

Overview of Justice System/ Purposes of Punishment

- I. Overview of justice system
 - a. Cases begin with cops who arrest somebody. The reason is based on some level of probable cause. It then gets kicked to the prosecutors. Our system is different than most because prosecutors have more discretion. The discretion not to charge is not disputable.
 - b. If they charge, they have to have probable cause
 - c. Most sentences are resolve by plea bargains and very few actually go to trial
 - d. The burden of proof is on the prosecution.

- II. Reasons to punish criminals
 - a. General: Deterrence, incapacitation, rehabilitation, retribution, and denunciation.
 - i. Dudley v. Stephens illustrates denunciation, retribution, and deterrence
 - b. **Retribution**
 - i. The idea that there needs to be some punishment and that people who commit crimes are blameworthy and that they need to suffer in some way. If you transgress social norms, you should be punished proportionally for your transgression→ retrospective in the idea that trying to keep people accountable for the crimes that they have committed
 - c. **Deterrence**
 - i. What a man perceives or supposes pain to be the consequence of an act, he will withdraw from the commission of that act
 - ii. If you commit a crime and are punished, the message is sent to society. Generally, people will not commit the crime. Specifically deterring you from committing the crime again. Also prospective: looks forward to prevent crimes
 - iii. Specific Deterrence: pain of punishment prevents individual from committing act again
 - iv. General Deterrence: pain of others sets example to larger society about consequences of death penalty
 - d. **Incapacitation**
 - i. Incapacitation seeks to prevent future crime by elimination or restricting the ability and opportunity of a potential criminal to commit crime. The primary rationale for punishment in CA for some time—take people off the streets—i.e. one cannot rob a store from a prison cell
 - e. **Rehabilitation**
 - i. Makes punishment useful to society by attempting to reduce further crime
 - f. **Denunciation**
 - i. Punishing those who violate society's rules helps to draw law-abiding society together by reaffirming societal values
 - ii. U.S. v. Bergman (case where the rabbi defrauds the fed. Government)
 1. Here the general aim of denunciation will stop him from doing it again. Also it has an aim of deterrence: to prevent others from doing it too.

Conduct

- I. Conduct: General
 - a. Legislatures typically require some sort of conduct for criminal liability: “actus reus”
 - i. An act: bodily movement, voluntary bodily movement (includes speech), etc.
 - ii. Cannot punish somebody when there isn’t an act, unless legal duty, and cannot punish somebody when there isn’t an act, unless legal duty, and cannot punish somebody for bad thoughts.
- II. **Voluntariness** definition
 - a. MPC: Voluntariness: liability is based on conduct that includes a voluntary act or the omission to perform an act of which he is physically capable
 - i. A) A reflex or convulsion
 - ii. B) A bodily movement during unconsciousness or sleep
 - iii. C) Conduct during hypnosis or resulting from hypnotic suggestion
 - iv. D) A bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual (Very low standard)
I.e. *Martin v. State*: plaintiff was drunk inside his home and police officers bring him to a public highway in this condition—No voluntariness because of (D)
 - b. Another definition:
 - i. A voluntary act is a movement of the human body that is, in some minimal sense, willed or directed by the actor, can also be the result of habit or inadvertence as long as the individual could have acted differently – Involuntary control: the person has no conscious control
 - c. (AR)+ (MR) + Causation= Crime UNLESS Defenses
 - i. AR: Actus Reus: act element of a crime
 - ii. MR: Mens rea: mental element to a crime
 1. (Attendant circumstances: circumstances of the crime that need to be present)
 2. Attached to the conduct element
 - d. A person cannot be punished for a status or condition (*Robinson v. Powell*)
 - e. A person cannot be punished for an omission unless it meets one of the four exceptions creating a legal duty (*Jones case*)
- III. **Timeframing**
 - a. I.e. *People v. Decina*: Legal issue: Whether the driver can be accused of negligence in that he consciously undertook to and did operate his vehicle on a highway with knowledge of his illness
 - i. The prosecution is saying that he meets this act requirement because he has a conscious element of acting—voluntariness
 - ii. There are 2 acts here that are relevant: 1) for the prosecution: getting into the car with knowledge of the epilepsy, 2) For the defense: the proximate cause is epilepsy: not a voluntary act
 - iii. So takeaway: to show that sometimes it depends on which act you focus on that ultimately determines which act was voluntary
- IV. **Status “Being” versus “acting”**
 - a. *Robinson v. California*: Court says that his additional is a status of “being” and is therefore not an act— isn’t actus reus because it reflects his reflect—it’s a status because it’s a disease not a condition—not a choice or control over this state of being
- V. **Omission**
 - a. Liability may be imposed for failure to act
 - i. I.e. *Jones v. U.S.*—appellant charged for involuntary manslaughter of an infant that was placed in her care by a family friend
 - b. MPC: Omission: Liability for the commission of an offense may not be based on an omission unaccompanied by action unless
 - i. A) The omission expressly made sufficient by the law defining the offense
 - ii. B) A duty to perform the omitted act is otherwise imposed by law
 - c. Legal Duties Owed Because of Status Relationships: 4 conditions for a legal duty
 - i. 1) Status imposes a duty of care

- ii. 2) Certain status relationship (i.e. parent to child, spouses to each other, employers to employees, owners to customers, innkeepers to guests, and captains to passengers)
 - iii. 3) Contractual duty to care for another
 - iv. 4) Where one has voluntarily assumed the care of another and so secluded the helpless person as to prevent others from rendering aid.
- d. Omission + Legal Duty = Act
- e. THEREFORE: An Omission can substitute for an act when coupled with a legal duty
- i. If you can demonstrate the legal duty (1 of 4 conditions) then failure to act meets the actus reus requirement
- f. Prosecution has to prove more in omission because has to prove legal duty

Mental States

Mens Rea + Actus Reus + Attendant Circumstances + (Causation) = Crime UNLESS Defenses
(Attendant circumstances: circumstances of the crime that need to be present)—attached to conduct element

- I. Mens Rea: General
 - a. Most crimes involve a union of actus reus and mens rea
 - i. The actus reus and the culpable mental states must be present at the same time and the DEF's guilty mind must have compelled his voluntary act
 - b. There has to be a union of actus reus and mens rea: "concurrency"
 - c. There may be multiple mental states present in a statute
 - d. Mental states are relational
 - e. Mental states come in degrees that are hierarchical
 - f. Legislatures often draft statutes that are silent or otherwise ambiguous regarding mental states, leaving it to the courts to decide what mental states should apply or if strict liability should be imposed
 - g. Mental states may also be used to establish the relative blameworthiness of and severity of punishment for crimes
 - h. The MPC seeks to remedy the vocabulary problems by using 4 primary mental states—purpose, knowledge, recklessness, and negligence.
 - i. The highest three mental states are subjective, while negligence is objective because of RPP standard—Section 2.02 of MPC
 - i. Purposely
 1. A person acts purposely when: if the element involves the nature of his conduct or as a result therefore, it is his conscious object to engage in conduct of that nature
 2. Conscious object to engage in the conduct or to cause the result
 3. Aware of the attendant circumstances if they are there (he believes/hopes that they exist)
 - ii. Knowingly
 1. A person acts knowingly when: If the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature, or to cause such result
 - a. Awareness of the nature of conduct
 - b. Practically certain that the conduct will cause the result
 - c. Aware of attendant circumstances if they exist
 - iii. Recklessly
 1. A person acts recklessly when: he consciously disregards a substantial and unjustifiable risk that the material element exists or will exist from his conduct and is a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation
 - a. Substantial risk
 - b. Unjustifiable risk
 - c. Awareness (known to him)
 - d. Gross deviation
 - e. In actor's situation (law-abiding)
 - iv. Negligently:
 1. A person acts negligently when: he should be aware of a substantial and unjustifiable risk that the material element exists or will exist from his conduct.
 - a. Substantial risk
 - b. Unjustifiable risk
 - c. Should be aware
 - d. Gross deviation
 - e. In actor's situation (reasonable person)
- II. Common law: Mens Rea: Offense analysis
 - a. 3 types of intent: "specific intent," "general intent" and "strict liability"
 - i. **Specific intent**: requires intent regarding something not included in the non-mental elements of the offense

