Criminal Law Outline

I. General Elements of a crime:
   a. The basic premises of criminal law:
      1. requirement of an act (see below)
      2. some bad state of mind
      3. physical and mental conduct must occur (△ mental state must concur with his act or omission)
      4. must be harmful conduct
      5. If a crime requires some particular result of the conduct, the conduct must be the legal/proximate cause of the result
      6. △ can only be subjected to legally prescribed punishment
      7. Conduct is not criminal unless forbidden by law (must have fair notice)

Example: State v. Stanko—pulled over for 85mph/only statute
Said reasonable under circumstances/statute was VOID FOR VAGUENESS because fails to give person of ordinary intelligence fair notice that his conduct forbidden.
   Purpose: man is free to steer btn lawful and unlawful conduct. If vague, it traps the innocent, no fair warning, arbitrary and discriminatory enforcement so must give explicit standards to those who apply them, must give fair notice

Example: Palmer v. City of Euclid—city ordinance, unlawful to be abroad late at night/he was arrested because gave no explanation of what he was doing in parking lot, etc. SC said not criminally responsible for conduct he couldn’t reasonable be understood.
Nothing △ did appeared criminal. No one should be held for conduct he couldn’t expect to be visible/lawful purpose. Crime must be clearly defined.

IMPUTABILITY

I. Requirement of an Act:
   a. Must have some affirmative act (actus rea) that causes social harm.
      -thoughts alone are not enough
   b. Many definitions of an act
      1. Model Penal Code—act is a bodily movement (this excludes a failure to act
2. Also classified as internal/external or positive/negative
   c. Mere thoughts are different than speech
      1. a crime can be committed by spoken words but not thoughts
      d. The action must be the specific one that the definition of the crime requires.
   e. Act must be voluntary-external manifestation of the will
      1. example: State v. Taft- intoxicated Δ’s brake was accidentally released and hit another car = not guilty because there was no act of driving voluntarily. Δ not driving because he didn’t have control. Criminal Liability can only be voluntary act.
      2. Example: Δ falls asleep while driving and hits someone, he is liable because it does not mean voluntary only at that particular moment.
      3. Example: People v. Decina- Δ knew subject to epileptic attacks, drove car anyway, had attack, killed four. Liable b/c involuntary act will be considered voluntary if actor had prior knowledge the involuntary act might occur in a manner resulting in harm. Δ consciously, knowingly disregarded consequences. Dissent- unconstitutional b/c it punished the condition and Δ would be guilty as soon as he got in the car.
      4. Example: State v. Kimbrell- wife “watched” husband’s cocaine, charged with trafficking, reversed b/c of wrong instructions. Mere presence is not enough, because you must have voluntary act (or failure) but intent to control illicit drugs can be inferred at times from Δ knowledge of presence (constructive or actual possession).

2. Model Penal Code-an act is not a reflex or convulsion, unconscious, sleep, hypnosis, or not the product or effort of the actor

II. Negative Acts (omissions)-liable only if: 1. Duty to act  2. Knowledge of duty and facts giving rise to duty  3. Possibility to perform the act
   1. Duty to Act
      a. based on relationships
         - parents/children, husbands/wives, captain/crew, Er/Ee
         - example: Walker v. Superior Court-Christian Science parents failed to give medical attention to sick child and were held liable because gov’t interest in protecting children is greater than religious interest of parents
      b. based on statute
         - example: driver in auto accident must stop and render aid to anyone injured
c. based on contract  
- example: lifeguard, railroad gateman, nurse to patient  
- example: Jones v. U.S. - and Green had a contract with first child, but wasn’t clear about second (didn’t have knowledge of facts giving rise to duty)  
- example: Davis v. Commonwealth- lived with her mother, got her food stamps and SS check, Mother died from failure to care for her. convicted of v/m. Court found duty under implied contract of mother to provide financial aid in return for her care. (could also be under assumption of care possibly)  

d. voluntary assumption  
- example: picking someone unconscious off railroad track  

e. creation of the peril, intentionally or negligently  
- example: accidentally sets fire to building and fails to rescue trapped victim  
- example: Van Buskirk- ran over boyfriend and left him there. A party who negligently places another in a position of peril has duty to aid if the injury is reasonably foreseeable.

f. Duty to control others conduct  
- example: parent/child, Er/Ee (limo driver)  
- example: Moreland v. State- chauffer was driving recklessly, convicted because he had control over the driver when driver was in his presence

2. Knowledge of Legal Duty and Facts Giving Rise to Duty

a. examples:
- example: if father, who has duty to save drowning child, doesn’t know his kid is drowning, then he may not be liable.  
- example: if parent has duty to get medical help for ill child but doesn’t know of child’s condition  
- example: hit and run statute, if didn’t know an accident occurred  
- example: drunk grandmother whose grandkid suffocated was still responsible because she put herself into drunken stupor because duty to take care to know the facts

b. ignorance of law is no excuse
exception: if statute only covers willful or knowing failure
(example: Internal Revenue Code violations)

3. Possibility of Performing the Act
a. examples:
   - father who can't swim
   - must be impossible (poverty mother who doesn’t go get welfare and so child starves is still liable)
b. example: Commonwealth v. Texiara- ∆ neglected to pay child support, showed that he could not afford it. Was held not liable because if no ability, not willful (no ability to pay)

RESPONSIBILITY

I. Mental State-must have actus rea (physical) and mens rea (culpable mind)
   Mens rea-guilty mind/mind at fault.
   1. Two meanings of means rea:
      a. broad approach: general immorality of motive or evil will, guilt not dependent upon specific mental state such as knowingly, general malevolence is enough.
      b. narrow approach-the particular mental state provided for in the definition of the offense
   2. No factor sufficient for exculpation vs. must be intent to do deed that is the actus reas. Need to look at ∆ mental state and the offense itself.
   3. types of fault required for a crime: objective (not a matter of the mind) subjective (actual mind) and none at all.
   4. Model Penal Code-four types of crimes that require mens rea:
      a. requiring intention or purpose to do the act or cause result
      b. requiring knowledge of nature of act
      c. requiring recklessness in doing act or causing the result (subjective fault in not knowing risk)
      d. negligence
   5. Different crimes require different mens rea as to each element necessary for actus rea of the crime.

II. Criminal Negligence and Recklessness
   1. Criminal Negligence-unaware of risk but should have been aware, substantial and unjustifiable risk (not just everyday risk), gross incompetence.
Any conduct which falls below standard established by law for the protection of others against an unreasonable risk of harm.

a. reasonableness test—magnitude of risk vs. utility of conduct.
b. magnitude factors: probability of harm, nature and extent of harm.
c. conduct falls below line of social acceptability if realizable and unreasonable risk of harm.
d. Unreasonable risk—must be greater than everyday risks (weigh magnitude of harm against the actors utility of the activity)

   example: racing quickly to take injured to hospital
   example: if 1000 pistols on table, only one loaded, picks up and randomly fires, though low risk, utility is lacking therefore unreasonable.

-also Δ must know of the facts (giving gun to unknown madman)
-nature/extent of harm also important

e. objective standard—actor ought to have been aware of his conduct.
f. Criminal v. Civil Negligence:

   criminal often defined as gross, culpable, or wicked

g. Example: Gian-Cursio v. State—chiropracter treated tuberculosis
   By special diet, patient diet. Criminal negligence because a good faith
   But unreasonable intentions are no excuse for crim. Neg.

Example: State v. Howard—Δ brought gun to friends house who was
   Fighting, argument, Δ had gun for them to leave, man lunged
   At him, he shot, but hit another man who stepped in between.
Criminal Negligence requires showing he was unaware of sub. risk
Specific intent required. State of mind as to intended v is controlling.

2. Criminal Recklessness—aware of risk that was substantial and unjustifiable, gross deviation from reasonable person standard. (more culpable than criminal negligence)

a. aware that his conduct might cause the result (even if not substantially certain)
b. difference from negligence: awareness of the risk and is a subjective standard.
c. Example: State v. Peterson—drag race, stops before races is over,
   Court says recklessness was not terminated. Recklessness is based on awareness of the risk. He set the force in motion, the risk was substantial and unjustifiable, gross deviation from reasonable person standard of care. Can’t turn of liability like a light switch.
d. Howard-recklessness-disregarded risk must be such a nature and degree that it is a gross deviation from care of ordinary person under circumstances viewed from actor’s standpoint.

III. Intent and Knowledge

a. Definition of intent- traditionally used the same as knowledge.
   1. Common Law-desire to cause the social harm or acts with knowledge that the social harm is virtually certain. (SUBJ.)
   2. Modern approach, however, is to separately define mental states of knowledge and intent. Purpose or design (purpose-MPC).

b. a crime may be defined:
   1. in a way that $\Delta$ must intentionally engage in specific conduct OR
   2. the traditional view that a crime may be defined in terms of an intention to produce a specific result
      - intends result if consciously devises result or acts knowing the result is virtually certain.

c. MPC-purposely acts if it is conscious object to cause such a result, engage in conduct of that nature or aware of existence of such circumstances or believes or hopes they exist
   - knowingly acts if he is aware that it is practically certain that his conduct will cause such a result or aware his conduct is of that nature or aware that such circumstances exist.
   Exception to knowing-willfull blindness (Jewell Case, see Below)
   - MPC-knowledge assumed if aware of high probability of fact’s existence

d. General Intent-
   1. Historically-any offense for which the only mens rea required was blameworthy mind
   2. Today- most statutes include a mens rea term, which blurs the line. Some courts say that with general intent, actor can be convicted without proof of conscious effort (knowingly, reckless, negligently) or they say it is with statutes w/ no specific intent.

e. Specific Intent
   1. definition-
      a. historically-designation of a special mental element that is required above and beyond any mental state with respect to actus rea of the crime.
b. today-def. of the crime includes intent or purpose to do some act or achieve some consequence beyond the actus rea or provides that the actor must be aware of statutory offender circumstance.

c. MPC-does not use general/specific intent

2. requires actual intention as distinguished from general criminal intent, which is a whole field of blameworthiness (additional intent required for particular offense)

3. When it is required:
   a. acting from general malevolence is not enough to attempt to convict for certain crime
   b. act with intent to commit a crime cannot be attempt to commit another crime though it might result in another crime.

Examples: larceny requires not only the mental state to take away property of another but also an intent to steal property. Burglary requires breaking and entering but also with an intent to commit a felony

Example: Thacker v. Commonwealth- 2 drunk men, said going to shoot light out, Δ fired shots at tent/narrowly missed/convicted of attempted murder. Not guilty because Criminal attempt requires the specific intent to commit the particular crime (can’t have attempt if merely reckless with no intent to kill)

f. Knowledge (scienter) –some have two prong test (actual and reasonable) and some only require actual, subjective.

1. Examples:
   State v. Beale-antique owner sold Δ’s goods, convicted of knowingly transferring stolen property. Court says knowing is subjective standard because the whole purpose of criminal system is to punish intentional wrongdoing. State must prove Δ actually believed the goods were stolen.
   U.S. v. Jewell- Δ was paid to drive car into U.S., factors such As being paid, etc. pointed towards drugs, was suspicious person, didn’t’ look in trunk, etc.. Court held liable because knowingly does not require positive knowledge.
Knowingly-voluntary and intentionally and not by mistake or accident. Willfull blindness is no defense
   a. Purpose of scienter is that no one should be committed for innocent reasons, and here no innocence because he deliberately shuts eyes.

