief that AR divorce decree was valid should be allowed b/c he consulted with an attorney → Where there was no better way to ascertain the law, it is a defense that the defendant consulted a reputable attorney, made a full disclosure to the attorney, a good faith effort to ascertain the law and had no reason to believe that the advice was ill-founded.
   o Still no excuse for being unaware of the law, or of believing one’s conduct not subject to the law.
   o Nothing inherently evil about act.
   o For purposes of this opinion the lawyer’s opinion becomes the law and for this reason most courts will not agree with the Long court

6) State v. Striggles - Relied on lower court decision, plus letters from city attorney and mayor that gum and mint machine was not a gambling device → Only reliance on the highest court’s decisions is an excuse. Court trying to prevent inconsistency
   o MPC would have allowed reliance on judicial opinion, not on letters.
   o If we were in a MPC jurisdiction could rely on 3(b) “If you have reasonable reliance on a judicial opinion or judgment” → under the MPC he has a defense
   o For Mr. Long the MPC bigamy statute would provide a defense see p. 847 MPC §230.11 (d) “the actor reasonably believes that he is legally eligible to remarry”
   o The MPC says the ex: if would be guilty of burglary, won’t be convicted of a different crime will be convicted of the same crime but will be convicted of a lower degree

B. MPC Mistake of Law or fact
   (1) Defense if negates purpose, knowledge, belief, recklessness or negligence required to establish material element of offense.
      (a) Or Law provides that ignorance is a defense
   (2) Where ignorance would be a defense, not a defense if defendant would have committed a crime had the situation been as he supposed.
      (a) Ignorance or mistake reduces the grade or degree of offense to one which he would have committed had the situation been as he supposed.
   (3) Belief that conduct does not constitute an offense is a defense
      (a) Statute or enactment is not known to defendant and has not been published or otherwise reasonably made available
      (b) Acts in reasonable reliance on official statement of law afterward determined to be invalid or erroneous
         (i) Statute
(ii) Judicial decision, opinion, or judgment  
(iii) Administrative order or grant of permission  
(iv) Official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense  
(c) Defendant must prove by preponderance of the evidence  
(4) Unless statute defining offense so provides, knowledge, recklessness, or negligence as to whether conduct constitutes offense is not required

C. Ignorance or Mistake of Fact (see also MPC above)  
1) general rule: defense if:  
   a) honestly entertained  
   b) based on reasonable grounds  
      1. exception: specific intent crimes—does not have to be reasonable  
      2. may require due care to discover if belief erroneous  
   c) conduct would have been lawful had the situation been as the actor thought  

2) People v. Vogel - Defendant believe that wife had gotten divorce and remarried; he then married another → where it is not clear that the legislature intended the crime to be strict liability and the mistaken belief would deprive him of the intent to commit bigamy, good faith belief that thought was free to remarry is a defense  
   o Some jurisdictions—bigamy is a strict liability  
   o He relies on her word (which is a mistake of FACT) and Mr. Long relied on the attorney (which was a mistake was of LAW)  

3) People v. Hernandez - D had reasonable belief in her being 18, MPC provides that statutory rape is a strict liability crime → Charged with statutory rape → mistaken belief not a defense—statutory rape is a strict liability offense  
   o Clear that legislature purposefully left out mistake of fact defense. Up to states to determine necessary mens rea for crime.  
   o MPC—Mistake of age when critical age is above 10, defense when proved by preponderance of the evidence that believed the child above the critical age  
      o The drafters feel as a matter of policy it is not fair to hold the person strictly liable  

4) People v. Crane - Defendant was attacked by Gahan who tried to choke him. Defended himself with numchucks until thought Gahan was dead. Burned body to destroy evidence → Mistake of fact that thought victim was already dead a defense when it negates the mental state necessary for the crime  
   o there is a CAUSATION problem because you don’t know whether the beating or the burning killed the victim  

MUST BE AN INDEPENDENT FELONY FOR FELONY MURDER

28
XII. INTOXICATION

A. General Rule - voluntary intoxication not a defense

B. Common Law Modifications
   - Extreme involuntary intoxication
   - Voluntary intoxication that negates specific intent or special state of mind required for crime
     - I.e. defense for larceny
     - Not a defense to rape, but a defense to attempted rape
   - Alcoholic-induced mental illness treated same as other types of insanity