- ii. **General intent:** any offense for which the only mens rea required was a blameworthy states of mind
 - 1. Where mental state is attached to the actus reus (conduct)
 - a. The word “willfully” is part of the actus reus not the mens reus in general intent crimes. Think of this as voluntariness, meaning a slight movement, willed or directed
 - b. MPC does “element analysis” as opposed to offense analysis
- III. Direct v. Circumstantial evidence
- a. **Direct evidence:** Establish the point is offered to prove without the necessary of inference
 - b. **Circumstantial evidence:** Requires the use of one or more inferences to prove the pt
- IV. **Strict Liability**
- a. Argument in favor of strict liability: It makes enforcement easier and more effective
 - i. Requires prosecution to prove fewer elements
 - b. MPC’s take on culpability
 - i. A person is not guilty of an offense unless he acted purposefully, knowingly, reckless, or negligently with respect to each of the material elements of the offense.
 - c. Generally, strict liability is the exception not the rule because blameworthiness is predicated on the notion of having a guilty mind
 - i. We get this from the *Morisette* case (bomb casings taken in broad daylight—plaintiff thought they were abandoned—need a mental state)
 - 1. Statutory Silence MPC §2.02 (4): When a statute is silent on mens rea we assume that the statute intended mens rea and that the default mens rea is “recklessly”
 - 2. Statutory Ambiguity MPC §2.02: When the statute is ambiguous and the mens rea for one element is reckless then it is reckless for all the rest of the elements
 - d. **LaFave Strict Liability Factors (if statute is silent on mens rea)**
 - 1) Legislative history of the statute and context
 - 2) Guidance from other statutes
 - a. Sometimes related statutes that will give you guidance by analogy or distinction
 - 3) The severity of the punishment
 - b. The greater the possible punishment, the more likely that some fault is required and conversely the lighter the possible punishment, the less likely that some fault is required—i.e. speeding tickets, fix-it tickets
 - 4) The seriousness of the public harm that the statute seeks to prevent
 - c. The more serious the consequences to the public, the more likely strict liability
 - 5) The defendant’s opportunity to ascertain the true facts
 - d. The harder to find out the truth, the more likely the legislature meant to require fault in not knowing.
 - 6) The difficulty of prosecuting officials would have in proving a mental state for this type of crime
 - e. The greater the difficulty, the more likely the legislature meant to relieve the prosecution of this burden
 - 7) The number of prosecutions to be expected under the statute
 - f. The larger the number, the greater chance the legislature meant fault
 - ii. If the LaFave factors show mens rea, default statute is recklessness
 - iii. *People v. Taylor* (possession of cane sword)—shows us the LaFave factors (Factors 4-7 do not exist to a cane sword)
 - iv. TAKEAWAY about LaFave factors: what they say about a statute that is silent about mens rea and how to apply them to figure out if there is strict liability
- V. **Mistake of fact**
- a. Defendant is claiming that he did not possess mental state due to 1) mistake or 2) ignorance or 3) accident
 - b. Mistake of fact relates to the mental state
 - i. Need to negate culpable subjective mental state to be effected

- c. Definition: Mistake of fact: A claim that the defendant did not possess the mental state required by the statute because of mistake, ignorance, or accident. By negating culpable mental element, defendant can defeat the crime
 - i. Defendant must negate the subjective mental state to be effective
 - ii. Reasonableness of mistake is not always required
 - iii. **Think of mistake of fact as an issue that goes to the mental state**—generally mistake of fact evidence is admissible if it negates a culpable mental state, including recklessness.
- d. 3 step approach analysis of mistake of fact
 - (1) What non-mental element of the crime is the person mistaken or ignorant about?
 - (2) What, if any, mental state is required as to the element about which the defendant is mistaken?
 - 1. If strict liability is assigned to the element, the mistake or ignorance is immaterial to determining liability
 - (3) If a mental state is assigned, then determine if the defendant has the required mental state
 - 2. If they have the required mental state then the mistake of fact doesn't negate the required mens rea element
 - 3. (Prob. 5.13-5.16 about delivering jars of cocaine—not knowingly)
- e. Case: *People v. Rypinski* (says he's going to blow the victim's brains out but didn't know the gun was loaded—awareness of the risk was not known to him, so not reckless)
 - i. TAKEAWAY: If you negate the mental element (here recklessness) then the mistake of fact defeats the conviction
 - ii. Rypinski rule: A mistake of fact can be used as a defense against the mental state requirement of recklessness
- f. Our study group example
 - i. A woman sold cocaine near school (which was illegal) but did not know she was near a school (5.13)
 - 1. Selling cocaine near a school
 - 2. Knowing there was a school nearby
 - 3. She didn't know there was a school—ignorant about a non-mental element, therefore, the woman negates the mens rea for that statute

VI. Legal Wrong Doctrine

- a. Even if the defendant can assert a (reasonable) mistake of fact defense, he or she will not be exculpated if, had the facts been as the defendant believed them to be, he or she would still be guilty of some other crime.
 - i. I.e. If two 25 year olds engage in sex but the guy thinks the girls is 15 is he guilty? Yes.

VII. Mistake of Law

- a. GENERAL: **Ignorance of the law is no excuse** (U.S. v. Baker)
- b. Strict liability for the most part. BUT EXCEPTIONS
 - Exception 1: Ignorance of the law can be a defense to a crime if knowledge that the prohibited conduct is unlawful is an element of the crime
 - 1. In such a case the defendant's lack of knowledge will negate the mens rea required for the commission of the offense
 - a. I.e. Ratzlaf (gambling case—structuring)
 - Exception 2: A person who reasonably relies on an official interpretation of the law that turns out to be erroneous
 - 2. I.e. Cox v. Louisiana (courthouse case—“near”)
 - a. MPC §2.04
 - b. He act in reasonable reliance upon an official statement of the law contained in... an administrative order or grant of permission or an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense.
 - Exception 3: A person is mistaken about circumstances that include a legal element
 - 3. (I.e. *Regina v. Smith*—man undoes roofing work to remove stereo—was mistaken about the law of real property)

Exception 4: Under certain limited circumstances, the prosecution of a person who lacks fair notice of a legal duty by law can violate due process

4. Not an exception we're covering—falls into constitutional law
- ii. (On the other hand: mistake of fact—a non-mental element—whether or not you possessed cocaine, whether or not your kid had an allergy, etc.)
- c. A defendant cannot avoid prosecution by simply claiming that he has not brushed upon the law and that the principle of ignorance or mistake of law is valid to the extent that ordinarily the criminal law does not require knowledge that an act is illegal, wrong, or blameworthy—(U.S. v. Baker—case of the counterfeit watches)
 - i. TAKEAWAY of this case: Ignorance of the law is no excuse, so long as you meet the mens rea and actus reus of the crime and if there is not something in the statute indicating that you had to know that it was against the law