Willful Blindness Doctrine (see above)
Deliberate Ignorance and positive knowledge are equally culpable
   b. Dissent-problem with willfull blindness is he wouldn’t know unless he saw

2. Model Penal Code—if awareness of high probability of the facts existence then you have subjective belief/guilty mind

IV. Other States of Mind
   a. Malice-intentionally or recklessly causes harm prohibited by offense.
       Need actual knowledge of risk. Wish to vex, annoy, or injure
       Another or intent to do wrongful act regardless of harm
       State v. Nastoff- Δ had saw with modifications to it. Fire started. Statute required malice starting of a fire. Intent to engage in wrongful conduct other than intent to injure or destroy property is not considered malicious injury to property. Malicious is not just negligence.

   b. Willfulness-must be studied within its context and in light of offense or statute. Generally means:
      1. with a bad purpose, 2. without justifiable excuse, or 3. stubbornly. Also employed 4. to characterize something done without ground for believing it is lawful or 5. conduct marked by careless disregard for whether Δ has right to do it.

       Fields v. U.S. Failure to produce subpoenaed records, statute required that it be willfull. Willful in this statute-no more than a person charged with a duty knows what he is doing/deliberate and intentional. Willful rarely means with a bad purpose.
      -can act willfully even if no bad intent, motive or purpose

       Cheek v. U.S.-Failure to file income tax returns because he thought He was exempt. (had seen trials, consulted with lawyer, etc.) To find Willfulness, it has to be voluntary and intentional violation of a known legal duty because even Though ignorance of the law is no excuse, there are very complex laws (Δ here, though, prob. had no subj. belief because of trials and lawyer showed otherwise). Good faith belief in Constitutionality would not be a defense.
V. Strict Liability (Liability without fault)-
1. only okay for malum prohibitum crimes
2. usually carries a light penalty and often created to help prosecution if situation of intent, knowledge, etc. is hard to prove.
3. why? legislature may think it is important to stamp out that type of crime at all costs even convicting the innocent or may expect many prosecutions and want to relive officials the task of preparing evidence of fault
4. factors to consider when deciding if legislature, in failing to give specific mental state, meant strict liability: legislative history of statute or title or context, some other statute that gives guidance to how court should determine strict liability, and severity of the punishment, seriousness of harm to public from forbidden conduct, oppy to get true facts, difficulty prosecuting if mental state was required, number of prosecutions expected
5. Blackmun’s factors to overcome presumption of not strict liability:
   a. statutory and not common law
   b. legislative policy would be undermined by mens rea req.
   c. standard impose is reasonable and adherence is properly expected of a person
   d. penalty is small
   e. conviction rarely damages reputation of violator
6. Most commonly imposed on food and drug control, traffic regulations, pollution, and navigation, alcohol, explosives, etc.
7. Examples:
   a. Commonwealth v. Olshefski-Δ was truck driver, loaded coal, had it weighed, passed standards, next day went to get weighed elsewhere, pulled over, ticketed. Δ guilty even if he believed it was legal. (malum prohibita) only physical, guilty irrespective of belief. Strict Liability
   b. Example: Speed limit
8. Purpose: practical, administrative, convenience or necessity and usually only a nominal penalty
9. MPC-strict liability only for offenses that are violations (can’t result in prison, only in fines)

VI. Unlawful Conduct-state of mind of one who is committing unlawful conduct may be substituted for criminal negligence in establishing the mens rea required for guilt
in certain crimes (manslaughter and battery but not specific intent or mental state crimes.

a. Examples:

State v. Horton- ∆ hunting without permit. Homicide occurs. Prosecution argues he was in an unlawful act and therefore homicide. Court says unlawful act of trespassing is not enough for unintentional homicide (misdemeanor vs. felony)
Must be malum in se, not malum prohibita to be guilty of unlawful homicide or negligence (when unintended harm results)
-if no negligence and not in and of itself dangerous then not liable for homicide

U.S. v. Rybicki- 2 internal revenue agents taking ∆ car. He didn’t know they were performing duty as officials of U.S. Charged with Obstruction of the administration of IRS laws. SC said not guilty because must be shown that ∆ knew they were officers

Gladden v. State- ∆ shooting at friend, hit two unintended victims. Intent follows the bullet and as long as you have purpose and malice, then you are liable. If ∆ has mens rea for crime against one victim and injures another he is still guilty.

Cuellar v. State- ∆ hits car (intoxicated) and lady has to have emergency c-section, baby born, dies 2 days later. Is baby individual? Court says yes b/c statute should be interpreted to promote justice and effective objectives
Court also looks to common law doctrine of born alive doctrine- if a child is born alive and later dies from ∆ misconduct, ∆ is liable. If not born alive, then not liable because evidentiary reasons (if fetus is not alive, no way of knowing if they ever would have been so you don’t know the true cause of death)

b. Transferred Intent

1. law transfers the actors state of mind regarding intended victim to unintended one
2. justified on ground of necessity (bad aim should not be a defense) and proportionality (ensures prosecution and punishment according to culpability)
3. NO Transferred intent from one type of social harm to another.
4. Intent follows the bullet
5. Examples: If ∆ kills man while intending:
a. to shoot wild turkey (no neg.)-accident/no crime.
b. to shoot owner’s chickens )(wanton)-manslaughter
c. to shoot chicken with intent to steal-murder (f/m rule)

VIII. Model Penal Code and Responsibility in General
a. defines separately mental states of knowledge and intent
b. section 202 takes elemental approach to mens rea: “may not be convicted of an offense unless he acted purposely, knowingly, recklessly, or negligently, as the law may require, with respect to each material element of the offense.

c. Terms:

1. purposely: as to results of ones conduct: it is his conscious object to engage in conduct of that nature or to cause such a result.
   As to circumstances: if he is aware of the existence of such circumstances or believes or hopes they exist.
2. Knowingly: a result is knowingly caused if the actor is aware that it is practicacally certain that is conduct will cause such a result.
   As to circumstances and conduct elements, one acts knowingly if he is aware that his conduct is of that nature or that such circumstances exist.
   a. Willfull blindness exception-when knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence unless he actually believes it does not exist.
      This ensures that purposeful avoidance of the truth is Culpable but ∆ can’t be convicted objectively either.
3. Recklessly-A person acts recklessly if he consciously disregards a substantial and unjustifiable risk that the material element exits or will result from his conduct. Risk is substantial and unjustified if considering the nature and purpose of the ∆ conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law abiding person would observe.
4. Negligently-if he should be aware of substantial and unjustifiable risk that the material element exists or will result from his conduct.

d. Principles of Statutory Interpretation: 202 (4)-if a statute defining an offense prescribes the kind of culpability that is sufficient for the commission of the offense, without distinguishing among the material elements thereof, a court will interpret such culpability provision to apply to every material element of that offense unless a contrary purpose plainly appears.
OFFENSES AGAINST THE PERSON

1. Homicide
   a. definition- Common law-killing with malice aforethought
      States have statutory definitions now too (first and second
degree)-killing or causing death
   b. General rule that victim must be a living human being
      born alive doctrine-see above
      criticism-outdated because modern technology could show if
      fetus was alive
      Majority Rule (minority say that viable fetus is protected and
      some even say nonviable)
   c. Elements of Murder
      1. act or omission to act when there is duty to act
      2. malicious state of mind (intent to kill or serious bodily
         injury, depraved heart or intent to commit felony)
      3. legal cause of death
      4. many jurisdictions- common law-death must be within a year
         and a day after Δ conduct. (trend with modern medical advances
         to keep people alive is to move toward longer limitation or no limit
         at all)
   D. Intent to Kill Murder-(without justification, excuse, or mitigating
      circumstances)
      1. Traditional view- Intent means he either desires the result
         regardless of likelihood of it happening or he knows that the result
         is substantially certain to occur regardless of his desire
      2. Modern View- intent means the actor knows the harmful result is
         substantially certain to occur.
      3. Because people don’t usually admit to intent, it is generally said
         that one is presumed to have intended the natural and probable
         consequences of his acts.
            Example: if Δ carefully aims and shoots a gun at someone
            and they die, we assume he intended to kill
4. Deadly Weapon Doctrine—one who uses deadly weapon on another human being and thereby kills him is presumed to have the intent to kill. (deadly weapon- in the manner it is used is calculated likely to cause death or serious bodily injury)

5. Causation—must be legal cause
   1. substantial factor in bringing about death
   2. actual result (death) cannot be brought about in a manner too different from the intended manner

E. Depraved Heart Murder
   1. Definition—extremely negligent conduct which creates an unjustifiable risk and high degree of risk of death or serious injury even without intent, that causes death.(implied malice)
   2. Risk Created—more than ordinary negligence (gross negligence) or recklessness
   3. Reckless Homicide—malice aforethought implied if person’s conduct manifests an extreme indifference to value of life
      1. awareness of risk (some say only objective standard, some require subjective only) (MPC-requires subjective awareness of the risk unless voluntarily intoxicated)
      2. conscious disregard
      3. extreme indifference to value of human life
         Example: King v. State—shooting at tires of the car but kills the person in the car. Reckless homicide because extreme indifference to human life (great risk and unjustifiable even though no deliberate intent to kill)

4. You are criminally liable for the natural and probable consequences of your acts
5. Example: shooting into crowd, drive car while intoxicated at very high speed in inclement weather, Russian Roulette, failing to feed child for two weeks, fostering aggressive Rottweiler dogs

F. Felony Murder
   1. Varies substantially throughout US and efforts to limit it.
   2. Elements Commission of /attempt to commit an enumerated felony,
      △ participates in the commission or attempt, and death of a victim as the result of injury during the course of attempt
3. In many states it is limited to certain felonies
   a. dangerous to life
      example: People v. Phillips - death in commission of theft and cancer death of his patient. F/M does not apply because only felonies that are inherently dangerous to human life and you must only look at felony in general/not the specific case
      rationale: don’t want to stretch f/m further
   b. common law felonies only (rape, sodomy, burglary, robbery, arson, mayhem, larceny)
   c. malum in se

4. Vicarious Liability of Co-felons

5. Legal Cause Limitation - death must be the natural and probable cause of conduct
   If intervening cause - must be foreseeable.
   Coincidence vs. response

6. Usually not a felony/murder if one of the felons is shot and killed by the victim
   Example: Campbell v. State - co-felon shot by police in chase during the course of felony. Majority rule Is not guilty when killing is done by person other than felon because it is based upon agent rule and concert of action. This doesn’t apply, therefore, when victim kills, because he does so without malice.
   Rationale: purpose of deterrence wouldn’t be served here. You are only liable if felon or accomplice committed it in furtherance of a decision
   1. agency rationale and 2. proximate cause (was force set in motion by Δ) are two rationales used, but proximate cause won’t serve purpose of deterance because not in furtherance of felony,

7. Compared with depraved heart murder:
   risk for f/m may be less than is needed for depraved heart murder and in felony murder you need not subjectively foresee results whereas depraved heart, some rquire that he be subjectively aware of the risk he created.

8. Must occur in the commission or attempted commission of a felony.
1. (in the course, in furtherance of) - not enough that it occur during the felony or while it is going on.
   Example: if customer at a bank unaware of robbery going on at the same time and dies from heart attack of natural causes, Δ is not liable.
   -vs- customer with weak heart dies of seizure by fright from witnessing the robbery - liable.
2. can take place before or after the commission

Example: State v. Mayle - felonious attempt to rob McDonalds/later the other felon was shot and killed. Felonious attempt counts if not returned home to a place of safety. Still 1 continuous transaction, in the act of escape. Applies to hot pursuit. (not yet safe)
   Example: robbers that go to remote cabin in woods, someone comes by, and is shot. Safe? Same trans.? Example: State v. Hokenson - Δ had bomb for pharmacist to steal Drugs, police came and arrested him, a few minutes later the bomb went off when cop examining it. Murder because crime didn’t terminate upon his arrest and even if no intent, he did intend to rob So felony/murder rule
   Example: People v. Stamp - after robbery with deadly weapon, mgr of store had heart attack. Felon murder rule applies even if accident because presumption of malice aforethought with a felony inherently dangerous to human life (deadly weapon) Doesn’t have to be foreseeable and a felon is held strictly liable for all killings by him or accomplice In the course of a felony as long as it is direct cause. You take victim as you find him.