C. Cases
   1) State v. Cooper - Defendant had been taking amphetamines for several days prior to high speed police chase, shooting officer, and kidnapping victim → Insanity not a defense where no preexisting mental illness—where insanity was the temporary result of voluntary drug use
      - M’Naghten rule—insanity where does not know the nature and quality of acts, right from wrong
      - the law doesn’t want to encourage people to take excessive amount of intoxicants
      - brought on solely by voluntary act of using drugs

   2) State v. Brown - Defendant publicly drunk, but did not intend to get drunk → Defense where crime is malum in se and mistake in fact about intoxicating properties of liquor
      - At least partial defense—if after mistake, knew what he was doing and still went into public place then liable.

   3) Burrows v. State - Hitchhiking with intoxicated driver, claims driver threatened to leave him if he did not also drink, became intoxicated, killed driver with gun, hid body, drove away with car and money → involuntary intoxication only an excuse where induced by fraud or duress and was to such an extent that he was no longer capable of understanding the criminal nature of his acts
      - Facts here which undermine finding of duress—even though choice not desirable, did have choice
      - Compulsion to drink, i.e. addict, still voluntary—want to hold responsible for anti-social conduct.
      - Fraud—drink laced, marijuana laced with LSD
      - duress is more compelling than coercion; if he threatened to shoot, then it would be
        a. this will be difficult for the jury because there are no witnesses

   4) Commonwealth v. Graves – has preconceived plan to rob, but on the day of the incident consumes a quart or more of wine and took LSD → TC committed reversible error by not allowing the effects of alcohol and drugs
Tarver didn’t recognize as a defense, it recognized it as something that would mitigate the crime to a lesser degree if it negates the intent element.

If you apply Tarver to the series of offense that Graves was charged with, then alcohol would play no role in negating the intent.

The problem with carver is that there were no degrees of robbery and no degrees of burglary, wouldn’t allow proof of intoxication.

The court insists that the court is not recognizing a new defense.

5) MPC

- Not a defense unless it negates an element of offense.
- If recklessness is element, unawareness of risk that would have been aware of if was sober is not a defense.
- Intoxication by itself is not a mental disease.
- Intoxication which is not self-induced or is pathological (grossly out of proportion with expected response—don’t know that susceptible—only a defense 1st time, once know that have reaction, no longer a defense) is an affirmative defense if the actor lacks substantial capacity to appreciate the acts wrongfulness or to conform conduct to law.
- Self-induced—know or should have known tendency to cause intoxication.
  - Under medical advice a defense.

XIII. Insanity Defense

A. Tests for Insanity

1) M’Naghten rule: “labouring under such defect of reason from disease of mind, as not to know the nature and quality of the ct he was doing; or, if he did know it, that he did not know he was doing what was wrong.”

- Insanity under the M’Naugten rule requires:
  - Mental defect or disease: that he suffered a mental disease causing defect in his reasoning powers; and
  - Result: that as a result, either (1) he did not understand the “nature and quality” of his act; or (2) he did know what he was doing was wrong.

2) Durham “product” test: “if his unlawful act was the product of mental disease or defect.”

- Difficult to define “product”.
- No state courts, and only one state legislature (MN) enacted the Durham test. The Durham court itself later more or less abandoned the test in favor of the MPC test.

3) MPC attempts to broaden the MN and irresistible impulse” tests

<<

M’Naughton rule ↔ Right / Wrong Rule
- did the D’s lack of capacity to determine right or wrong or the nature and quality of his act

MPC/ALI Rule
differs from MN in that it talks about whether the D has substantial capacity to appreciate the nature and quality of the acts

B. Cases

1) State v. Fetters - mental broke out and killed her aunt; conflicting expert testimony; enough for jury to find against her → M'Naughton: (1) Mental disease of Defect (2) Does not know [nature and quality or right vs. wrong];
   o Her grief indicates her understanding of what is right and wrong.