VIII. MPC on Mistake of Fact/Law

- a. (i)—*Mistake of fact*: Ignorance or mistake as to a matter of fact or law is a defense if:
 - i. (a) Ignorance or mistake negates the purpose, knowledge, belief, recklessness, or negligence required to establish a material element of the offense OR
 - ii. (b) The law provides that the state of mind established by such ignorance or mistake constitutes a defense
- b. Exception 2
- c. (iii) MPC—*due* to a belief that the conduct does not legally constitute an offense is a defense to prosecution for that offense based upon such conduct when:
 - i. (a) The statute or other enactment defining the offense is not known to the act and has not been published or otherwise made reasonably available prior to the conduct alleged, or
 - ii. (b) He acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in:
 - (1) A statute or other enactment
 - (2) A judicial decision, opinion, or judgment
 - (3) An administrative order or grant of permission, or
 - (4) An official interpretation of the public officer or body charged by law with responsibility for interpretation, administration or enforcement of the law defining the offense.
- d. MPC 2.04 (p. 257)
 - i. When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposefully, knowingly, or recklessly
 1. MPC 2.02 (3)

IX. Specific Intent Crimes, General Intent Crimes and Strict Liability

- a. Comes from *Sally Mistook*
 - i. General Intent: no reference to future act or to achieve a future consequence
 - ii. Specific Intent: referring to a defendant's intent to do some further act or achieve a future consequence
 - iii. Strict Liability: Statute is silent on mental states

X. Intoxication

- a. Intoxication is a defense to a specific intent crime
 - i. Intoxication is NOT a defense to a general intent crime
 - ii. Did the intoxication negate the specific intent that was required for the commission of the crime?
- b. Purpose of introducing evidence of intoxication:
 - (a) To show identify (or mistaken identity)
 - (b) To show lack of knowledge
 - (c) To negate mens rea
 - (d) To negate actus reus
- c. Intoxication law varies depending on jurisdiction
 - (a) Some states do not allow intoxication as a defense, others allow it only if it negates actus reus. Still they allow it to negate mens rea, show lack of identity or knowledge
- d. Egelhoff Rule:

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- i. It is constitutionally sound for a state to not allow voluntary intoxication as a defense or to negate mens rea if the jurisdiction has decided no such defense will be allowed
- e. Common law on intoxication
 - i. Common law at first did not recognize intoxication as a means of negating mens rea.

Homicide

- I. Homicide General:
 - a. All homicides require the same three non-mental elements: 1) some form of conduct, 2) a result of death, and 3) a causative link between the conduct and death

- II. Homicide: Intentional Homicide
 - a. **Intentional Homicide: General**
 - i. Requires Express malice
 - ii. "Malice aforethought" has four categories and encompasses the intent to kill: 1) Intent to kill, 2) Intent to do serious bodily injury, 3) extreme recklessness that reveals an indifference to the value of human life, and 4) felony murder.
 - iii. Need to consider direct/circumstantial evidence regarding to show premeditation/deliberation:
 1. **1) Planning, 2) Motive, and 3) Manner**
 - b. **Intentional Homicide: First Degree Murder**
 - i. In order to have intentional first degree murder, one needs to show 1) Express malice (intent to kill), 2) premeditation, and 3) Deliberation
 - ii. In some states if you have express malice + enumerated means or enumerated felonies = 1st degree intentional murder
 1. I.e. CA: there are many enumerated means Penal Code § 189
 - iii. I.e. Commonwealth v. Carroll (Army man kills his crazy wife)
 1. Rule: Whether the premeditation and the fatal act were within a brief space of time or a long space of time is immaterial if the killing was in fact intentional, willful, deliberate and premeditated)
 - iv. Premeditation involves the mental process of thinking over beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short, after which the intent to kill is formed.
 1. You cannot infer premeditation and deliberation alone from the manner of killing
 - c. **Intentional Homicide: Second Degree Murder**
 - i. This is the default category for intent to kill → only need 1) express malice WITHOUT Premeditation and Deliberation
 - ii. Morrin: Says that hot blood does not impact the premeditation and deliberation processes— not a heat of passion
 - iii. State v. Bingham: Strangling and killing Leslie Cook (retarded woman)—reflection was not shown
 - d. **Intentional Homicide: Voluntary Manslaughter**
 - i. Intentional Voluntary Manslaughter General:
 1. We're now under the malice line
 2. MPC on Manslaughter:
 - (a) Under the influence of extreme mental or emotional disturbance
 - (b) For which there is a reasonable explanation or excuse
 - (c) From the viewpoint of a person in the actor's situation
 - (d) Under the circumstances as he believes them to be
 - ii. The Provocation Doctrine: typically reduces murder to manslaughter (*State v. Lawton*) by negating express malice.
 1. State v. Lawton Provocation Doctrine rules:
 - 1) Provocation must be legally adequate
 - i. Legally adequate categories: Battery, adultery, mutual combat, assault, illegal arrest, "violent or sexual"
 1. "Mere words" are never enough to constitute legally adequate provocation
 - 2) Provocation must have impassioned the defendant
 - Actual Provocation: Pennsylvania Statute
 - a) Sudden and intense passion
 - b) Resulting from serious provocation by
 - i) The individual killed OR

- ii) Another whom the actor endeavors to kill, but actor negligently or accidentally causes the death of the individual killed
 - 3) Defendant must not have had time to cool off between provocation and slaying
 - Cooling question: Louisiana Statute
 - a) Sudden passion or heat of blood
 - b) Immediately cued by provocation sufficient to deprive an average person of his self-control and cool reflection
 - c) Offender's blood must not have actually cooled OR the situation must be such that an average person's blood would not have cooled at the time the offense was committed.
 - 4) Defendant must not have actually cooled off before the slaying
 - Cooling question: State v. Pierce
 - 2. Dennis v. State— (was not legally adequate)
 - a. Rule: One cannot combine 3 separate grievances, none of which can individually constitute legally adequate provocation, as sufficient to give the triggering event a legal quality it does not otherwise have.
 - 3. Provocation and Extreme Emotional Distress
 - a. State v. Pierce: (LaPorte was the lover)
 - i. Rule: No person, while under extreme emotional stress brought on by serious provocation reasonably sufficient to incite him into using deadly force shall knowingly cause the death of another.”
 - ii. An act committed under extreme emotional stress is one performed under the influence of sudden passion or in the heat of blood without time and opportunity for reflection or for passions to cool
 - 4. MPC v. Georgia Statute on Voluntary Manslaughter
 - a. Georgia statute: “Modern Reasonable Man” Approach: Voluntary manslaughter is when someone acts solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a reasonable person. But if there's enough time where the voice of reason could be heard, the killing is murder
 - b. MPC: intentional manslaughter is when it is committed under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation.
 - iii. Imperfect Self- Defense
 - 1. In Re Christian
 - a. Rule: When a tier of fact finds that a defendant kills another person because they *actually* but unreasonably believed he was in imminent danger of death or great bodily injury, the defendant is deemed to have acted without malice and therefore cannot be convicted of any crime greater than voluntary manslaughter.
- III. Homicide: Unintentional Homicide (Implied malice)
- a. Unintentional Homicide: General
 - b. Unintentional Homicide: First Degree Murder
 - i. You get here through:
 - 1. Implied Malice + Enumerated Means OR Enumerated Felonies
 - 2. Provocative Act Murder→ Not on the exam
 - ii. Implied malice: (required for first degree and second degree unintentional murder)
 - 1. Extreme recklessness that reveals an indifference to the value of human life
 - a. “Abandoned and malignant heart”
 - b. “Depraved heart”
 - c. Unintentional Homicide: Second Degree Murder
 - i. Extreme Recklessness
 - 1. U.S. v. Fleming (Δ is driving 80 mph and has a BAC of 0.315 and kills the victim)
 - a. The murder was committed recklessly under circumstances manifesting extreme indifference to the value of human life.