9. Future of felony murder rule
   a. rationale behind it: one who commits a felony is a bad person with a bad state of mind and he has caused a bad result so that we should not worry about the fact that the fatal result he accomplished was different (and worse) than
intended result (and deterrence of felonies). Also deterrence of negligent and accidental killing, reaffirming sanctity of human life, transferred intent, easing prosecutors burden.
b. however general principle that not ordinarily criminally liable for bad results which differ greatly from intended results and can't be justified by saying all f/m carry great risk of harm as does depraved heart murder.
c. limitations on the doctrine and may be highly artificial but it is also well entrenched in common law.

G. Degrees of Murder
1. Degrees have come through legislation, usually 2, sometimes three degrees.
2. Purpose-limit more severe punishments, such as death penalty, to first degree murder.
3. Almost all American jurisdictions divide the following into first degree murder: 1. intent to kill with premeditation and deliberation and 2. felony murder where felony is one of five or six enumerated felonies.
4. Premeditated and Deliberate (1st degree)
   a. intent to kill
   b. premeditate-cool mind capable of reflection
   c. deliberate-one with cool mind did in fact reflect at least for short period of time before his act of killing
      1. time required- usually only brief moment of though or matter of seconds, may be formed immediately after intent but can’t be instantaneous.
      2. subjective states of mind
      3. often no witnesses so conduct must be determined in light of circumstances to determine if premed and deliber.
      4. no presumption of first degree (must be some affirmative evidence)
      5. factors the court looks at in determining if $\Delta$ actually did premeditate and deliberate:
         a. how and what $\Delta$ did prior to actual killing (plan)
         b. $\Delta$ prior relationships and conduct with victim (motive)
         c. nature of killing (particularity and exacting)
6. example: Midgett v. State- father regularly beat his son, one night he killed him by beating. Court said deliberation requires cool mind capable of reflection and premeditation is actual reflection. This statute required intent to kill, delib. And premed.

Example: State v. Forrest- father dying, etc. was going to take care of him. Father gasping, groaning in hospital, shot, admitted it, cried, etc. 1st degree murder

Because factors that showed it:
  a. provocation (△ not provoked)
  b. # of shots
  c. helplessness of victim
  d. statements made by △

5. In commission of felon (1st degree)
6. Other types of 1st degree murder-
   reference to some manner (bomb, perjury execution)
   statuts of victim
   other states have said aggravating characteristics such as committing murder for pay or more than one person or someone had already committed murder before

7. Second Degree Murder-some statutes say it is all other murder
   a. intent to kill without premeditation and deliberation
   b. intent to do serious bodily injury murder
   c. depraved heart murder
   d. felony murder if felony is not a listed one (larceny)

H. Voluntary Manslaughter-intentional homicide committed under extenuating circumstances, which mitigate, though they don’t justify or excuse. CL-killing in sudden heat of passion, provocation, no cool mind.

1. Heat of Passion- a. △ was in fact provoked b. provocation is legally adequate c. no time for reasonable person to cool d. △ not cooled
   a. provocation must be such that it would cause a reasonable man to lose his normal self control (example: violent painful blow, mutual combat, extreme assault, adultery, words conveying information of fact that provocation when fact occurs, injuries to third persons if close relatives, if a △ reasonably believes, for example, that wife is adultery, but rare, )
   b. state of mind-emotional disturbance, great anger
c. Model Penal Code-subjectivity- if committed under influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse determined from the viewpoint of the actor's situation under the circumstances as he believes them to be.

d. Source of provocation-
   CL-Source of provocation must be the victim
   MPC-cause and intensity of emotion are less indicative of moral depravity than would be homicidal response to a blow to one's person (can be anyone)

e. Rationale: Historical, attempt by courts to reconcile preservation of fixed penalty for murder with limited concession to natural human weakness
   Present Rationale-moral blameworthiness is not in his violent response but in his homicidal response

f. Examples: State v. Dumalow-Δ had paranoid personality disorder, extreme jealousy, unwarranted suspicions, hypersensitive, killed mother in law, Jury should have instructed on manslaughter if under extreme emotional disturbance.
   State v. Sauter- altercation, victim stabs, dr. fails to discover a laceration, victim dies, voluntary m/s because victim liable even if med mal unless med mal is sole cause of death. Homicide liability if death results from its treatment or mistreatment of injury inflicted by Δ. Even if dr. purposely did it, still vm.

I. Involuntary Manslaughter-CL-negligent homicide MPC-reckless killing
1. Two Types:
   a. criminal negligence manslaughter-greater than ordinary neg.
      1. Δ conduct under circumstances known to him, involves high degree of risk of death or serious bodily injury.
      Or 2.Δ is aware that his conduct creates the degree of risk required.
   b. unlawful act manslaughter
      2. Some statutes don't define it or defined it vaguely (unlawful killing in commission of an unlawful act not amounting to felony or in the commission of a lawful act without due caution
      3. Cuplbible negligence, criminal negligence, gross negligence, but without defining the terms
4. Some require Δ awareness of the risk, but others say doesn’t matter if Δ doesn’t realize it.
   Modern View (and MPC)-recklessness required (awareness)
5. Trend today is to abolish the unlawful act involuntary m/s which says that unintended homicide in commission of unlawful act was involuntary manslaughter. (2/3 don’t have this)
6. Examples: **People v. Rodriguez**- Δ left two year old and six year old in the house and it caught on fire. Kids killed,. Mere negligence is not enough for manslaughter). Δ not criminally negligent because to be crim. neg. a reasonable person should be able to forsee the act would cause high degree of risk of death or serious bodily harm. Leaving kids alone didn’t, and a fire is unforeseeable.
   **Leather v. State**- Δ shot near a boat, men drowned when one jumped out to avoid bullet and other jumped out to save him. Δ convicted of involuntary manslaughter. Act of Δ is unlawful regardless of intent.
   Everyone is responsible for antural consequences of an act (connected with intervening cause)
   **Lewis v. State**- Russian roulette playing, introduced him to game, etc. later put game away, left room, and he shot himself. Insufficient evidence because not present at time, not froseeable he’d play alone, and victims conduct only caused it (would be different if Δ was present)

J. Model Penal Code-vs- Common Law
   Common law-murder is killing with malice aforethought (intent to kill/bodily injury/ depraved heart/ malice, felony-murder)
   1st degree-premediatated and deliberated
   2nd degree-extreme recklessness
   MPC-guilty of homicide if unjustifiably and inexcusable takes the life of another human being purposely knowingly, recklessly, or negligently. Doesn’t divide/ only says purposefully and knowingly (intent to kill) and reckless homicide is extreme indifference to value of human live (murder under MPC) and felony-murder
   MPC-death need not occur within a year and a day
a. Murder—Actor unjustifiably, inexcusably, and in absence of mitigating circumstance, kills another purposely or knowingly, or recklessly with extreme indifference to value of human life

b. No felony murder specifically, but says that extreme recklessness is presumed if homicide occurs while the actor engaged or accomplice in commission, attempted commission, or flight from one of dangerous felonies.

c. Manslaughter—recklessly kills another or kills another as result of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. (no liability for criminal negligence, must only be convicted for conscious disregard)

**ATTEMPT AND KINDRED PROBLEMS**

A. Elements of attempt—
   1. intent to do an act or bring about certain consequences that would be a crime
   2. act in furtherance of that intent that goes beyond mere preparation
   3. failure of consummating commission of the crime

B. Purpose—not to deter but to punish those who have manifested their Dangerousness. Rationale is that there is just as much need to stop, deter, and reform person who has unsuccessfully attempted or attempting to commit a crime as there is for one who has already committed the act.
   1. provides a basis for which law enforcement can intervene
   2. general deterrence is a minor function of the law of attempt because if someone has near perfect crime and only caught if unsuccessful, law of attempt could still deter him.

C. Mental State-intent to commit a crime (some other crime)
   -may also be able to get on attempt if reckless, negligent for crimes that require only recklessness creation of danger and defendant actually intended to engage in conduct that would create that danger
     
     Example: If a $\Delta$ attempts to start his car to drive it knowing it has no breaks may be an attempt to drive negligently

D. Examples:
   Moffet v. State—tied hands together, told her to write suicide note and that she would give her pills. Victim escaped, it was attempt because she intended to commit a crime, performed an act towards the commission (got keys, made
list, wrote note, planned two days before, had control, entered apartment), and she failed to commit it.

**People v. Rizzo**-planned to rob bank by getting the person that came everyday, but person did not come that day, court said no attempt because they didn’t exert activity in a certain action. They only drove to bank and no attempt could be made until the guy was actually at the bank.

**State v. Mitchell**- \( \Delta \) thinks that victim is in room sleeping and shoots in window but victim isn’t there. Attempted murder because intent was shown (deliberate attempt to kill)

E. The Act

- not enough that \( \Delta \) intended to commit crime. must be an act
- more than mere preparation
- traditional-act towards commission of some offense or in furtherance of
- MPC-substantial step toward commission
- some require “overt act”

**Young v. State**-scanner on belt, banks had been held up and he was the suspect, got out by bank, stocking cap, hand on face, ducks, door locked, runs away to car, pulled over. Attempted Robbery. Law of attempt is to stop or deter the actual crime and this court preferred an overt act

F. Limits on Attempt:

1. Legal Impossibility but not factual impossibility is a defense (traditional view). –vs- modern view-impossibility is not a defense when \( \Delta \) actual intent was to do an act or bring about unlawful result.

Legal impossibility-\( \Delta \) did everything he intended to do but yet had not committed the completed crime (what \( \Delta \) set out to do is not actually criminal) (object is not criminal)

Factual impossibility-\( \Delta \) unable to accomplish what he intends because of some facts unknown to him. (intended crime is impossible of accomplishment merely because of some physical impossibility unknown to \( \Delta \)) (unknown factual circumstance)

Examples:

- **People v. Rohas**-\( \Delta \) convicted of receiving stolen property even Though it had already been recovered by police (setup). \( \Delta \) Didn’t know it was unstolen (only need subjective belief)

- **Booth v. State**- bought stolen coat that had already been recovered and owner informed that it was found. \( \Delta \) can’t be convicted if property was not considered stolen at the time
regardless of what he thought. Can’t be convicted of attempt to commit a crime unless the crime could have actually been committed
U.S. v. Oviedo- Δ set up to sell heroin, he thought it really was Heroin but it really was not. This was a legal impossibility because actions of Δ even if carried out would not be a crime. Therefore this was a defense. Objective act needs to be criminal.