2) Durham v. United States - DC court of appeals makes a decision that MN doesn’t comport with modern scientific knowledge because it only takes into account cognitive conditions → establishes the product rule: if the criminal conduct in question is the product the mental disease or defect
   o This is a “but/for” test in a sense
   o In some jurisdictions MN has been combined with the “irresistible impulse test” which Durham felt also wasn’t a good test because only takes into account volition
   o “if his unlawful act was the product of mental disease or defect”

3) State v. White – controversy over jury instructions; court rejects the Durham test; the DC court applied this to “an emotional unstable personality” the White court then considers the test constructed in Drew, feels the M’Naughten test better serves to minimize crime in society, (MN requires complete incapacity), under MPC you have to be substantially incapacitated → lacks substantial capacity to appreciate your criminality; substantial capacity to conform conduct (might mean not very disciplined),

4) People v. Drew – bar fight, remanded because the test inadequate, CA adopted the MPC standard
   o In 1982, the voters voted out the substantial capacity test and voted in the right/wrong rule

5) United States v. Freeman – robbed a bank because obsessed with “Save the Children” campaign; argues he’s insane challenging constitutionality says he met burden of proof
   o deals with the Insanity Defense Reform Act adopted by congress
     ▪ Definition of insanity was restricted so that a valid defense only exists where the D was “unable to appreciate the nature and quality or the wrongfulness of his acts” at the time of the offense
     ▪ Shifted the burden of proof form the government to the D
     ▪ Prohibits experts for either the government or D from testifying as to the ultimate issue of the accused sanity
     ▪ Unable to appreciate (model penal code just requires substantial incapacity) wrongfulness/conduct or nature and quality of acts
     ▪ Requires that if you are acquitted you must automatically enter civil proceedings
Currently experts can:
- Say what type of disease (ex: Psychotic) and provide symptoms
- Congress wanted to leave the ultimate factual question to the jury
- Statute places the burden of proof on the D to prove insanity by **clear and convincing evidence**
  - Imposed high burden of proof so it will be scarcely used

<<Four standards for releasing:
1) Finding that the D is now sane
2) Finding that the D is not dangerous
3) Finding of sanity and lack of dangerousness
4) Require a finding of sanity or lack of dangerousness >>

6) **People v. Ramsey** - stabs his wife thinking he was exorcising a demon
   - this introduces the crime of “**guilty but mentally ill**”
     - D is guilty of offense
     - D was mentally ill at the time of commission of that offense
     - D was not legally insane at the time of the commission of that offense
   - M.C.L. defines insanity: “A person legally insane if, as a result of mental illness…that person lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.”

<< What happens when the jury comes back with guilty but mentally ill? B: Almost the same thing, D will be sentenced like any other defendant, judge will impose the same length of sentence, but the D will begin serving his time in a mental health facility. >>

**XIII. SELF DEFENSE**

**A. Force** – the D may not use more force than is reasonably necessary to protect himself

  1) **Non deadly force:** One is entitled to use non-deadly force to resist virtually any kind of unlawful force
  2) **Deadly force:** One may defend oneself with deadly force only if the attack threatens him with serious bodily harm

**B. Common Law** Modern Common law: Reasonable belief of the defender under the circumstances as they appear at the moment

  - But, must be aware of danger—no excuse that turned out to be necessary
  - If the actor is not at fault, he is privileged to use whatever force reasonably seems to the actor to be necessary to prevent being harmed by the wrongful act.

**C. Retreat Rule** (split among states)

  (a) Retreat rule—must take advantage of clearly safe retreat unless
      (i) Victim of attempted robbery
      (ii) Attacked by person lawfully trying to arrest
      (iii) In castle at time
  (b) No retreat rule-- innocent victim of murderous assault not required to retreat
(c) Little disagreement that one who started murderous assault or deadly combat must withdraw to regain privilege of self-defense.
(d) One who was aggressor of ordinary fight or nondeadly encounter—many require retreat unless in home if castle doctrine recognized
   (i) Some jurisdictions only mitigate in this situation and do not allow it to be complete excuse