- b. Malice may be established by “reckless and wonton disregard and a gross deviation from a reasonable standard of care that the jury can infer that defendant was aware of a serious risk of death or bodily harm.”
 - i. Standard: 1) Person consciously disregards, 2) Substantial and unjustifiable risk to human life, 3) risk of death is great, and 4) justification for taking risk is weak or non-existent.
 - 2. People v. Watson
 - a. Malice may be implied when the Δ does an act with high probability that it will result in death and does it with a base antisocial motive and with a wanton disregard for life.
 - 3. Berry case (2.5 yr old boy is killed by neighbor’s dog)
 - a. 2 standards for having implied malice
 - 1) Δ’s extreme indifference to the value of human life—i.e. the conduct involved has a high probability of causing death
 - 2) An awareness either a) of the risks of the conduct or b) that the conduct is contrary to law.
 - 4. MPC Definition of Extreme Recklessness
 - 1) Intent to do serious bodily injury OR
 - 2) Extreme recklessness that reveals an indifference to the value of human life

“Abandoned and malignant or depraved heart”
- ii. Extreme Recklessness Chart

US v. Fleming	CA v. Watson	People v. Watson	MPC
1) Serious risk of death or serious bodily harm	1) Natural consequences are dangerous to life	1) Objective risk of death or serious bodily injury	1) Act of killing is done recklessly (See MPC definition of reckless)
2) Defendant’s awareness of this risk	2) The act was deliberately performed	2) Subjective awareness of risk	2) Extreme indifference to the value of human life
3) Wanton and reckless disregard for human life	3) By a person who knows that his conduct endangers the life of another	3) High probability of death or serious bodily injury	
4) Gross deviation from standard of care	4) The person acts with conscious disregard for life	4) Wanton disregard for life and/or base antisocial motive	

- 1. The Fleming Standard is going to be **our common law standard.**

d. Unintentional Homicide: Involuntary Manslaughter

- i. Unintentional Involuntary Manslaughter: General
 - 1. Has to do with risk and not provocation (Like with intentional homicide)—and mostly we see a reliance on some form of negligence or recklessness
 - 2. MPC: §210.3: Criminal homicide constitutes manslaughter when it is committed recklessly
 - 3. Mens rea for Unintentional Involuntary manslaughter: “criminal negligence” → recklessness or gross negligence
- ii. Recklessness and Involuntary Manslaughter
 - 1. I.e. Welansky case (nightclub burnt down)
 - a. Rule: To constitute wanton and reckless conduct, as distinguished from mere negligence:
 - 1) The grave danger must have been apparent
 - 2) The defendant must have chosen to run the risk rather than alter his conduct so as to avoid the act or omission, which caused the harm
- iii. Negligent Homicide

1. State v. Williams (parents to 17mth old baby—thought she had a toothache and she died)
 - a. Ordinary negligence: Failure to exercise the “ordinary caution” necessary to make out the defense of excusable homicide.
 - b. Ordinary Caution: Is the kind of caution that a man of reasonable prudence would exercise under the same or similar conditions.
 - c. If the conduct of a defendant, regardless of ignorance, good intentions, and good faith, fails to measure up to the conduct required of a man of reasonable prudence, he is guilty of ordinary negligence because of his failure to use ordinary caution which is the standard at which time an ordinarily prudent person would deem it necessary to not take such risks.
2. MPC and Negligent Homicide:
 - a. Criminal homicide constitutes negligent homicide when it is committed negligently
 - i. It is gross not ordinary
 - ii. Tougher standard than the Williams standard

IV. Homicide: Felony Murder

a. Felony Murder: General

- i. A felon is liable for murder when a killing is committed in the perpetration of or attempt to perpetrate a felony. Liability is attached even if the killing is accidental.
- ii. There is strict liability in regards to the mental state regarding the death.
- iii. Limitations on felony murder: 1) Enumeration, 2) the inherently dangerousness requirement, 3) the merger doctrine, 4) the agency rule, and 5) the res gestae or duration requirement
- iv. Felony murder exists both in statutory and common law forms
 1. Common law usually: 2nd degree
 2. Statutory: 1st degree
 - a. I.e. Stamp case: The guy is in bad health and doesn't take good care of himself and he gets robbed and has a heart attack and dies—felony murder says so what: you take your victims as you find them
- v. “Anchor felony”: the felony which is committed
- vi. CA enumerated felonies: 1) Arson, 2) Rape, 3) Carjacking, 4) Robbery, 5) Burglary, 6) Mayhem, 7) Kidnapping, 8) Train wrecking, 9) Torture, 10) Sodomy minor/against will, 11) Lewd act on child, 12) Oral copulation minor/against will, 13) Anal/genital penetration foreign object/sexual purpose/minor/against will
- vii. The **difference** between implied malice and felony murder
 1. Under implied malice theory, when the defendant kills a person while committing an act which, by its nature, poses a high probability that the act will result in death, the trier of fact *may infer* the defendant killed with malice aforethought, whereas under the felony-murder theory, if the inherently dangerous act is a felony, the defendant is *deemed* to have killed with malice aforethought as a matter of law.

b. Felony Murder: First Degree Murder

- i. How to get here: Anchor felony must be from the list of statutorily enumerated means and the killing must be in perpetration of anchor felony.

c. Felony Murder: Second Degree Murder

- i. Limitation 1: Enumeration: The absence of a felony from the enumerated list excludes it as a possible basis for a felony-murder first degree charge and so the highest you can get is Second Degree Murder.
- ii. Limitation 2: Inherently Dangerous Felony:
 1. I.e. People v. Sanchez
 - a. (Drunk driver tried to elude officers and was driver fast and his car flipped and one person died)
 2. Inherently dangerous to life: High probability of death in the abstract
 - a. If anchor felony is inherently dangerous to life in the abstract, then it can support a second-degree murder conviction.
- iii. Must not be barred by The Merger Doctrine
 1. If a felony “merges” with a homicide, that means it cannot support a felony murder charge.”