2. Model Penal Code-
   a. attempt-1. purposely engage in conduct that is a crime if the circumstances are as Δ thinks they are, 2. if causing result is an element of the crime, it must have purpose or belief to cause it. 3. purposely acts in a substantial step to commit the crime
   b. Factual impossibility is not a defense (ex: shooting at a tree stump thinking it was a person)
   c. Look at Δ perception (ex: coat, if not stolen, if Δ has intent to receive stolen property and belief that conduct would be a crime under his perception, then no Δ)

3. Intent-Some attempt crimes require specific intent
4. Solicitation-some places don’t make it a crime to solicit because they say it is not dangerous if not accompanied by agreement –vs- the idea that solicitation is more dangerous because it may give rise to cooperation of criminals that is a special hazard.
   a. purposes of criminal law are served with solicitation rules (prevents harm which would result should the solicitation be successful and aids in protecting public from being exposed to inducements). It also provides timely law enforcement intervention, permits criminal justice system to deal with individuals who have shown their dangerousness, and avoids inequality of treatment based on fortuity beyond control of the actor.
   b. elements-no explicit mental state required but intent must occur if consistent with acts of commanding or requesting. (intent to have an offense be committed, or intent to promote/facilitate its commission or intend to have solicited person engage in criminal conduct)
   Solicitor must intend a result because if not then crime hasn’t been solicited. There must also be an act (evil intent alone is not enough), but the mere speaking of words is an act and mostly is the act with solicitation (but can be committed nonverbally too)-can include advising,
command, counseling, enticing, entreat, induce, request, procure, solicit, urge. (not mere approval of an act or just exercise of free speech).
c. doesn’t have to be personal request (public speech is sufficient)
d. even if solicitation doesn’t reach intended person, still can be considered solicitation (a letter that is intercepted before it reaches addressee)
    rationale: solicitor has manifested his dangerous and should not escape punishment simply from fortuitous event beyond his control
e. voluntary renunciation as a defense—never been decided one way or another by an appellate court but it is a defense in several recodifications and MPC.
    Rationale: solicitor has shown not sufficiently dangerous and allowing this defense could encourage solicitors to stop crime.
f. impossibility of committing crime is not a defense (∆ culpability is measured by circumstances as he believes them to be)
g. example: State v. Bleechman-∆ counseled another to set fire.
    Common Law-misdemeanor to counsel/entice/solicit another to commit a felony or misdemeanor even if no effect and crime doesn’t occur
    -criminal intent still occurs

E. Abandonment—may act to show lack of intent
    traditional view—abandonment is never a defense to attempt if ∆ has already engaged in the requisite acts because the crime has already been completed
    Example: Stewart v. State-∆ robs gas station, wanted attendants money and wallet, saw cops, gave wallet back and left. Not abandoned because attempted robbery was already complete when he demands the money and shows his weapon. Once an intent to commit a crime has been formed and any overt act has occurred, then it is an attempt.
    Commonwealth v. McCloskey- ∆ incarcerated for larceny, started to attempt to leave, tripped alarm, cut wire, jumped into yard, but then changed his mind and went back to work. Convicted for attempted prison breach. Not guilty because acts were still preparation and were abandoned before any transgression, so not an attempt yet. He never left the premises of the prison and was in a position to abandon offense involuntary and exonerate himself
CONSPIRACY

1. Definition- 2 or more people agreeing to a criminal objective - can be liable for conspiracy and attempt at the same time.
   a. agreement between two persons
   b. intent to achieve certain objective (doing unlawful act or lawful act by unlawful means)

2. Purpose-special and continuing dangers of group activity and means to prosecute those who have shown disposition of a criminal

3. The Agreement- considered the requisite act for a crime (advancement of intention which each has in his mind)
   a. all important because must look to nature of agreement to decide many issues such as mental state, plurality and number of consp.
   b. more lax than agreement required in other parts of the law (mere tacit understanding is enough), doesn't need to be written or even spoken agreement (can be inferred from facts of the case)
      1. unilateral approach (MPC)- single actor agreeing with another so that if A and B agree to do something but B secretly intend not to, then A can still be convicted of conspiracy (don't need 2 people to actually have conspiracy)
      2. bilateral approach (traditional)- if only one person has actual intent, then neither can be convicted because no agreement between two people and thus no criminal act.
         Example: People v. Foster - talked about robbing man, R faked agreement as a setup, informed police, can’t be conspiracy because you need actual agreement between at least two people.
   c. aiding a conspiracy with knowledge of its purposes can make one a party to the conspiracy because he has added to danger by giving aid which makes it more probable the crime will occur (some courts say it is not because they must act in the agreement) (see Lauria)

4. The Mental State-
   a. common purpose must be to attain objective covered by law of conspiracy
   b. intent to agree vs. intent to achieve something by agreement
   c. providing goods or services
d. specific intent crime (must intend to agree and intend to commit the target offense)

example: People v. Swain- Δ shot but court didn’t show he intended to commit a murder, therefore can’t be conspirator to murder.

US v. Feola-Δ charged with conspiracy of assaulting a federal Officer and the substantive crime. Claim they didn’t’ know they were federal agents and therefore couldn’t have the intent to commit the substantive crime, therefore no conspiracy. Court rejects this argument because the substantive crime itself does not require that they know it was federal agent. Therefore, the requisite intent required is the intent needed to commit the substantive crime.

5. Limits of Liability
a. modern view-limited to criminal objectives
b. impossibility of success is not a defense b/c the combination of people itself is the danger.
c. Withdrawal- an affirmative act bringing home the fact of his withdrawal to his confederates made in time for his companions to effectively abandon the conspiracy and in a way which would be sufficient for a reasonable man to be informed of the withdrawal/
   -must be given to all other conspirators
   -Model Penal Code-only if and when he advises those of whom he has conspired with of his abandonment or informs law enforcement officials about it.
   -Example: People v. Sconce-Δ offered money to G to kill someone. G talked to H who agreed to help G for money. The two drove to the house and discussed how to do it. Conversations over next three weeks between Δ and G. Then Δ called it off. H was arrested in the meantime. This was not an effective withdrawal because conspiracy is complete upon commission of an overt act.
   Rationale: can’t withdrawal from a completed crime
   -vs- purpose of withdraw is to encourage abandonment or weaken the group and this would still happen with an
d. Is withdrawal and affirmative defense?
   -traditional-strict and inflexible since crime complete with the
agreement
-if overt act required, then okay until overt act occurs
-MPC- affirmative defense if ∆ has thwarted success of the conspiracy under circumstances manifesting a complete and voluntary renunciation of his purpose.

Rationale: act of agreement is not of itself undesirable
Enough to warrant punishment despite withdrawal and it is proper to require thwarting of conspiracy because then the objective of conspiracy will be pursued in spite of renunciation by one conspirator. (also taken by most modern recodifications)

e. plurality requirement-
   a. traditional view- acquittal of all persons with whom ∆ is alleged to have conspired with precludes his conviction. (internal consistency should be required in verdicts returned by single jury). Sometimes extended to separate trials.
   b. MPC-unilateral approach-one trial will not affect the other Both parties must be capable of committing crime itself.
   c. Example: Gebardi v. U.S.- ∆ and woman convicted of conspiracy to violate Mann Act by buying train ticket and going across state lines. However, the woman’s act was not illegal, so she could not be conspirator to a legal act. Legislature intended to exempt the woman from liability. Also, ∆ not conspiracy since not enough parties to establish plurality.
   People v. Marquiz-Separate juries acquitted two people in conspiracy, the third was found guilty but still liable because rule of consistency is inapplicable when tried separately because evidence wouldn’t be identical and therefore no inherent internal inconsistency (evidence and way its presented different and juries may reasonably interpret evidence differently)

f. Common law- You are held liable for acts of co-conspirator.
Example: Pinkerton v. U.S.- 2 brothers conspired for tax Evasion, only one actually did it, both convicted of substantive and conspiracy because coconspirators are liable for those acts committed by each other that are in furtherance or reasonably foreseeable to be in furtherance of the conspiracy.

Rationale: each act as agents for the other
Modern Law and MPC- mere participation in conspiracy not Enough for accomplice liability.

g. types of pairs:
   husband and wife used to not be able to conspire, but now there is a split of authority
corporations-not strictly restricted but problems w/ plurality
g. Wharton’s Rule-when plurality is needed to commit substantive offense, conspiracy cannot be maintained because it assumes that the crime is aggravated by plurality and with crime that requires more than one person, it would occur anyway. (examples: dueling, bigamy, adultery, incest, pandering, gambling, contraband sales and buy, giving and receiving of bribes)
   -doesn’t apply when it could be committed by one of the conspirators alone or if cooperation is logical but not necessary.
   -doesn’t apply if number of conspirators exceeds number required for the crime itself (ex: A and B conspire with C for A and B to commit adultery, then all three are liable. Likewise, if D and F agree to bribe E but not if E and D alone a bribe for E)
   -doesn’t apply if substantive offense does not specify punishment for only one of the participants. (only applies if statute requires culpable participation of two persons)
      example: A agrees with B to give illegal rebate, statute only imposes penalty on giver of rebate, then they can both be convicted. C agrees to sell D liquor underage and statute only punishes seller (c) then both liable for conspiracy.
   -rationale: If all parties to crime would be subject to punishment for substantive crime then the agreement presents no danger beyond that inherent in crime itself.
   -examples: U.S. v. Payan-farm equipment disappearing, Δ was suspect, indicted on conspiracy to transport goods in interstate for commerce. Evidence of two cooperating with almost all equipment. Could be convicted of conspiracy and transporting stolen goods because the statutory
elements of transporting stolen goods do not require that there be more than one person, therefore it doesn’t require consent and Wharton’s rule does not apply.

h. Miscellaneous:

1. **Example: People v. Lauria**—Lauria ran answering service and knew many call girls used it. Indicted for conspiracy. Court said no conspiracy because even though he knew about it he charged same prices and it was a small part of a legitimate business. You must have knowledge and intent to further the criminal objective. Factors that show intent to further: stake in venture, no legitimate use, volume of illegal is grossly disproportionate to business.

2. Hub and spoke vs. wheel conspiracy
   a. wheel or hub and spoke—one central with everyone responding or reporting to him
      example: distillers had suppliers of sugar, yeast cans, etc. They have no common link so no conspiracy.
   b. chain conspiracy-linked one after another
      example: mfg of pharm. Sold morphine to dr. who sold to dealers. This is conspiracy b/c they’re linked

h. Punishment-

1. common law-substantive crime and conspiracy are separate and distinct offenses so they can be punished for both (cumulative sentences)
   rationale: collective criminal agreement is greater threat to the public. Concerted action increases likelihood of it occurring and decreases chance they will change their mind. Also makes it possible to attain ends more complex than one criminal could do. More likely that unrelated crimes will occur too. So the danger is not limited to substantive offense which is the immediate goal of conspiracy.

2. Model Penal Code-If conspiracy’s objective is a crime, then combination is not more dangerous and so no cumulative sentences, but if combination does have objectives that transcend particular offense, then cumulative sentences permissible (only a minority view).
3. State statutes now provide penalty provisions expressly but they vary from state to state.

PARTIES TO CRIME

1. Accomplice Liability
   a. Accomplice—S is an accomplice of P in the commission of an offense if he intentionally assists P to engage in the conduct that constitutes the crime.
   b. Derivative in nature
   c. Common Law Terminology: Two categories of crime: principals and accessory
      1. Principals
         a. in the first degree—person who, with mens rea required, physically commits the act and uses innocent instrumentality (animal or misinformed person) to commit the act
         b. in the second degree—one who intentionally assisted in the commission of in the presence (actual or constructive) of principal in the first degree. Constructive presence=in a position to assist
            -main types of principals in the second:
            a. lookout—by pre arrangement, keeps watch to avoid interception or detection or to provide warning.
            b. get away drivers
      2. Accessories
         a. before the fact—just like principals in 2nd degree but not actually or constructively present at the time
         b. after the fact: one who with knowledge of the other’s guilt intentionally assists the felon to avoid arrest, trial, conviction
            -cannot become this until the felony has been accomplished
            -distinct crime, standing on its own elements(today)
            -conviction of principal is not a condition precedent