D. MPC
   o Use of force justifiable when the actor believes that such is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person at the present time
     ▪ Limitations:
       • Not justifiable to resist arrest even if the arrest be unlawful
       • Not justified to resist force by occupier or possessor of property or by another person on his behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property—but does not apply
         ○ Actor is public officer or person assisting him or making a lawful arrest
         ○ Actor has been unlawfully dispossessed of the property and is making justified reentry or recaption
         ○ Actor believes force is necessary to protect himself against death or serious bodily harm
       o Use of deadly force is not justifiable unless actor believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping or sexual intercourse
         ▪ Not justifiable
           • Action with purpose of causing death or serious bodily harm provoked use of force in same encounter
           • Actor knows he can avoid the necessity of such force by retreating with complete safety or by surrendering possession of a thing to a person asserting a claim of right or by complying with a demand that he abstain from any action which he has no duty to take
             ○ Exceptions:
               ▪ Not obliged to retreat from dwelling or place of work, unless was initial aggressor at work or assailed by another employee
               ▪ Public officer justified in using force or person assisting or making an arrest or avoiding escape—not obliged to desist from efforts to perform duties
       o Person may estimate the necessity of the force under the circumstances as he believes them to be without retreating, surrendering possession, or doing any act which he has no legal duty to do or abstaining from any legal action—unless otherwise provided.
       o Can confine as protection as long as take reasonable measures to terminate as soon as can
MPC is wholly subjective test—belief not qualified by need for reasonableness
- Imperfect self-defense as a mitigating factor does not arise under MPC

E. Cases

1) *State v. Realina* - H had previously threatened to kill R. R drove to Police station. H again threatened to kill R and grabbed R by the shirt. R grabbed a cane knife and chased H into the Police Station → Self-Defense. Deadly force depends not only on the weapon but also on the intent—an intent to create an apprehension of deadly force is not deadly force. If Realina believed he was about to be kidnapped, he was justified in using deadly force
   - In Hawaii, justification not an affirmative defense—prosecution did not meet burden to negate his claims of self-defense.
   - Turns on Hawaii definition of kidnapping—restrains with intent to terrorize enough.
   - Special facts that Realina drove to police station, chased him toward Police Station, negate length of chase/threat over argument.
     - Allow for impact of adrenaline—can’t just turn off and on

2) *People v. La Voie* - Defendant driving home at 12:30, bumped from behind purposefully. Defendant took gun out of car—4 guys in other car advanced on him and made threats. Shot advancing man → Justified in using deadly force because he reasonably believed he was in danger of being killed or receiving great bodily harm—number of assailants, time/place relevant
   - What matters is reasonable belief at time, even if later turn out to be wrong or mistaken
   - Hypo: What if he was an expert marksman?
     - detached reflection cannot be expected in the presence of a knife

3) *People v. Goetz* - Goetz was the victim of previous muggings and had deterred other muggers by displaying his gun. He was on the Subway when 4 youths boarded. 1 or 2 youths approached him and asked for 5 dollars. He shot them in systematic fashion → The reasonable belief of death or serious bodily injury required to use deadly force contains an objective component of what a reasonable person in the same or similar situation with similar experiences would believe
   - For self defense you must:
     - Have reasonable grounds
     - Actual belief
   - MPC is entirely subjective, did the D actually believe, provision goes on to say that if he has an actual believe but he is reckless or negligent in forming that belief he may be guilty of a crime for which reckless or negligent in forming that state
   - Even if he misreads the situation, if the jury agrees it was reasonable for him to have the misconception, then he is not liable
   - Rejects wholly subjective test. Instead, ask two Q:

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• Did defendant believe that the use of force was necessary?
• If yes, would a reasonable person in his circumstances believe that the deadly force was necessary?
  ▪ Note case: Battered’s woman’s syndrome—must reasonably believe in imminent danger of death or great bodily injury---history of abuse not enough.