- a. I.e. *Barnett v. State*: When the underlying felony results in or is an integral element of the homicide in question, the felony-murder charge shall not apply
2. Questions to pose: 1) Does the anchor felony merge with the homicide? Is the underlying felony a step toward causing the death? If so, it “merges” with the resulting homicide. Does the act of violence that kills also fulfill the conduct element of the felony?
3. IF THE ANCHOR FELONY MERGES WITH HOMICIDE THEN NO SECOND DEGREE MURDER CHARGE
- iv. Must not be barred by Agency or in Furtherance
 1. Majority Rule:
 - a. Delaware Statute: A person is guilty of 2nd degree murder when: in the course of and *in furtherance* of the commission or attempted commission of any felony not specifically enumerated, the person, with criminal negligence, causes the death of another person
 - i. So here we’re looking at the circumstances of the death.
 - b. It is necessary to show that the conduct causing death was done in furtherance of the design to commit the felony. Must not be mere coincidence.
 2. Minority Rule:
 - a. *State v. Oimen*:
 - i. A defendant can be charge with felony murder for the death of a co-felon when the killing was committed by the victim of the underlying felony when that death was caused by a defendant committing or attempting to commit a limited number of inherently dangerous felonies where his conduct is a substantial factor in bringing about the death
- v. Must not be barred by Res Gestae Limitations:
 1. Courts here focus on time and whether the felony was still in progress as the time of the killing
 2. Courts are also focusing on the *distance* between the place of the felony and the place of the death
 - a. If not much time, no felony murder
 3. Limits 1st and 2nd degree felony murder convictions when underlying felony is seen to be too far in time, distance, or duration to the killing
 4. “One continuous transaction” and closely connected in time and lace and causal relation.
 - a. I.e. *State v. Adams*: One Continuous Transaction Test:
 - i. Statute applies where the initial crime and the homicide were parts of one continuous transaction and were closely connected in point of time, place, and causal relation.
 - ii. If it is NOT one continuous transaction, then it is not within the res gestae
 5. Other Interpretation of Res Gestae Limitation:
 - a. I.e. *Williams* case
 - i. Can break up the case into more than continuous act
 - ii. If the felon has gained a place of temporary safety after the commission of the felony and before the death of the victim, the felony murder rule generally does not apply.
 - iii. “Place of temporary safety” and “break in the chain of circumstances.”
- d. **Felony Murder: Misdemeanor Manslaughter**
 - i. General:
 1. If the prosecutor can prove that the defendant caused a death as a result of committing or attempting to commit a misdemeanor, the defendant may be liable for misdemeanor manslaughter
 - a. Only need to prove the mental state required for manslaughter
 2. I.e. *U.S. v. Walker* Δ dropped his gun in a stairwell and it killed someone)

Causation

- I. Causation: General
 - a. Mens Rea + Actus Reus (+ Attendant Circumstances) + (Causation) + (Harm) = Crime UNLESS Defenses
 - b. Causation is a 2-step process: 1) Cause in fact (But-For Test) and 2) Proximate Cause
 - i. Both need to be met to find causation

- II. Causation: Cause in Fact: “But-For Cause”
 - a. “But for” Cause
 - i. 1) Whether without the Δ’s act the death would not have occurred?
 - ii. 2) Would the death have occurred if the defendant had not acted?
 1. (Basically saying: But for the defendant’s acts, the result would not have occurred, and therefore there is cause in fact)
 - b. “Modified But-for Cause”
 - i. I.e. if two people try to independently kill V and either V dies faster than he would have if the other wasn’t trying or V dies at exactly the same time as each of the two people kill him then: *Defendant is an actual cause if but for the defendant’s act the social harm would not have occurred when or as it did.*
 - c. Multiple actual causes
 - i. “But for” these multiple causes, the death would not have occurred as it did or when it did
 - ii. In rare cases where two acts combine to bring about a particular result and each act on its own would have produced that result, neither act would meet the standard test for cause in fact.

- III. Causation: Proximate Cause
 - a. Intervening Causes
 - i. General:
 1. Definition
 - a. An act or event which:
 - i. 1) Comes after the Δ’s voluntary act and before the social harm (death) and
 - ii. 2) Contributes causally to the social harm
 - b. If there is an intervening cause, then we need to figure out whether it “breaks the chain of causation” (relieves Δ of liability)
 2. If the intervening cause is said to “break the causal chain” then no proximate cause
 3. The proximate cause inquiry asks the jury to assess blame and responsibility while cause in fact is concerned with finding out what happened.
 4. Proximate cause: concerned with determining who should be held responsible for what happened
 - a. When there are interveners, 3 factors drive the determination of whether a second actor insulates a first actor from causal responsibility: 1) probability, 2) responsiveness, and 3) blameworthiness.
 5. If dependent intervening cause, court considers whether intervening cause was unusual or bizarre. If independent, the court considers whether the intervening cause was **foreseeable**.
 - ii. A **Dependent** intervening cause is an act that occurs in reaction or response to the Defendant’s prior wrongful conduct
 1. Generally, a dependent intervening cause does not relieve the initial wrongdoer of criminal responsibility unless the response was not only unforeseeable but highly abnormal or bizarre
 - a. So Test: 1) Was it unforeseeable? AND 2) was it highly abnormal or bizarre?
 2. I.e. State v. Jenkins: (Dependent intervening cause)
 - a. Eggshell plaintiff principle: take the victim as you find them: One who inflicts an injury on another is deemed by law to be guilty of homicide where the injury contributes mediately or immediately to the death of the other.
 - b. With a medical mistake—only if it is gross negligence—then its bizarre and unusual

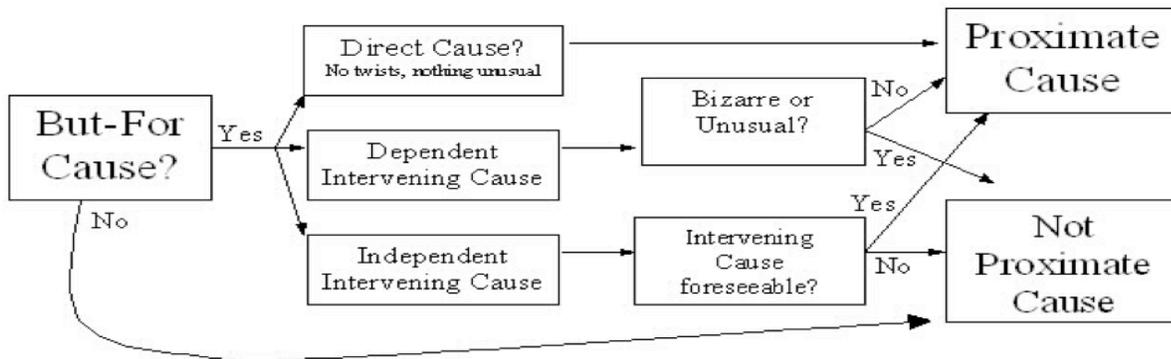
- iii. An **Independent intervening cause** is a force that does not occur *in response* to the initial wrongdoer's conduct?
 1. Test: 1) Did it occur in response to the initial wrongdoer's conduct? If no, it's independent. BUT EXCEPTION: 1) Was it foreseeable
 2. I.e. Flennon Case: Falls into the exception
 - a. (Facts: Defendant shoots victim in leg, he gets his leg amputated, 5 weeks later he dies because of serum hepatitis. It was an independent intervening cause that was foreseeable—so liability)
 - b. Rule: In a case where the *wound is not mortal*, the injured person may recover, and thus no homicide has been committed. If, however, death does result, the accused will be held responsible unless it was occasioned not by the wound but by *grossly erroneous medical treatment*. But, where the *wound is a mortal one*, there is no chance for the injured person to recover, and therefore the reason, which permits the showing of death from medical treatment, does not exist.
- iv. Second actors
 1. If a **second** person is involved in bringing about a result required for criminal liability, the causation analysis is more complex
 2. The second actor is referred to as an intervening cause who *may* break the causal chain between the first actor and the result
 - a. Breaking the causal chain: means that the first actor will not be found to have proximately caused the result.
 - b. The mental state and blameworthiness of the second actor play major roles in determining whether or not the second will relieve a first actor of causal responsibility
 - c. The higher the intervener's mental state and blame, the greater the chance that the intervener will break the causal chain
 3. When there are interveners, 3 factors drive the determination of whether a second actor insulates the first actor from causal responsibility:
 - a. 1) Probability
 - b. 2) Responsiveness
 - c. 3) Blameworthiness
- v. Direct Cause
 1. I.e. Root Case
 - a. Facts: Victim and Δ are illegally racing on a rural 2-lane road.
 - b. Here, we are in the direct cause box, there is no foreseeability (this was not foreseeable enough), and no blameworthiness.
 - i. When there are no dependent or independent intervening causes, we must go back to the direct cause box and see if that is the proximate cause.
 - b. Depraved Indifference to human life
 - i. I.e. People v. Kibbe
 1. (Δ was at a bar showing of his \$100 bills. Then was robbed and put in a street and was run over by a truck)
 2. Rule: Under circumstances where one shows depraved indifference to human life through reckless conduct one engages in which creates a high risk to another person, which therefore leads to the death of that person, one is guilty of murder.
 - a. Here: A driver would have come along almost certainly and killed him
 - c. Concurrent Proximate Causes
 - i. I.e. State v. Echols
 1. Rule: One whose wrongdoing is a concurrent proximate cause of an injury may be criminally liable the same as if his wrongdoing was the sole proximate cause of the injury.