3. Differences between principals and accessories:
   Handicaps to trying as an accessory:
   -jurisdiction (tried where accessory acts, not where crime occurred)
   -rules of pleading—indictment had to correctly state if principal or accessory
   -timing of trial—accessory could only be tried jointly with or after principal
effect of principals acquittal—couldn’t be convicted if principal acquitted (old rule)
- accessory can’t be convicted of greater offense than principal except in criminal homicide
  No such handicaps for principals
c. Modern Movement—classify principals or accessories, except for after the fact principals, as principals (accomplices)
  - accessory after the fact also known as obstruction of justice (makes prosecution easier by removing aforementioned obstacles, provides milder punishment than for principal, excludes guilt for close relatives.
d. Accomplice Liability: Means Rea
  Two states of mind:
  1. intent to assist primary party to engage in the conduct that forms the basis of the offense
  2. mental state required for the commission of the specific offense
e. Examples:
   People v. Beeman (491)—∆ involved (he denied) in planning of a robbery but 2 days before the commission he told co-conspirators he no longer wanted to participate and said again day before the robbery. ∆ convicted as aider and abettor under jury instructions providing “a person aids and abets if with knowledge of unlawful purpose of perpetrator, he aids or Promotes the commission of such crime. Court held instructions erroneous because substitutes knowledge of perpetrators intent for criminal intent of accomplish.
   - aider and abettor must have criminal intent—must prove aider acted with knowledge of criminal purpose of perpetrator and with intent of committing or aiding the offense.
   State v. Hoselton—∆ charged with intent to commit larceny. Served as lookout for friends on barge. Unaware of friends intent to commit larceny and thought their only intent was to trespass.
   - Aider and Abettor (principal in 2nd) must share criminal intent with princ. In the first
f. Means Rea and Accomplice Liability with recklessness and negligence
  1. Majority rule—allows accomplice liability for reckless and negligence
  2. Conviction of accomplice for neg/reck crime should be permitted so long as accomplice has a mental state of:
     1. intent to assist in conduct that forms basis of offense and
2. Requisite culpable mental state

3. Examples:
   State v. Foster-△
   *girlfriend raped. △ catches suspect, goes to get girlfriend, leaves friend to watch suspect, gives him a knife, suspect charges at friend, friend kills suspect. △ guilty to accessory because it does not require that △ act with conscious objective to cause the result described by the statute. Only needs requisite culpable mental state while intentionally aiding another in a crime.

f. Mens Rea and Natural and Probable Consequences Doctrine
   1. common law majority rule-a person encouraging or facilitating the commission of a crime may be held liable not only for that crime but for any other offense that was a natural and probable consequence of the crime he aided and abetted.
   2. Applying the doctrine:
      a. Did P commit target crime A? If yes:
      b. Did S intentionally assist P in crime A? If yes:
      c. Did P commit any other crimes? If yes:
      d. Were these crimes reasonably foreseeable consequences of crime A?
   3. Example: State v. Linscott:△ and X conspire to rob drug dealer, △ breaks down window, X fires shot through and kills dealer. △ claims no intent to cause death. Liable for secondary crime established on two part showing that actor intended to promote primary crime and commission of the secondary crime was a foreseeable (natural and probable) consequence of participation in the primary crime.

3. Mens Rea and Attendant Circumstances
   1. As long as secondary party acts with purpose of assisting principal in first degree in conduct that constitutes the offense and has necessary culpability as to the prohibited result, he should be deemed an accomplice if his culpability as to the attendant circumstance would be sufficient to convict him as a principal. Mens rea regarding substantive offense should control accomplice’s situation.
g. Mens Rea: Purpose and Knowledge

1. Most acts hold that a person is not an accomplice unless he shares the criminal intent of the principal in the first. Must have community of purpose in unlawful undertaking.

2. Example: State v. Villaincourt-∆ and X went to Y’s residence. ∆ stood by watching X as he tried to pry open Y’s window. ∆ indicted under accomplice liability for “promoting and facilitating the offense by accompanying X to the location of said crime and watching X attempt the crime. Indictment insufficient because accomplice liability requires actor to solicit, aid, etc. principal in committing an offense. -knowledge and mere presence are not enough for accomplice because accompaniment and observation are not aid.

h. Mens Rea and the Feigning Accomplice:

1. To be an accomplice, must have purpose that principal engage in criminal conduct AND share in the same intent which is required for commission of substantive offense.

2. Example: People v. Genoa-Undercover cop told ∆ that if ∆ gave 10K to buy a kilo of cocaine, ∆ would be repaid and client list and more profit. No aid and abet because cop never intended to commit contemplated crime. No crime, no aid and abet.

2. Elements of aiding and abetting:

1. Crime committed by ∆ or someone else

2. ∆ performed acts or encouraged in commission of a crime

3. ∆ intended commission of a crime or had knowledge that the principal intended its commission at the time of encouragement

3. Withdrawal/ Abandonment

1. Most courts hold that the person who provides assistance to another for purpose of promoting/facilitating offense but subsequently abandons criminal endeavor can avoid accountability.

2. Spontaneous and unannounced withdrawal will not do. Accomplice must communicate withdrawal to principal and make bona fide efforts to neutralize effect of prior assistance.

3. Example: People v. Brown-∆ and 2 others conspire to steal car. ∆ and one man kick in door, then decide to abandon. Told principal they were leaving with or without him. ∆ guilty of attempted burglary because kicking in the door was more than mere preparation and instead constituted a substantial step toward commission of robber. No withdrawal before commission.
However, withdrawal would have been effective ∆ to burglary charge because it occurred prior to commission of the crime.

4. Liability of the Secondary party in relation to primary party
   1. It is derivative (to be an accomplice, a crime must have been committed)
   2. At common law, accomplice could not be convicted if principal acquitted. No longer true. Generally, principal can be acquitted but accomplice can still be convicted.
   3. Example: State v. Williams- X deliberately shot and wounded Y. X fled to ∆ home. X and ∆ lied to police to try to establish X innocence. After all this happened, Y died. ∆ convicted as accessory after the fact to murder, but it was overturned because can’t be an accessory to a crime that hasn’t been completed (felony-death of victim). Since Y only had a mortal would at the time of ∆ involvement, D can’t be acc. After the fact to murder because not yet murder.
   4. To prove accessory after the fact of murder must show:
      a. principal actually committed murder
      b. accused knew principal committed murder
      c. accused received, relieved, assisted, or such in order to aid escape or hinder arrest or conviction.
   5. Example: State v. Truesdell- ∆ charged as acc. After the fact to shooting with intent to kill her ex husband by her minor son. Minor son couldn’t be tried for felony. ∆ can still be convicted of accessory to murder after the fact. Accessory not connected to principal after original offense. Distinct crime. Conviction of principal not condition precedent to conviction of an accessory. Only need to show principal who was guilty of crime charged.
   6. When primary party is innocent instrumentality, or has an excuse ∆, accomplice can still be convicted. However, when primary party is justified (self defense), no conviction possible for secondary party because no crime to impute.

   LIABILITY FOR THE ACTS OF OTHERS: MPC

I. Forms of Liability
   a. in general: Under MPC, guilty of offense if he commits it by his own conduct or by conduct of another person for which he is legally accountable, or both
   b. Accountability Though Innocent Instrumentality
      1. Under MPC, ∆ is guilty of commission of the crime if he uses an innocent instrumentality to commit a crime. X must cause innocent party to do the act. X must have requisite culpable mental state for crime.
c. Miscellaneous Accountability
   1. A person may be held accountable for another’s conduct if law defining an offense so provides (ex: aiding suicide attempt).

d. Accomplice accountability
   1. if accomplice in commission of a crime then legally liable
   2. accomplice liability dependent on relationship of party to specific offense

e. Rejection of Conspiratorial Liability
   1. rejects Pinkerton (a person is not accountable for conduct of another solely because he conspired with that person to commit a crime.

II. Nature of an Accomplice
   a. Conduct:
      1. X is an accomplice of Y if with requisite mens rea he
         a. solicits Y to commit offense
         b. aids, agrees to aid, attempts to aid Y in commission or planning
         c. has duty to prevent offense but makes no effort to do so.
      2. Accomplice by solicitation: complicity section doesn’t define. X is guilty of solicitation if his conduct would constitute criminal solicitation as defined elsewhere in code.
      3. Accomplice by Aiding: code combines carious common law and statutory terms under aid (solicit, however, is not aid)
      4. Accomplice by Agreement to Aid: X is an accomplice of Y if he agrees to aid Y in planning or commission of an offense.
         a. requirement met if X tells Y he will help even if X doesn’t follow through.
         b. however, X not an accomplice of Y because he agrees to solicit but then doesn’t.
         c. Differences from Common Law: CL-if X agrees to help Y rob bank and Y steals car in furtherance of conspiracy, Pinkerton rule says X guilty of the theft —vs- under MPC-X not guilty of theft because he had no agreement to aid in that offense.
      5. Accomplice by Intent to Aid
         a. Under MPC, X accountable as accomplice for attempting to aid Y in crime even if aid has no effect (departure from CL).
      6. Accomplice by Omission
         a. ordinarily no liability for omission
b. Liability if omitted has duty to prevent AND mental state required of accomplice (omission must be intended to further crime)

b. Mental State

a. in general: x is an accomplice if he assists with the purpose of promoting or facilitating the commission of the offense.

1. conforms with common law
2. ALI rejected the argument that complicity liability should apply to one who knowingly but not purposely facilitates commission of offense (example: if X sells dynamite to Y knowing Y intends to blow open safe, X not an accomplice in subsequent crime unless it was his conscious objective to facilitate)

b. Liability for Reckless and Negligent Crimes:

1. MPC-Section 206 (4)-when causing particular result is an element of the crime, X is accomplice if he was accomplice in conduct that cause result and he acted with culpability regarding result.

2. Provision is important in states that recognize common law doctrine of felony murder and misdemeanors manslaughter. These rules apply to primary to be convicted of homicide if death occurs accidentally while committing felony or misdemeanor. Effect of 206-4 makes accomplice in underlying conduct that causes result strictly liable for death because he had requisite culpability in regard to result.

3. Attendant circumstances-MPC deliberately vague, leaves to judge

4. Natural and Probable Consequences Doctrine- (aka Foreseeable Risk)

1. MPC rejects this doctrine
2. Liability doesn’t extend beyond purpose he shares

C. Liability of Accomplice in Relation to Perpetrator

1. accomplice can be convicted upon proof of commission of crime by another regardless of whether other person is convicted
2. accomplice can be convicted of different offense or degree of offense than primary perpetrator
3. Person legally incapable of committing an offense personally may be held accountable for crime if committed by one for whom he is legally liable (example: husband cannot legally rape wife, he may be an accomplice in her rape)
d. limits on accomplice liability

1. Section 206 (6)-cannot be an accomplice if:
   a. victim of that offense
   b. offense defined to conduct is inevitably incident to its commission (ex: purchaser of drugs can’t be accomplice to sale of drugs).
   c. terminates participation before crime committed and neutralizes assistance or gives timely warning to police or in some other manner attempts to prevent the crime.

**IGNORANCE OR MISTAKE OF LAW**

1. Generally, ignorance of the law is no excuse.
2. Knowledge of the law is presumed; in most cases presumption is conclusive but under exceptional circumstances it is disputable.

I. When Mistake of Law is a Defense (Exceptions to the Rule)

A. Reasonable Reliance Doctrine-a person is not excused for committing a crime if they reasonably rely on own erroneous reading of the law, even if a reasonable person would have misunderstood the law.

B. Example: *People v. Marrero*- ∆ a corrections officer, took a loaded gun to nightclub, mistakenly believed he was entitled to do so because misconstrued statute. ∆ guilty and can’t claim protection of mistake of law by misconstruing statute must establish statute he relied on actually permitted conduct and was only later found to be erroneous

-Underlying statute never actually authorized conduct so no mistake in law itself so no defense
- court says mistake of law defense should only be recognized where specific intent is element of offense or mis-relied upon law later adjudicated as wrong.

II. Official Interpretation of the law

A. if X reasonably relies on official statement of the law, later determined to be erroneous, X is excused.

B. official statement must be from one with responsibility of interpretation, administration, or enforcement of the law

C. Defense is very narrow. For statement to be official it must be contained in
   a. statute later decided invalid
   b. decision of highest court in jurisdiction later determined to be wrong
   c. official but erroneous interpretation of a public officer. (attorney general)

D. interpretation must also come in an official manner
E. Example: State v. Striggles-Δ allowed gum vending machines to be installed in store based on municipal decision declaring that machine wasn’t gambling device and letters from county attorney and city mayor. Charged with willful and unlawful housing of gambling device. Held guilty because you can’t rely on decisions of an inferior court.