4) People v. Ligouri - The decedent pointed gun at defendant and his friend. Ligouri then shot and killed him → There is no need to retreat if a felonious assault is being perpetrated and deadly force is necessary to resist the assault
  ▪ Other note cases from different jurisdictions:
    ▪ If know can retreat with safety, must do so
  ▪ Even if danger to life to use all reasonable means apparent to a reasonable person to avoid the use of deadly force
  ▪ NY statute deals with when use of deadly force is justifiable
    ▪ Justifiable
      ▪ Reasonable fear of imminent harm
      ▪ Resisting felony

5) Brown v. United States - Brown and Hermes has a long running feud where Hermes had assaulted the defendant and threatened him with death. He came up and threatened Brown at work with a knife. Brown retrieved his gun and shot him 4 times. → No duty to retreat—cool reflection in the presence of an assault can not be expected
  ▪ Court says failure to retreat is a circumstance to be considered but not categorical proof of guilt.
  ▪ Type of weapon may make difference—easier to retreat from hand to hand fight, knife, harder to retreat from gun.
  ▪ May not have to retreat, but still not entitled to pursue

6) Cooper v. United States - Two brothers feuding. One returned home from work with a gun. Argument continued. Other brother threw a radio at him. Shot brother → Castle doctrine does not apply to a fight at home between co-occupants. Co-occupants have an obligation to treat each other with respect and try to defuse the situation
  ▪ Rules:
    ▪ American Rule: No duty to retreat
    ▪ Common law rule: Retreat to wall
    ▪ Court says: No duty to retreat, but jury can consider whether if defendant could have retreated safely in determining if he was in imminent danger.
  ▪ Castle Doctrine Exception to Rule: No duty to retreat in own home

7) State v. Broadhurst - Defendant hired Williams to kill “husband”. Attacked Broadhurst with wrench, striking three blows to the skull before he decided not to go through with it. Claims forced to shoot Broadhurst when he came at him → No
self-defense. Only way an aggressor can claim self-defense is if it can be shown that the adversary knew the aggressor had withdrawn from the conflict and that a reasonable man would have known that the assault had ended
  o Impossible for Broadhurst to communicate—if render victim senseless tough luck.
  o Conspiracy to murder—if initial attack would have proven fatal, can still be liable for murder, even if had been self-defense, at very least liable for aggravated assault in Pinkerton jurisdiction.
  o assailant lost his right of self defense because he was in the act of committing a crime against the victim

XIV. DEFENSE OF OTHERS
A. Right to defend others in general: A person may use force to defend another in roughly the same circumstances in which he would be justified in using force in his own defense

B. Relation between defendant and aided person
  1) Common law: limited the right to come to the assistance of others; may courts refused to permit a person to assist anyone except his relatives
  2) Modern Rule: most courts and statutes permit one to use force to defend a friend, or even a total stranger from threat of harm from another.

C. Requirements for defense:
  1) Danger to other
  2) Degree of force (no greater than necessary)
  3) Belief in another person’s right to sue force

D. Retreat – Most courts would probably hold that the D may not use deadly force if he has reason to believe that the person being aided could retreat with safety.
  o MPC requires that the D at least “try to cause” the person aided to retreat if retreat with safety is possible.

E. Mistake as to who is aggressor
  1) Traditional view: (aka “alter ego rule”) D “stands in the shoes” of the person he aids. If the person aided would no have had the right to sue that degree of force in his own defense, the D’s claim fails
  2) Modern view: As long as the D’s belief that unlawful force is being used against the person to be aided is reasonable, the D may assert a claim of defense of others even if his evaluation turns out to have been wrong

F. MPC-- Justifiable when
  o Actor would be justified in using force to protect himself against the injury he believes to be threatened against person seeking to protect and
  o Under the circumstances as the actor believes them to be the person whom he seeks to protect would be justified in using such protective force and
o The actors believes that his intervention is necessary to protect the other

o But:
  o When right of self-defense would oblige retreat or complying with demand, not obliged to do so unless can thereby secure complete safety of other person
  o If person would be obliged under self-defense to retreat or comply with demand actor is obliged to try to cause him to do so if actor knows he can obtain complete safety that way
  o Neither actor nor person protecting obliged to retreat from dwelling or place of work

o Very subjective test

o Regardless of reasonableness if belief is formed recklessly or negligently may be guilty of lesser offense that requires recklessness or negligence as a mental state