IV. Framework for understanding causation

- a. Was the crime a result crime?
 - i. If so, there may be a causation issue
- b. Was the "actual cause" requirement met?

- i. Apply the “but-for” test (the answer is usually yes, but if not, then no causation)
- c. Was the defendant’s act the direct cause (but-for) of the prohibited result—if the natural and foreseeable consequence and no intervening causes, then yes (barring unusual exceptions)
- d. What if there were intervening causes?
 - i. Need to figure out whether a dependent/responsive intervening cause or an independent/coincidental intervening cause (was it a response to the defendant’s voluntary act OR was it in response to the defendant’s voluntary act
 - ii. Then apply the rule for the type of Intervening cause (use flowchart below)

Causation Flow Chart



Attempt

I. Attempt: General

- a. Attempt is an anticipatory offense—attempt is looking forward to the commission of some other crime or “target offense:
- b. Attempt is not a result crime, it is a conduct crime.
- c. Analysis
 - 1) Conduct required for attempt
Conduct provides concrete circumstantial evidence of an actor’s culpable mental state
 - 2) The mental state required for intent
In the context of attempt, “intent” is generally a synonym for “purpose”
 - 3) Determining defenses: “impossibility
Whether or not a person will be held legally responsible for trying to commit a crime that is not possible for her to commit
- d. 3 situations where we could have attempt
 - 1) Those who try but fail
 - 2) Those who are in the process of trying
 - 3) Those who try but are mistaken about something that makes the crime impossible
- e. Attempt generally (but not always) carries a lighter penalty than the target crime
- f. The mens rea for attempt is typically high (2 mens rea) while the actus reus for attempt is typically low.

II. Attempt: Conduct

- a. MPC Substantial Step test: (p.667—recheck this)
 - i. *A person is guilty of attempt to commit a crime if he purposely does or omits to do anything that under the circumstances, as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.*
 1. Substantial step:
 - a. Lying in wait, searching for the contemplated victim of the crime
 - b. Enticing the contemplated victim to go to the place for commission
 - c. Reconnoitering the place contemplated for the crime
 - d. Unlawful entry of a structure where it is contemplated the crime will occur
 - e. Possession of materials to be employed in the commission of crime
 - f. Possession of material for crime near the place it will be committed
 - g. Soliciting an innocent person to engage in conduct for the crime
- b. US. V. Jackson case (Facts: 3 people decide to rob a bank June 11)
 - i. Here: **Substantial Step Test** Applies for Conduct—2 part test:
 - 1) It must be a substantial step in a course of conduct designed to accomplish a criminal result.
 - 2) It must be strongly corroborative of criminal purpose in order for it to constitute such a substantial step.

III. Attempt: Mental State

- a. Mental State: General
 - i. Analysis: 2 mens rea are required for mental state of attempt
 - 1) The intent to commit the acts, which constitute the actus reus of the offense
 - a. I.e. Δ must intentionally perform acts which bring Δ in proximity to commission of a substantive offense
 - b. Must intend the actus reus of the crime
 - 2) Specific intent to commit the target offense
 - c. Attempt is a specific intent crime
 - d. Specific intent: is the intent to commit a crime and achieve some future purpose or consequence
 - i. One cannot intend an unintentional crime
 - ii. So to prosecute someone for attempt must show 1) intent to commit the actus reus of the attempt, and 2) did they intend the actus reus of the completed crime.
- b. I.e. South Dakota v. Lyerla
 - i. Facts: Dude playing games with 3 girls in a car and they die.

- ii. Rule: There is no attempt because there is no purpose—he did not intend to kill the two girls he did not kill
 - 1. The mens rea for attempt is higher than the mens rea for the completed target offense
- c. Mental State regarding a circumstance
 - i. Purpose as to a required *result* is typically needed for an attempt conviction
 - ii. But “his purpose need not encompass all of the circumstances included in the formal definition of the substantive crime.” – MPC § 5.01

IV. Attempt: Defenses

a. Abandonment

i. People v. Staples

- 1. I.e. Δ wanted to burglarize the vault of a bank
- 2. Rule: *The relevant factor is the determination of whether the acts of the perpetrator have reached such a stage of advancement that they can be classified as an attempt. If not, exculpatory abandonment.*
 - a. The character of the abandonment in these situations, whether it is voluntary or involuntary, is not controlling.
 - b. Here: you do not need causation because its an inchoate/incomplete crime—you need actus reus and mens rea
- 3. Common law: no defense at all, no exculpatory abandonment

ii. MPC and abandonment

- 1. There must be **voluntary** and **complete** renunciation of criminal purpose and it is not voluntary if it is motivated by circumstances not present at the inception of the actor's course of conduct that increase the probability of detection or apprehension.
- 2. MPC goes to motivation—it depends on what motivates one to voluntarily abandon one's crime
 - a. Complete: not motivated by a decision to postpone until a more advantageous time or to transfer to another but similar objective or victim
 - b. Voluntary: Not changing mind because of increased probability of detection or difficulty of committing crime

b. Impossibility

i. Factual impossibility (not a defense to attempt)

- 1. Δ is mistaken about a fact that makes it impossible for him to commit the offense
- 2. Factual impossibility occurs when extraneous circumstances unknown to the actor or beyond the actor's control prevent a consummation of the intended crime.
- 3. Factual impossibility is not a defense to attempt

ii. Legal Impossibility (2 types—type 2 is not a defense to attempt)

- 1. There are 2 types of legal impossibility situations

a. Pure Legal Impossibility

- i. Attempting to commit a non-existent crime
- ii. A person commits or attempts a crime but in reality this does not qualify as a crime under the law
- iii. This is a defense to attempt (i.e. girl who moved here and thought holding animals was illegal but its not)

b. Hybrid Legal Impossibility

- i. Δ 's intended act is criminal but Δ is mistake about the legal status of some factor relevant to the case
- ii. Involves errors by the Δ regarding some legal aspect of the situation. When the commission of the offense is impossible due to a factual mistake regarding the legal status of some attendant circumstance
- iii. Factual or legal impossibility of committing a crime is not a defense if the crime could have been committed had the attendant circumstances been as the actor believed them to be.