III. Advice of Private Counsel
   A. Majority Rule-reliance on erroneous advice provided by private attorney is not a defense
   B. Minority Rule-reliance on advice is a defense if Δ was diligent and reasonable in so doing.
   C. Example: Long v. State- (MINORITY RULE)Δ went to AK to get a divorce. Relying on attorney, he believed divorce was good in Delaware and returned to Delaware, remarried. Prosecuted for bigamy. Court allowed reliance on attorney provided Δ made bona fide diligent effort, adopting appropriate course of conduct to ascertain law and acted in good faith reliance on what he learned.

IV. Fair Notice of the Law and the Lambert Principle:
   A. Common Law Principle-every one is conclusively presumed to know the law means you are expected to know and understand it. Exception: Lambert
   B. Lambert v. California-Δ an LA resident and convicted felon. Local ordinance required felons in city for five or more days to register with the police. Violation is punishable by jail, fine, or both. Δ never registered and when arrested for separate crime was charged under ordinance. SC held conviction violated due process because passive conduct, and no reason to know of law, no provision to comply with law after learning it.
   Factors present: statute punished omission, duty imposed based upon statute, offense was malum prohibitum (remember this when trying to apply because it is not clear how far the doctrine extends)

V. Ignorance or Mistake that Negates Mens Rea
   A. If knowledge/recklessness/negligence, not element of offense then mistake of law usually won’t negate any mens rea element found in definition of a crime
   B. If knowledge that conduct constitutes an offense is an express element of the crime, then mistake/lack of knowledge will negate mens rea
   C. Example: State v. Cude-Δ took car to garage, couldn’t pay bill, garage refused to give it to her. Δ returned at night at claimed he honestly believed he had right to car (no knowledge of lien law). Δ charged with larceny. Intent to steal is an essential element of larceny so Δ entitled to jury instruction allowing for mistake if Δ believed he had right to the car.
D. Example: People v. Weiss- Δ assisted NJ detective in interrogation of alleged baby killer. Δ offered evidence they believed detective had power to authorize them to help. Δ charged with kidnapping (intent is an element). If Δ acted in good faith believing they were acting within the law then no intent to act without authority of the law.

VI. Model Penal Code Section 2.04: Ignorance or Mistake
A. General Rule-unless definition of crime provides neither knowledge nor recklessness nor negligence as to whether conduct constitutes a crime or as to the existence, meaning, or application of the law determining the elements of an offense is an element of such offense.
B. Exceptions:
   1. Reasonable reliance: MPC codifies common law
      a. does not recognize reliance on advice of private attorney
   2. Fair Notice
      a. MPC provides not guilty if she doesn’t believe it is illegal and the statute is not known to her and was not published or otherwise made reasonably available to her before she violated the law.
      b. MPC written prior to Lambert and doesn’t necessarily cover it.
   3. Ignorance or Mistake that Negates Mens Rea
      a. requires proof of some culpable state of mind regarding every material element of an offense
      b. defense if it negates a material element of offense, or if law expressly provides for mistake of law defense

IGNORANCE OR MISTAKE OF FACT
I. General Intent Offenses
   a. Mistake of fact will disprove a criminal charge if the mistaken belief is honestly entertained, based on reasonable grounds, and of such a nature that the conduct would have been lawful had the facts been as they were reasonably supposed to be.
   b. Example: People v. Vogel- Δ wife told him she was getting a divorce and that sometime later she remarried, Heck, lived with the man, called herself Mrs. Heck. Δ remarried, tried for bigamy. Not guilty if Δ had a reasonable and bona fide belief that facts existed that left him free to remarry.
II. Strict Liability Offenses-
a. a person’s mistake of fact does not negate his criminal responsibility for violating a strict liability offense

   1. rationale: no mens rea so court can’t negate it as a defense
b. Example: People v. Cash- ∆ had sex with 16 year old, who told ∆ she was 17. ∆-statutory rape. Reasonable mistake of age is no defense statutory rape.
c. Minority Rule-reasonable mistake is a ∆ to statutory rape

III. Specific Intent Offenses-
a. a ∆ is not guilty of an offense if his mistake of fact negates the specific intent required of a crime
b. even an honest, unreasonable mistake may be exculpating
c. Example: People v. Crane- ∆ hitchhiking, picked up by X. X smoked weed. X attacks ∆. ∆ defends himself with numchucks. ∆ thinks he killed X, decides to hide crime by burning body. Later heard X was still alive at time and cries. ∆ charged with murder for burning death of X. ∆ not guilty because he believed X was already dead and therefore lacked the specific intent to kill as required for murder

IV. Model Penal Code
a. A mistake of fact is a defense if it negates the mental state required to establish any element of the defense. (no distinction between general and specific intent distinction)
b. Mistake as to age-if under 10, no defense, if 10 and up, ∆ must prove by preponderance of the evidence hat he reasonably believed child to be above critical age.
c. Bigamy- ∆ guilty unless he believes prior spouse is dead or spouse he and spouse are living apart five consecutive years throughout which ∆ doesn’t know if spouse is alive or court has entered judgment purporting to end marriage and ∆ doesn’t know judgment is invalid or ∆ reasonably believes he is legally free to marry
d. Polygamy- if marry/cohabitate with more than one spouse at a time in purported exercise of right to plural marriage then guilty of polygamy n/a to transients whose polygamy would be okay in their country
e. other party to bigamy/polygamy-if marry someone knowing they are married, guilty.
RESPONSIBILITY: LIMITATIONS ON CRIMINAL ACTIVITY

I. Immaturity/Infancy-
   a. Common Law—child under seven has no criminal capacity, 7-14 rebuttable presumption of incapacity (must show clear proof of capacity to establish real appreciation of wrongfulness of act committed), 14 and up—criminal capacity unless for some other reason.
   b. Changes Today—net result of juvenile delinquency statutes in most jurisdictions is to raise age of incapacity above 7, although there has been a trend to lower the age and prosecute children as adults for serious crime.

II. Drunkenness/Intoxication-
   a. Intoxication—disturbance of the mental or physical capacities resultant of any substance entering the body
   b. Prior to nineteenth century, intoxication was no defense.
   c. Today
      1. involuntary intoxication may be so extreme as to render it exculpating
      2. voluntary (culpable) intoxication may entitle Δ to be acquitted if the charged crime requires specific intent or special state of mind.
         a. intoxication is voluntary if Δ culpably knowingly ingests.
         b. once a Δ voluntarily ingests, courts are unsympathetic to unexpected effects.
         c. common law—alcoholism and drug addiction considered voluntary
      3. alcohol induced mental illness is same as other types of insanity.
   d. Voluntary Intoxication: General Rules
      1. voluntary intoxication is no excuse
         a. exceptions— the intoxicated state leaves Δ without the ability to form the requisite mental state, or long term intoxicated induced, fixed insanity can be basis for acquittal.
      2. Mens Rea-
         a. common law distinguished between specific and general intent crime
            1. general intent—voluntary intoxication is no defense example: raping someone while drunk, no defense, because rape is a general intent crime.
            2. specific intent— if drunkenness leads to no requisite mental state then it is a defense, because the mental state is one element of the crime and that would be missing.
a. Example: attempted rape while drunk would be a defense because you need specific intent for attempted rape.
b. Example: State v. Cooper-△ convicted of kidnapping and assault. He was on drugs and claimed temporary insanity. Conviction upheld because voluntary intoxication is not a defense to a crime unless it is used to show lack of specific intent.

3. See Graves.

3. Voluntary Act
   a. Unconsciousness may serve as acquittal because △ didn’t commit criminal act

4. Insanity
   a. Temporary Insanity- common law doesn’t recognize temporary insanity as a result of intoxication.
   b. Fixed insanity-if alcohol or drugs create a fixed unsoundness of mind, △ may claim typical insanity defense. (see cooper)

5. Involuntary Intoxication
   1. involuntary if actor is not to blame for intoxication
   2. Four situations:
      a. coerced
      b. innocent mistake
      c. unexpected due to prescription medication
      d. pathological intoxication-consumption triggers pre-disposing condition △ has no reason to know of.
   3. General Rule-involuntary intoxication person entitled to acquittal in all situations in which voluntary intoxication is a defense and general intent crimes. Also, temporary insanity is a defense.
   4. Example: State v. Brown-△ charged with being drunk in street and in city courthouse. Claimed innocent mistake as a defense. Court recognized honest mistake as a defense but noted if after △ is drunk he is still with it enough to know what he is doing and does it anyway, no defense.
   5. Example: Burrows v. State-△ hitchhiker killed driver. Claimed driver coerced him into drinking by threatening to make △ get out of car. △ claim no prior experience with alcohol and that after drinking he was unable to realize what he was doing. Court holds that for a defense of
involuntary intoxication you need: inducement by acts due to duress and ∆ must be unable to understand criminal nature of act after he drinks.

f. Model Penal Code
1. Distinguished between three types of intoxication:
   a. self induced
   b. pathological
   c. involuntary (not induced)
2. Actor’s intoxicated condition at time of crime may exculpate him in two circumstances:
   a. if it negates an element of the offense
   b. pathological and involuntary are affirmative defenses if it causes actor to suffer from mental condition similar to insanity.
3. Negation of an Element:
   a. no differentiation between general and specific intent
   b. if intoxication results in lack of mental state required, not guilty
   c. exception-recklessness
      -when recklessness is an element of offense, if actor due to self induced intoxication, is unaware of risk he would have realized if he was sober, such unawareness is immaterial.
4. If unconscious-act is involuntary, if act is involuntary, not guilty.
5. Intoxication as an affirmative defense
   a. pathological or involuntary is a defense if no capacity to appreciate wrongfulness
6. Example: Commonwealth v. Graves-∆ convicted by jury of 1st deg. Murder, robbery, burglary, ∆ high on LSD and wine. TC refused to charge jury that if ∆ couldn’t form intent (psychiatrist testified he couldn’t) then he was not guilty. TC erred-if crime requires specific intent and intoxication excludes existence of mental state, then no crime.