<< the MPC deprives to the right to use it during false arrest.
- MPC §3.05 Use of Force for the Protection of Other Persons
  o Does the actor believe that the use of this degree is force is necessary for the protection of this third person?
  o Subsection 2 looks at retreat rule says that if third party would have had duty to retreat then the intervener must do what he can to persuade the third party to retreat

>>

G. Cases

1) State v. Saunders - Saunders brothers in a series of bar fights with Kinniccannons. Defendant’s brother was attacked and Kinnicannon threatened to kill him. Defendant grabbed witness’s gun, fired warning shot, then shot at decedent’s leg → Privileged to exercise right of self-defense on behalf of another—steps into shoes of the victim—permitted to do as much as victim would have been
  o Depends on if victim would have right to use deadly force.
  o “Alter ego rule”—intervene at own peril
  o Must have reasonable belief that deadly force necessary

2) State v. Bernardy- Defendant’s friend in fight. Evidence that other started fight. Kicked other in head several times → Privilege to defend another where one reasonably believes him to be the innocent party and in danger, justified in using force necessary to protect him even if other party was in fact the aggressor
  o “If properly requested by the defense, a “defense of others” instruction must be given whenever there is evidence from which the jury could conclude that, under the circumstances, the actor’s apprehension of danger and use of force were reasonable.”

3) Alexander v. State - Alexander saw guards attack prisoner. Turned out only saw guard’s overreaction not prisoner’s initial provoking behavior → Good
Samaritan’s fate should not be linked to the culpability of the victim but instead should be tied to the situation as it reasonably seemed to the defendant
  - Defense triggered by witnessing a violent assault.
  - While encourages more intervention than Alter Ego rule, also presents more of a danger to undercover officers carrying out duty.
  - Most jurisdictions follow Alexander rule as long as apparent necessity is present and belief is reasonable.
  - The Court wants to encourage people to be good Samaritans

XV. DEFENSE OF HABITATION
  - Higher than defense of property
  - common law: could use deadly force to prevent burglary or arson
    - use non-deadly force to prevent any unlawful harm or injury to abode or to prevent unlawful intrusion.
    - Law has evolved over time—early common law, did not have to guess about intent as long as preventing imminent and unlawful entry
  - More modern times—need a reasonable belief that force necessary to prevent imminent and unlawful entry, must reasonably that person intends to commit a felony or injury owner or occupant
    - Narrowest: also have to believe that the intruder intends to commit a forcible felony or kill or seriously injury owner or occupant
  - All typically focused on entry—if making judgment before entry, now in age of guns, likely to allow defense at very early point.
    - Once get inside, no longer relying on defense of habitation in most jurisdictions—have to look to other defenses.

1) State v. Mitcheson - Herras had threatened to steal defendant’s mag wheels, threatened to kill him, at Sister’s home, heard commotion, got gun to protect house, accidentally discharged → Home is defined in a broad sense and may be substitute home where a guest, motel room etc
  - Enough that occupying or using even temporarily
  - If shot was accidental, without defense, then would be criminally negligent, but if risk was justified then was not criminally negligent.
  - Utah Statute
    Deadly force
    1) Violent and tumultuous entry
    2) reasonable belief
    3) purpose of entry – assault – personal violence
        → a person, dwelling, or being therein
 2) People v. McNeese - Defendant and Vivian had an oral lease on condition that husband would not enter apartment. Vivian returned with husband and friend to get things. Defendant killed husband and friend—tried to kill Vivian → “Make my day statute” does not apply unless intruder makes an entry in knowing violation of criminal law. Does not apply to unlawful remaining
  - Supreme court has no problem in concluding that John was uninvited but the court says it has to more than uninvited it must be unlawful
Statute looks much broader than court’s narrow reading—absolute right to safety in home.
Homeowner must take intruder as they find him, mistake is no defense—has to read mind of intruder.
   But, not deprived of other available defenses like self-defense.
<<MPC says you can use deadly force to protection the habilitation only where the intruder is trying to dispossess you and to your you knowledge is not acting under a claim of right >>