iv. People v. Dlugash

- 1. Facts: Δ was with killer and victim and victim told killer he must pay rent and eventually killer shot the victim. Δ then shot the victim 5 x afterwards. No medical testimony could prove that he murdered the victim

2. Rule: It is not a defense, under the attendant circumstances, the crime was factually or legally impossible of commission, “if such crime could have been committed had the attendant circumstances been as such person believed them to be.”
3. This case abolishes the hybrid legal impossibility category
4. **Know this rule if we are in a common law jurisdiction**

iii. **Inherent Impossibility**

1. Δ chooses means of accomplishing crime that are unlikely to succeed
2. The means chosen by the actor are manifestly unlikely to achieve the ends sought.
3. Only is a defense if such impossibility would have been clearly evident to a person of normal understanding. (Minnesota statute)
 - a. MPC approach to impossibility.
 - i. Rejection of the defense to impossibility
 - ii. **Know how MPC deals with impossibility**
4. Overall, it *may* be a defense depending on the jurisdiction

iv. MPC: and Impossibility

1. Eliminated the defense of impossibility in virtually all situations
2. MPC to Impossibility: looks to what is in the Δ's mind when attempting to commit a crime, not to extrinsic circumstances
3. Only inherent impossibility would be ok for MPC—the MPC wants you to do what Dlugash wants.
4. For exam: Look to inherent impossibility as only defense
5. Statute (p.699—look to it)

Complicity

I. Complicity: General

- a. Accomplice: those who do not personally engage in the conduct proscribed by the statute but assist or encourage those who do: they are complicit
- b. Complicity is a way of sharing liability for a crime
- c. Accomplices: treated the same as principals in the sense that they become liable for the same offense as the principal and are exposed to the same potential punishment.
- d. There is NOT a causation requirement for the accomplice because complicity is not an independent crime, but only derivative liability.
- e. Cannot be 'guilty of complicity' → only guilty of substantive crimes- its only a way to share liability

II. Complicity: Conduct

- a. Presence
 - i. General:
 1. Someone's presence at the scene can raise issues about the context of complicity
 2. Mere presence alone does not typically satisfy the actus reus requirement for complicity
 - ii. State v. VT
 1. Facts: Δ was with a group that was there when the friend stole guns and a camcorder. There is videotape showing that he was present when a pawnshop was called. Δ appeals that he was an accomplice
 2. Rule: In order to be complicit, one need to have advised, instigated, encouraged, or assisted in the perpetuation of the crime—passive presence and mere knowledge is not enough.
- b. Omissions
 - i. State v. Walden
 1. Facts: Δ is a mother who watched her kids get beat up by "Bishop" and is accused of not preventing the attacks.
 2. Rule: When someone who is present when a crime is taking place and has a reasonably opportunity and duty to prevent the crime and fails to do so, they will be equally guilty as the principal.
 3. Here, different that VT case: because Δ a legal duty to assist the victim.
- c. MPC Approach to Conduct for Complicity
 - i. A person is an accomplice when with the purpose of promoting or facilitating the commission of the offense he:
 1. Solicits the other person to commit it or
 2. Aids or agrees or attempts to aid such other person in planning or committing it, or
 3. Has a legal duty to prevent the commission of the offense and fails to make a proper effort to do so

III. Complicity: Mental States

- a. Mental States: General
 - i. Generally:
 1. An accomplice needs 2 mens rea:
 - a. 1) Mens rea re assisting the principal: Δ must purposefully assist the principal to engage in the conduct that forms the basis of the offense, and
 - i. So you must purposefully assist
 - b. 2) Mens rea re the crime the principal is attempting or has complete (i.e. mens rea re the underlying crime):
 - i. Majority rule: accomplice must have the mental state of purpose regarding the principal's crime (MPC, Beeman)
 - ii. Minority rule: accomplice must have knowledge of the principal's crime (Backun)
 - ii. People v. Beeman
 1. Facts: Δ's relative was robbed after he helped robbers draw up her floor plan but then he said he wanted nothing to do with it

2. Rule: For the *mens rea* of complicity it must be shown that an aider and abettor acted with 1) **knowledge** of the criminal purpose of the perpetrator, and 2) with an **intent** or **purpose** either of committing, or of encouraging or facilitating the commission of the offense
 - a. Intent means to do some act or achieve some consequence beyond the actus reus of the crime
 - b. Must share the specific intent of the perpetrator
 - c. **Natural and Probable Consequence Doctrine**
 - i. *"The liability of an aider and abettor extends also to the natural and reasonable consequences of the acts he knowingly and intentionally aids and encourages."* (Beeman, p. 732)
 - ii. Application:
 1. Did P commit target crime A?
 2. If yes, did S intentionally assist in the commission of crime A, i.e., was S an accomplice in the commission of that offense?
 3. If yes, did P commit any other crimes?
 4. If yes, were these crimes, although not contemplated or desired by S, reasonably foreseeable consequences of crime A
- b. **Liability for crimes of recklessness and negligence**
 - i. Washington v. Hopkins
 1. Facts: Δ and her friend Jimmie Burns went to a chicken dinner and he was drunk and struck another car and fled. Δ was charged with manslaughter.
 2. Rule: One element of manslaughter can be that someone can be charged as grossly negligently resulting in the unintentional death of another
 3. She is derivatively liable for his crime
 4. This is an unintentional crime
 - ii. Analysis for **unintentional crimes**:
 1. Accomplice's mens rea re assisting the principal: purposeful.
 2. Accomplice's mens rea re the underlying crime: must be the same as the mental state required for attempt for non intentional crimes
 - a. *Ergo, no attempt liability for non-intentional crimes (i.e. Lyerla), yet complicity liability for non-intentional crimes* (Hopkins, Flayhart)
 3. So must:
 - 1) Intentionally aid the person
 - 2) But must not intend the target offense (recklessness/negligence) will do
- c. **The MPC approach to mental states in complicity**
 - i. MPC: General
 1. A person is an accomplice of another person in the commission of an offense if, with the **purpose** of promoting or facilitating the commission of the offense, he solicits such other person to commit it or aids and abets them in planning or committing it.
 2. Actus Reus:
 - a. Aids or agrees to or attempts to aid such person in planning or committing
 - b. Omission satisfies the actus reus requirement if Δ has a legal duty to prevent
 3. Mens Rea:
 - a. Purpose of promoting or facilitation the commission of the offense
 - b. When causing a particular result... acts with the kind of culpability with respect to that result that is sufficient for the commission of the offense.
 - ii. People v. Flayhart
 1. Facts: Δ were husband and wife taking care of husband's mentally retarded brother who could not care for himself, and he was living with them and under their care.
 2. Rule: It is not illogical to aid and abet criminally negligent homicide when one has the mental culpability required for the commission of the offense of encouraging another to engage in the illegal conduct.