**SELF DEFENSE**

I. At common law, non aggressor is justified in using force upon another if he reasonably believes that such force is necessary to protect himself from imminent use of unlawful force by the other person.
II. Components of Self-Defense
   A. Necessity-force shouldn’t be used unless and to the extent that it is necessary.
      1. At common law, self-defense limited to imminent threats.
         a. imminent if it will occur immediately or at once. Danger must be pressing and urgent.
         b. Force is not imminent if aggressor threatens to harm another person at a later time
      2. A person may not defend himself against the imposition of lawful force (ex: lawful police restraint)
      3. Retreat
         a. Majority rule-innocent person threatened by deadly force must retreat rather than use deadly force if he is aware that he can do so in complete safety (aka “retreat to the wall”)
         b. Minority Rule-non aggressor permitted to use deadly force to repel unlawful deadly attack even if aware of opportunity for safe retreat (aka American Rule)
            1. Example: People v. Ligouri-△ attacked by a man armed with a gun. TC refused △s instruction that a person who is feloniously attacked is under no duty to retreat but may stand his ground and if necessary, kill his opponent. Court of Appeals reversed, said instruction should have been given.
            2. Brown v. U.S.-△ and X had long standing feud. X had twice assaulted △ with a knife and had told △ next time he intended to kill △. △ began carrying pistol. X came towards △ armed with knife. △ retreated 20 ft to get coat, got gun, X still striking at △. △ shot X 4 times. SC says if △ reasonably believes he is in immediate danger of death or grievous harm from attacker he may stand ground. Failure to retreat not proof of guilty, only a circumstance to be considered with all others to determine if △ exceeded justified force.
                -detached reflection can not be demanded in the presence of an uplifted knife
      3. “castle exception” to retreat rule
a. non aggressor need not ordinarily retreat if he is attacked in his own dwelling.
   1. if stranger, never duty to retreat.
   2. If co-dweller, jurisdictions are split
      Majority-assailants status as co-dweller irrelevant
      Minority—there is duty to retreat if attacker is co-dweller

b. Example of minority rule: Cooper v. U.S.
   ∆ and brother lived with their mother. Brothers arguing. Brother hitting ∆ in head with radio, ∆ shoots brother. Court finds castle doctrine inappropriate.
   Note: in American rule jurisdictions (no-retreat jurisdictions) this issue wouldn’t arise

B. Proportionality—a person is not justified in using force that is excessive in relation to the harm threatened.
   1. non aggressors—subject to retreat (majority rule) already discussed, non-aggressor have absolute right to use proportionate force. Thus
      a. non-deadly threat—non deadly force okay
      b. deadly threat—deadly force okay
      c. non-deadly threat—deadly force not okay
   2. Aggressors—one who provokes unlawful physical conflict by words or actions calculated to bring about an assault
      a. deadly aggressors—one whose acts are reasonably calculated to produce fatal consequence
      -can only regain right of self defense by withdrawing from conflict and successfully communicating that to the intended victim
      Example: State v. Broadhurst—∆ hired X to kill husband. X struck husband twice on head with wrench, fracturing husbands skull. X then decided to abandon murder, started walking to car. Claimed husband then came at him and he was forced to shoot husband in self defense. ∆ claimed Xs self defense claim should be valid, meaning no murder imputed to ∆. ∆ guilty because X never successfully
communicated withdrawal to husband. (may not have been in light of husbands head injuries anyway). No successful communication, no regaining of right of SD.

b. non deadly aggressor-if X uses non-deadly force on Y and Y responds with deadly force, what is X legally entitled to do

1. courts are split:
   a. some say original aggressor immediately regains right of SD
   b. some say non-deadly aggressor who is victim of deadly response must retreat to any known place of complete safety before using deadly force and failure to do so is an imperfect defense (no complete exculpation only lesser charge of manslaughter)

C. Reasonable Belief-a person is justified in using force to protect himself if he subjectively believes and has objective reasonable grounds for believing that such force is necessary to repel an imminent unlawful attack, even if appearances prove to be false. (perfect self defense)

1. Example: People v. Goetz-△ shot four men after one of the group approached him and said give me five dollars on the NY subway. △ said he had been mugging victim, started carrying gun, based on prior experiences feared being maimed. △ objected to reasonable man in △s situation standard. Reasonably believes standard upheld. Determination of reasonableness must be made on the circumstances facing a △ or his situation.
   a. Determination of Reasonableness must be made on the circumstances facing a △ or his situation
   b. Relevant factors “Circumstances” (not exhaustive)
      1. physical attributes of all involved
      2. △ prior experiences
      3. △ knowledge of attackers

2. Battered Woman’s Syndrome-no such thing as a battered woman’s defense
   a. definition- a series of common characteristics that appear in women who are abused physically and psychologically over
an extended period of time by the dominant male in their lives

b. Three situations:
   1. confrontational homicides-self defense instruction always given
   2. non confrontational homicide-(ex. Sleeping husband)-courts are divided, majority says no self defense instruction
   3. hired killer-never self defense instruction

c. Evidence Issues
   1. evidence of victim’s abuse of victim is allowed-need it to show Δ had a reasonable belief
   2. expert testimony
      a. clear trend toward allowing it
      b. disagreement over purposes for which it can be used
         1. some permit evidence of syndrome but not whether victim suffers from it
         2. some allow expert to state whether Δ subjectively believed force necessary, but don’t allow evidence to be used to show conduct objectively reasonable.
         3. some allow expert testimony to be used in determining Δ subjective belief and objective reasonableness (see Humphrey)
   3. People v. Humphrey-Battered woman’s syndrome admissible by statute. Δ and X had violent relationship, while drunk on the day before killing, X hit Δ and shot at her. On day of shooting, X hit Δ and threatened to kill her. Δ grabbed gun and shot X when he reached for her hand. Jury should be allowed to consider expert testimony in deciding reasonableness as well as existence of Δs bullet that killing was necessary. Jury must consider Δs situation and knowledge which makes evidence relevant, but
issue whether reasonable person, not reasonable battered woman, would believe in need to kill to prevent imminent harm.

3. Imperfect Defense—many jurisdictions provide that a person who kills another because he reasonably believes that factual circumstances justify killing is guilty only of manslaughter, not murder.

4. Example: State v. Realina—X warned ∆ to stay away from Xs wife. X saw ∆ driving, thought going to see Xs wife, and decided to follow ∆. ∆ saw X following him and drove to the police station. At station, X approached ∆ and when ∆ prepared to drive away, X grabbed ∆s shirt. ∆ turned off engine, X let go. ∆ looked for weapon in car, grabbed carving knife. X ran toward station, 100 yards away, ∆ pursued. ∆ immediately complied when officer told him to drop the knife. Court didn’t decided if ∆ using deadly force, but found ∆s acts justifiable to protect himself from kidnapping. Court reject state’s claimed that ∆ justification evaporated during the chase.

Example: People v. Lavoie—∆ followed by car with four men he didn’t know. Men rammed ∆s car. ∆ braked, skidded to stop through busy intersection. Men backed their car away a bit. ∆ grabbed his gun. Men saw it, kept threatening. Group moved toward ∆, D shot and killed closest aggressor. Court found no issue for jury. ∆ was justified.

III. Model Penal Code
a. subject to various limitations, a person is justified in using force upon another person if he believes that such force is immediately necessary to protect himself against the exercise of unlawful force by the other on the present occasion.

b. How this differs from common law:
   1. drafted in terms of actor’s subjective belief, no reasonable component
   2. “immediately necessary therefore on the present occasion” language authorizes use of force sooner than may be allowed at common law.
c. Can’t use force to resist an arrest that he knows is being made by police officer (undercover officers don’t apply) even if the arrest is unlawful-different from common law.
   Exception-if belief that officer is going to use excessive force.

d. Deadly force-for the purpose of causing or knowing to create substantial risk of causing death or serious b. injury. (not just a threat)
   1. unjustified unless actor believes it is immediately necessary to protect himself on the present occasion from death, serious bodily injury, forcible rape, or kidnapping.
   a. exception-even if permitted above, it is unjustified if person using it is the aggressor (vs. common law-more narrow because it includes a non-deadly aggressor as justified, MPC any aggressor is not)
   b. ∆ may not use deadly force if he knows he can retreat to complete safety (unless at home or work and not initial aggressor or co-worker). At home, though, even attack by co-dweller, no need to retreat if not aggressor.

DEFENSE OF OTHERS

I. Started as privilege to defend wife, children, and servants, but has gradually extended.
   a. example: People v. Curtis-∆ entitled and bound to take an interest in life and safety of his brother. A dangerous felony may be prevented by one who is not himself in the wrong.
   b. Now includes privilege to defend even strangers

II. Common Law Rule
   a. actor is justified in using force based on reasonable appearances
   b. Example: State v. Bernardy-∆ interceded in fight between X and friend because he believed X and X’s friend were going to gang up on friend. ∆ kicked X in head several times. Trial court should have given defense of another instruction. An individual who acts in defense of another person, reasonably believing him to be the innocent party and in danger, is justified in using force necessary to protect that person even if, in fact, the party whom he is defending is the aggressor.
   c. Alexander v. State-∆ interceded believing fellow inmate had been attacked by guarded. Other inmate had in fact instigated confrontation but ∆ only saw guards reaction. Held-interveners right to react is not
strictly coterminous with a participants right to self defense. \(\Delta\) must be judged upon his own observation of the circumstances as they reasonably appear to him. (case based on statute but it follows the common law)

### III. Alter Ego Rule

An intervener could only use force to defend a third party if the party would in fact have been justified in using force and force in same degree in self defense. Once followed by a majority of jurisdictions. Today most jurisdictions use reasonably appeared rule. (see below)

- **Example:** State v. Saunders - \(\Delta\) shot man fighting brother in butt, guy bled to death. Court recognized right to defend brother. Says one simply steps into shoes of victim and is able to do only as much as victim himself would lawfully be permitted to do.

### IV. Subjective Rule

Defendant has right to use force in defense of others as long as it reasonably appeared that the person assisted had the right (See People v. Curtis)

### V. Model Penal Code

1. Intervener is justified in using force upon another person in order to protect a third party (X) if three conditions are met:
   - a. \(\Delta\) uses no more force than \(\Delta\) would be entitled to use in self protection based upon \(\Delta\) belief of the circumstances.
   - b. Under the circumstances as \(\Delta\) believes them to be, X would be justified in using such force in self defense.
   - c. \(\Delta\) believes her intervention is necessary for Xs protection

2. Retreat:
   - a. if \(\Delta\) would have to retreat if protecting herself, doesn’t have to before using force to protect X unless she knows retreat will assure X complete safety.
   - b. \(\Delta\) required to attempt to secure Xs retreat if X is required to under rules of self protection but only if \(\Delta\) knows X can retreat with complete safety.
   - c. Neither \(\Delta\) nor X required to retreat in the other’s dwelling or place of work to any greater extent than in her own.

3. Defense of other based on subjective belief of intervener.

### Defense of the Habitation

1. Rationale for Defense-home is your castle.
II. Early Common Law Rule-Home dweller may use deadly force if he reasonably such force is necessary to prevent an imminent and unlawful entry.

III. Today-dweller may use reasonable force to prevent any unlawful harm or injury to one’s place of abode or to prevent any unlawful intrusion there in.
   a. Example: People v. McNeese—VD and husband JD not getting along. ∆ agrees to allow VD to move in with him but on condition that JD doesn’t enter apartment. VD pays rent. VD and ∆ get drunk, ∆ hits on VD, VD decides to move. Returns later that night with JD and another to get her stuff. JD wakes ∆ up, while VD getting stuff finds JD applying a chokehold to ∆. Altercation ends, VD continuing packing then see JD and another guy come to help stabbed to death. ∆ then stabbed VD in head. Statute provides that deadly force okay if person makes unlawful entry and occupant reasonably believes intruder intends to commit crime other than unlawful entry. (make my day statute). Did JD make unlawful entry? Court says unlawful entry requires an entry in knowing violation of the criminal law. Immunity not intended to justify use of force against persons who enter accidentally or in good faith.
   b. to use deadly force today, need more than unlawful entry. Also need reasonable belief that intruder intends to commit felony and that deadly force is necessary to repel intrusion. Some jurisdictions say need belief that intruder intends to commit forcible felony. Burglary at night is a forcible felony and in some jurisdictions, during the day is too.

III. What constitutes a dwelling?
   State v. Mitchesen—Dispute arose over possession of mag wheels on van. ∆ had van parked at sisters house. Previous owners came to steal/reclaim wheels. Sister told them to leave. ∆ came to door with rifle. Shot guy (said accidental). Claimed defense of habitation. Can sister’s home constitute his habitation? Court says yes...habitation includes not only a persons actual residence but also whatever place he may be occupying peacefully as a substitute home or habitation.

IV. May occupier use force after the intruder has entered?
   a. case law split-some say no, defense inapplicable after entry occurs
      1. People v. McNeese—Unlawfully remaining on property does not include a mens rea to satisfy the unlawful entry requirement.
      2. in these jurisdictions, would need to be able to assert some other defense for use of force such as self defense.
   b. Others say it is a defense still
DEFENSE OF PROPERTY

I. General Rule-One is privileged to use non-deadly force when this reasonably appears to be necessary to protect one’s property, real or personal, from unprivileged interference by another, provided one does not employ more force than reasonably appears to be necessary for the purpose.
   a. Deadly force not allowed-deadly force is never permitted in defense of property, even if it is the only means available to permit the loss.
   b. Distinguish-right to use non-deadly force is sometimes transformed into an independent right to use deadly force in self-protection or defense of a third party. AKA deadly force may be justified where the facts also support another privileged act of force like self-defense.