XV. DEFENSE OF PROPERTY

A. Right to Defend Property Generally: One has a limited right to use force to defend one’s property against a wrongful taking
   1. Only non-deadly force
   2. Limited to reasonable degree
   3. Subsequent use of deadly force permissible if wrongdoer responds w/ attack

B. Cases
   1) Commonwealth v. Donahue - Defendant believed Mitchelman had defrauded him out of money by accepting money for clothing then demanding more → Force might be excessive, but should instruct that as long as force not excessive defendant may defend or regain his momentarily interrupted possession by the use of reasonable force without wounding or using a deadly weapon
      Court says you should allow the jury to consider that the D was privileged to use some degree of force to recapture the property which he believed had been taken from him
      One is not privileged to use deadly force
      If he had shot the victim, it would clearly be a case of deadly force
   2) Ceballos → Can not use mechanical deadly force to defend property

C. MPC
   Actor believes use of force necessary
   To proven or terminate unlawful entry or trespass upon law or the unlawful trespass or carrying away of property which is or believed to be in his possession or the possession of someone acting for
   To effect reentry upon land or retake property provided that person believes he or another to be unlawfully dispossessed and entitled to repossession and
      Force is used immediately or on fresh pursuit of dispossession
      Believes other has no claim of right to possession of property—if land would be hardship to postpone entry or reentry until court order obtained
   Limitations
      Only justifiable if first ask to desist interference unless
      Believes request would be useless
      Would be dangerous to self or other to make request
      Substantial harm done before request could be made
Use of force to prevent or terminate a trespass not justifiable if expulsion will expose him to substantial danger or serious bodily harm

Deadly force not justifiable unless

- Person is attempting to dispose of dwelling other than under claim of right
- Attempting to commit felonious threat or property destruction
  - And has employed or threatened deadly force
  - Or Use of force other than deadly would expose actor or another to substantial danger or bodily harm

Can not use device with known risk of serious bodily injury or death

XVII. DURESS

A. Nature of duress: D can be said to have committed a crime under duress if he performed it because of a threat of, force by a third person sufficiently strong that the D’s will be overborne (mind not body)

B. Elements of defense

- Threat
- Fear
- Imminent Danger
- Bodily harm

<<Duress

- Imminent threat of serious harm
- You will be disqualified if you have placed yourself in a position where
- Reasonable fear
- There has to be no ready escape route for you to take to avoid the crime >>

C. Cases

1) State v. Hunter - hitchhiker picked up and in car while one of parties shot a police officer, they then proceeded to take hostages and rob; D tried to shoot the attacker but accidentally shot police officer (after attacker had shot the police officer) → This court says we will draw a distinction between intentional killing and felony murder.

2) United States v. Contento-Pachon - offered job as private driver but really forced to swallow balloons of cocaine
- the threat must be immediate
  - it is not that far in the future because wants him to do it today or tomorrow and the court says you must look at this in context and realize that the person making the threat is a drug dealer and there is lots of money at stake
  - no problem finding the immediacy requirement was satisfied
- has a duty to escape
- Doesn’t call the police because they are corrupt
  - Even though he may have felt pressured, he immediately agreed to x-ray of stomach
  - Court says that is a plausible theory that he should be able to raise on retrial
3) **United States v. Castro Gomez** - felt threatened and went along with drug scheme and coast guard caught them, claims that in both instances he didn’t want to do it and felt threatened and was accompanied by armed drug smuggler and knew where he lived → The court felt that the problem with what he did was in the second meeting with drug smugglers, said no reasonable person would have gotten this call and not forseen that they were going to ask him to get involved again, since he placed himself in the second mtg the defense of duress is not available

<<*Is there a difference between intent and desire? You could argue that he didn’t’ have the desire, but he has the intent to carry out the unlawful action. >>

4) **People v. Carradine** - scared for her life and the life of her children because of gangs if she chooses to testify → the court says there is a more compelling interest in seeing murderers punished than the possibility of her being in danger

**D. MPC**
- a person of reasonable firmness in his situation would have been unable to resist the threats
- duress unavailable if actor recklessly placed himself in a situation where it was probable that he was aware of risk
- can be held responsible for a crime for which negligence is the requisite mental state

**XVIII. THEFT CRIMES**
- What were formerly larceny and embezzlement are not considered “theft by unlawful taking or disposition.”
- What were formerly false pretenses and that form of larceny called “larceny by trick” are not “theft by deception.”
- Receipt of stolen property is treated by itself
  **A. Cases**
  1) **United States v. Farraj** – stole electronic information; does it qualify → Court says that it is a commercial and professional relationship and this file document was created for a commercial purpose
- Federal statute that makes it a crime to transport, transmit, or transfer in interstate commerce any goods, wares, or merchandise
- Riggs said “just because the D stored the information on a computer, rather than printing it on paper, his actions were not removed from the purview of the statute.” P. 532 (5)
Not just downloading any computer file, but downloading a computer file that has proprietary information

Comes in house naked with no intention to steal.
- could say that he stole water, soup, shampoo (which are all property)
- At common law as long as the item in question had intrinsic value

Defining Property
- Until MPC was adopted there was a lengthy list of things that quailed as property for purposes of the theft state.
- MPC says property means anything of value and it can be movable or immovable
- Pre-MPC they had to revisit the statute
- MPC is very simple to apply
- Something can have value even though you didn’t pay for it

2) United States v. Mafnas - employed by armored car, takes money from sealed bag, convicted three counts of stealing money from the banks; Mafnas argues that he was a bailee → If he has custody, control then it would be larceny, but if an agent or bailee then it would be embezzlement

3) Binnie v. State - Appellate court said it is jury’s job to determine which facts Claims he found a “dirty looking hat” after he asked the clerk if they had that type of hat for sale, then the clerk said I guess it’s yours, and the TC denies the right to raise this defense → As long as there is some evidence that he has a claim of right then the court should allow the instruction
  - If he did have an honest belief, then it can undercut the government’s theory that he had an intent to steal (if you have intent to steal you have to want to deprive someone else of the property and he did not have that desire)

Larceny at common law defined as: The trespassory taking and carrying away of personal property of another with intent to steal.

4) State v. Delmarter – crouched behind counter questionably trying to steal from camouflaged safe → record fails to rise to the level required for a rational trier of fact to find the elements of attempted first degree theft beyond a reasonable doubt

D doesn’t have to know what the value of the goods are. Whatever its value is will determine the grade of the offense.

5) State v. Bautista - bought car with a bad check, court said he didn’t have an intent to keep in permanently since he returned it right away and had done this before and returned despite the fact that the bank account was closed
  - If you can come up with a reasonable estimate for what a Toyota that has been driven for week ; then you would have to show that he intended to make that deprecation in the price.
<<Definition of Theft
- Intent to deprive
  - permanently
  - or by appropriating a substantial portion of the property’s economic value

6) State v. Miller - inmate promised marriage and sexual bliss in exchange for money
- Looking specifically at the Iowa statute:
  - If you create or confirm that you will fulfill these promises you have made.
  - Failure to correct a false belief
  - Promising a performance she has no intention of performing or is not capable of performing.
- MPC includes an exemption regarding deceptions which have no pecuniary value
  - Concerned with seller’s puffing – statements that may go with creating a better relationship with a particular customers but do not really go to the heart of the value. Don’t relate to whether or not he buyer is going to receive the value that has been bargained for.

7) White Case - D used atm card at safeway to buy $1000s of merchandise; glitch which made safeway take a risk by later getting authorization → Court said in a case like this there is reliance because but/ for reliance

XIX. THEFT DEFENSES
A. Cases
1) State v. McCoy - put his hands on the hood of the stolen car in preparation to get in, at that point police arrested him → Court says possession can be joint, which means we would be asking if Mr. McCoy had constructive possession
  - NJ statute requires:
    - Receiving
    - Knowledge
  - Criteria
    (1) Presence in car
    (2) Knew stolen
    (3) knew driver
    (4) intent – benefit

2) In the Matter of T.J.E - 11 who went into store with her aunt and ate it → court said ridiculous, matter of if she entered store because staying there and developing intent not enough
  - Anyone who stays on public premises, if you construe statute literally every crime committed indoors would be burglary