II. Reasonable non-deadly force permissible.
   a. non-deadly force may be used to protect real or personal property in one’s lawful possession if the force used reasonably appears necessary to prevent or terminate an unlawful intrusion onto or interference with that property.
      1. some courts hold that a person can’t use force until he has sought to avoid a physical conflict by requesting desistance by the would-be dispossessor.
      2. defender may not use force beyond what reasonably appears necessary.

III. Recapture of Property
   a. in order to discourage self-help and consequent breaches of the peace, a person may not ordinarily use force to recapture property of which he has been unlawfully dispossessed.
      1. exception-hot pursuit
         -a person who acts promptly after dispossession may use non-deadly force as reasonably necessary to regain or recapture his property.
   b. Model Penal Code-A person may use non-deadly force to reenter land or recapture personal property if
      1. he believes that he or the person for whom he is acting was unlawfully dispossessed of the property and either
      2.a. the force is used immediately after dispossession or
         b. even if it isn’t immediate he believes the other person has no right to be in possession of the property.
-reentry of land not allowed under 2b unless actor believes it would constitute an exceptional hardship to delay reentry until court order was obtained.

c. Example: Commonwealth v. Donahue-Δ bought clothes from X for 21.50. X came to collect money, dispute arose, Δ offered X 20 dollars or return of clothes. X took the money and said Δ owed him 1.50. Δ demanded return of money, X refused. Δ choked X to get his money back. Δ claimed right to recovery of property justified the assault. A man may defend or regain his momentarily interrupted possession by the use of reasonable force, short of wounding or employment of a dangerous weapon. Jury should have been instructed on defense of property defense. Whether the force used was excessive was a question for the jury.

IV. Spring Guns and Similar Defenses

a. Traditional rule-an injury or killing caused by means of a mechanical device is justifiable only if the person who set the device would have been justified in inflicting the same harm had he actually been present.
b. Rule is changing-Increasing number of jurisdictions now support a proposition that a resident may not justifiably use a mechanical device designed to kill or seriously injure even if he would have been permitted to use deadly force himself.
c. Example: People v. Ceballos- Δ lived above garage but sometimes stayed in garage. Δ noticed lock on door bent. Mounted pistol and set it to discharge if door opened. Two teens tried to burglarize Δs garage, checked to see if Δ home, tried to break in, one teen shot in face. Court abandons common law rule. Says not all burglaries are committed in such a manner as to create fear of bodily harm so use of deadly force not reasonable for all burglaries. Allowing persons at their own risk to employ deadly mechanical devices imperils lives of others. When actor is present, there is always the possibility he will realize that deadly force is not necessary, but mechanical devices are without mercy or discretion. Δ actions not justified.
d. MPC-Spring guns not permitted. NO mechanical device to protect property okay if intended to cause or known risk of causing death/sbi.

V. Model Penal Code

1. Permissible use of non deadly force

   a. Force to protect property-may use non deadly force upon another person to prevent or terminate an entry or other trespass upon land or taking of personal property if he believes:
1. person’s interference with property is unlawful
2. intrusion affects property in actor’s possession (or possession of who he is acting on behalf of)
3. non deadly force is immediately necessary.
(Generally conforms with common law.)
b. Force to recapture property—may use non deadly force to reenter land or recapture personal property if
   1. he believes that unlawfully dispossessed
   2. force is immediately necessary or no claim of right of possession by the other person and it would be exceptional hardship get court order.
   (compare common law—expands and extends right even if not in hot pursuit because the law should not deprive someone of a privilege that a well conducted person would expect to have, but if he may have a claim then common law rationale that it is best to resolve dispute in court)
2. Impermissible use of non deadly force: 3 circumstances
   1. Not immediately necessary unless defender first requests desistance (unless request would be dangerous to himself or property)
   2. If he knows it would expose trespasser to substantial risk of serious bodily injury (evict from moving vehicle for example)
   3. Prior dispossessor may not use force by a second dispossessor even if he thinks he is acting unlawfully.
3. Use of Deadly Force—
   a. General Rule—Prohibited
   b. Exceptions:
      1. Dispossession of a Dwelling if intruder seeking to dispossess, has no claim of right, and such force is immediately necessary
         (Different rationale than common law—deadly force predicated on right to safe and private habitation, MPC—right to possession in dwelling).
         (Common law originally authorized deadly force merely for preventing an unlawful injury)

INSANITY
I. General Rule-If at the time of crime, a ∆ was so impaired by mental illness that he was insane by law then he is entitled to an acquittal.
   a. different than diminished capacity because diminished capacity is used to show he lacked mens rea but insanity is used to proved ∆ lacked capacity to engage in morally reprehensible behavior
   1. most jurisdictions-understand what he was doing.
   2. some jurisdictions also include control of conduct.

II. Elements
   a. sufficient impairment to constitute insanity
   b. that impairment so affected the ∆ as to meet the legal standard

III. Condition Required
   a. differs significantly in jurisdictions but all require some sort of mental impairment
      1. mental illness or disease (traditional)
         a. some require a severe mental disease or defect
            1. MPC and others-not just an abnormality manifested only by repeated criminal or antisocial conduct.
      2. mental defect (aka severe mental retardation)-MPC
      3. Intoxication
         a. involuntary if it produces the required effect on ∆ mind(Burrows)
         b. reasonably settled physical or psychological abnormality caused by repeated use of intoxicants
         c. voluntary is never qualified as insanity but could be for other ∆.

IV. Tests for insanity
   a. all jurisdictions say that must have 1. mental impairment and 2. that impairment created a certain effect at the time.
   b. Two types of impairments: cognitive (intellectual processes and ability to perceive reality and reason about it) and volitional (ability to control behavior and avoid wrong conduct)
   c. Jurisdictions differ over whether insanity is limited to cognitive or includes volitional.
      1. History-originally-only cognitive, then in early 80s trend toward expansion of the defense, but then with Hinckley’s acquittal, return of many to restrictive cognitive standard.
      2. M’Naughten Rule-cognitive test, a ∆ is only acquitted if at the time of the crime and as a result of his mental impairment he either:
         a. did not know nature and quality of his act
1. Majority- didn’t understand physical nature and consequences.
   (ex: holding flame to building will cause it to burn)
   (ex: I was strangling her and I knew I was doing something wrong-then not insane)
2. Minority-basic and accurate understanding of the significance of the action (true insight into nature of his conduct) (absent unless $\Delta$ can evaluate conduct in terms of its impact on others and appreciate total setting)
3. Example: squeezing V’s neck thinking it is a lemon, then courts agree she does not know nature and quality of her act. If she knows she is squeezing the neck of human but doesn’t know it is causing pain, then courts are split.
OR b. did not know the act was wrong.
   1. legally wrong or morally wrong?
   c. $\Delta$ ability to control his conduct is not relevant if he could reason and think about his conduct
   d. Criticism-so limited that it permits conviction of some persons who could not have avoided crimes and thus are not morally blameworthy.
   e. Example: State v. White- $\Delta$ charged with two murders committed on the same day. The evidence showed that the jury could have found that $\Delta$ could not control his conduct but was able to tell right from wrong. $\Delta$ offered an instruction on the ALI test. The trial court used the M'Naughten test for right and wrong. D was convicted. D appealed. Upheld. This court declines to accept the MPC test, which would have allowed the jury to find D not guilty by reason of insanity if his ability to control his own acts was substantially impaired by mental problems, even though he could still distinguish right from wrong. This is undesirable. There is uncertainty about what capacity to "control one's behavior" means. The M'Naughten Test is better because it is a better deterrent for criminal conduct
3. Loss of Control Tests-include cognitive and volitional tests
   a. MPC-$\Delta$ be acquitted if as a result of mental impairment he lacks substantial capacity either to appreciate the criminality/wrongfulness of his conduct or conform his conduct to
the requirements of law (most federal and some state courts have adopted this test)

a. Irresistible impulse test—some jurisdictions say if act was caused by insane impulse that overcame his will to avoid the crime, then he should be acquitted.

Example: Davis v. State—∆ learned of affair btn his wife and X. Killed X. Judge said irresistible impulse is not a defense. Convicted. Reversed. Irresistible impulse is not a defense but may reduce the degree of crime. A defendant who is acting under an insane delusion is presumed to be incapable of malice.

b. MPC test—If he lacked substantial capacity to conform conduct. (widely adopted until 1980s)

Example: State v. Fetters—∆ convicted of murder in first while participating in robbery. Underwent psychological and emotion treatment, in a treatment house, had told people of her plan to kill her aunt and take her money, etc. Court refused to allow jury to hear ∆ of insanity. A defendant must show by a preponderance of the evidence that she was incapable of knowing the nature and quality of her actions or that she was incapable of distinguishing between right and wrong in relation to her actions in order to prevail on the insanity defense. Substantial evidence for conviction since she planned it, witness testimony, etc.

Example: People v. Drew—∆ altercation with another bar patron over the alleged theft of money left at the bar to pay for ∆’s drinks. The police were called to stop the fights. In the course of restraining the fight, an officer was struck by ∆. Charged with battery on a police officer and with disturbing the peace. Plead not guilty by reason of insanity. Under the M’Naghten test for insanity, D was found to be free of any mental defect and found to be sane. D appealed. M’Naughten found invalid. Test for insanity is whether, at the time of the act, the defendant, as the result of mental disease or defect, lacked substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. The
M'Naughten test emphasizes cognition exclusively. M'Naughten is based solely on the recognition of the difference between right and wrong which may be totally irrelevant to the question of sanity. It can no longer be used in California. There was evidence that D had a history of assaultive behavior. This would support a finding that he could not conform his behavior to the requirements of the law.

b. Criticism-few if any persons are really unable to refrain from engaging in conduct they know is criminal. Too hard to determine whether they really were unable and testimony on the matter will confuse juries and cause unjustified acquittals because of misunderstanding.

c. Difference btn MPC and M'Naughten
   1. MPC-substantial capacity lacking –vs- M'Naughten just lack of capacity
   2. MPC-must appreciate nature and quality –vs- M'Ntn-must know.

4. Broader Tests
   a. Durham (product) rule-acquittal of ∆ if evidence shows that the crime was a product of an impairment the ∆ had at the time. (only currently the law in NH, and was in DC but DC abandoned it.)
      Criticism-fails to give juries guidance
   b. Example: Durham v. US-∆ accused of housebreaking. Claims unsound mind at the time of crime. Found sane under M'Naughten and irresistible impulse test. ∆ appeals. Reversed. Product test, and ∆ conduct was product of his mental illness. The M'Naughten and irresistible impulse tests are too narrow in the light of modern scientific knowledge. They frame insanity in terms of either cognition or a total loss of free will. This ignores the brooding type of insanity. It is very uncommon that someone is completely unable to distinguish right from wrong or is completely incapable of controlling his own acts.
   c. but for influence....

V. Burden of Proof-general presumption of sanity and ∆ has initial burden to raise the defense.
   a. past-prosecution had to prove beyond RD that ∆ was sane
b. recent trend-Δ has burden of proving insanity

DIMINISHED CAPACITY

I. Some jurisdictions say that if no mental illness to show insanity, then can still show Δ did or could not have specific intent necessary for the crime charged (majority reject rule)
   a. example: State v. Smith-Δ with personality disorder raped babysitter and killed the boy she was watching. State moved for mental exam. Δ claimed diminished capacity. TC refused to instruct jury on diminished capacity. Court reverses, saying that it can be used to negate mental state or reduce crime. Question for jury to decide. (MINORITY RULE). Consequences reduce rather than excuse commission. Says analogous to intoxication.
   b. After this case, CA legislature eliminates diminished capacity as a defense