IV. Defenses to Complicity:

- a. Abandonment and other limiting principles
 - i. MPC: **(use this rule on the exam)**

1. A person is not an accomplice in an offense committed by another if:
 - a. He/she is a victim in that offense
 - b. His/her offense is "inevitably incident: to the commission of the offense
I.e. purchaser of narcotics is not an accomplice in the commission of the sale or delivery of the controlled substance to himself
 - c. If he/she terminates participation before the crime is committed AND
 - 1) Neutralization his/her assistance
 - 2) Gives timely warning to the police of the impending offense
 - 3) In some other manner attempts to prevent the commission of the crime

Conspiracy

I. Conspiracy: General

- a. Generally:
 - i. Conspiracy is both a *substantive crime* and a means of establishing *vicarious liability*
 - ii. Conspiracy does not merge with target crime (unlike attempt) and therefore a Δ can be convicted both of conspiracy AND the target offense
 - iii. Structure of conspiracy:
 1. Actus Reus + Mens Rea (substantive crime of conspiracy and target offense) + attendant circumstances
 - iv. Co-conspirators are vicariously liable for crimes committed by other conspirators in furtherance of the conspiracy
- b. MPC: conspiracy § 5.03:
 - i. Statute
 1. A person is guilty of conspiracy if with *purpose* of promoting its commission he *agrees* with another that they will engage in conduct that constitutes such crime or *agrees* to aid this person in the planning and commission of such crime
 2. No person may be convicted of conspiracy to commit a crime unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.
 - ii. Analysis
 1. Actus Reus:
 - a. Agreeing to engage in conduct that constitutes a crime or an attempt OR
 - b. Agreeing to aid in the planning or commission of a crime or an attempt PLUS
 - c. Overt act in pursuance of conspiracy required (Except in first and second degree felonies)
 2. Mens Rea
 - a. With the purpose of promoting or facilitating its commission.

II. Conspiracy: Conduct

- a. Conduct: General
 - i. The conduct element is really about the agreement
 - ii. The actus reus: An agreement between 2 or more parties in a criminal or an unlawful act
 1. Some jurisdictions require unilateral (one party) agreement, others require bilateral (2 party) agreement
 - iii. The agreement between 2 or more parties may be direct or indirect
 - iv. The common law did not require an act beyond agreement, the modern trend is to require an act
 - v. Jurisdictional variation:
 1. Some jurisdictions (in addition to agreement) require one of the following:
 - a. Nothing more than agreement
 - b. An act in furtherance of the crime by one member of the conspiracy
 - c. An "overt act" in furtherance of the crime by one member of the conspiracy
 - d. A "*substantial step*" in pursuance of agreement
 - e. A "substantial step" toward the commission of the crime.
- b. Agreement
 - i. *Martinez v. Wyoming: Big Picture*
 1. Facts: informant contacted Δ to purchase morphine for him
 2. Rule: The agreement essential to conspiracy is like a "meeting of the minds." In the context of conspiracy the definition is more lax than elsewhere and a mere tacit understanding will suffice, and there need not be any written statement or even a speaking of words which expressly communicates agreement
 - ii. Bilateral or Unilateral Agreement
 1. Unilateral agreement: When 2 people discuss the possibility of committing a crime, but only one of them sincerely commits herself to the venture
 - a. MPC standard: unilateral agreement is sufficient.
 2. Bilateral agreement: When 2 people discuss the possibility of committing a crime and both sincerely commit themselves to the venture:

- a. Washington v. Pacheco
 - i. Facts: Δ worked as a private investigator and bragged about his hits to his boss who told the FBI. He was set up.
 - ii. Rule: A conspiracy does not exist when the sole conspirator is an undercover agent
 - 1. Bilateral agreement is what is intended by “agreement” in the conspiracy statute.
- c. Overt Act
 - i. Utah code annotated:
 - 1. A person is guilty of conspiracy when he agrees with one or more persons to engage in or cause the performance of conduct except where the overt act is not required for the commission of conspiracy
 - ii. State v. Dent
 - 1. Facts: defendants met in jail where Dent told the other about his ex-girlfriend. The new girlfriend was going to help kill her. Her kids get suspicious and tell the cops. They set up Balcinde together.
 - 2. Rule: Conspiracy requires only an act that is a “substantial step in pursuance of the agreement” and preparatory conduct which furthers the ability of the conspirators to carry out the agreement
 - a. So what is necessary: Substantial step in pursuance of the agreement”
 - b. UNLIKE attempt: which was a substantial step for the target crime
 - c. Test we need to know for actus reus for conspiracy:
 - i. Was there a substantial step in pursuance of an agreement?
 - 1. This can even mean an insignificant act and in some cases silence can be a substitute for an overt act

III. Conspiracy: Mental States

- a. Mental States: General
 - i. Mental state *re substantive crime of conspiracy* → conspiracy is a specific intent crime (Δ must intend to conspire and agree)
 - ii. Mental state *re target offense* → Conspiracy typically requires purpose/intent re the target offense
 - iii. Mens rea re attendant circumstances → same as the underlying crime
- b. People v. Lauria
 - i. Facts: Δ ran the telephone service for call girl activity
 - ii. Rule: Mens rea for conspiracy can be determined by 1) direct evidence that a Δ wants to participate or 2) through an inference that he intends to participate based on: a) his special interest in the activity or b) the aggravated nature of the crime itself.
- c. Mental state regarding a circumstance
 - i. US v. Feola
 - 1. Facts: Δs in a heroin sale were trying to rip off the police officers
 - 2. Even though the mens rea for conspiracy is specific intent, if there is an attendant circumstance, the mens rea for that attendant circumstance is not purpose or intent. It is the mens rea that is required for the underlying crime.

IV. Conspiracy: Pinkerton Doctrine

- a. The Pinkerton Doctrine
 - i. Sounds like a strict liability standard
 - ii. Pinkerton v. US
 - 1. Daniel Pinkerton who is not even around is convicted for these crimes.
 - a. Act must be in furtherance of the conspiracy
 - b. Must be in the scope of the conspiracy
 - c. There must be no termination of the conspiracy
 - 2. If two people agree, you can get one party who doesn't even know if the acts have been committed for those acts so long as these conditions are met
 - a. Similar to complicity

- iii. If you have two possibilities for vicarious liability, (Secondary and primary), you need knowledge or intent. But if they conspire, you do not have to worry about their knowledge or intent because conspiracy allows you to get them through negligence.
- iv. Co-conspirators are vicariously liable for the substantive crime(s) committed by other conspirators if: **(question on this will likely be on test)**
 - 1. The co-conspirator is a party to the conspiracy
 - 2. The conspiracy is ongoing (i.e. not terminated)
 - 3. The crime is in furtherance of the conspiracy
 - 4. The crime is reasonably foreseeable.
- b. Duration of a Conspiracy
 - i. U.S. v. Jimenez Recio
 - 1. Marijuana case
 - 2. Rule: A conspiracy does not automatically terminate simply because the Government, unbeknownst to some of the conspirators, has “defeated the conspiracy’s object.”

V. Conspiracy: Defenses

- a. Corrupt Motive Doctrine
 - i. If conspirators lack a corrupt or wrongful rationale, they are not guilty
 - ii. Applies only to *malum in se* crimes
- b. Wharton’s Rule
 - i. Is a limitation on conspiracy liability when the crime is of such nature as to necessarily require the participation of 2 persons for its commission?
 - ii. A conspiracy cannot be used to criminalize the agreement that is a logically required component of the substantive offense
 - iii. If there is a crime that needs two parties you cannot separate be responsible
- c. Abandonment
 - i. Common law:
 - 1. No overt act PLUS
 - 2. Advising co-conspirators of withdrawal OR
 - 3. Informing police of the existence of the conspiracy AND
 - 4. Withdrawing from all involvement in the conspiracy
 - ii. MPC Requires
 - 1. Complete renunciation AND
 - 2. Voluntary renunciation AND
 - 3. Thwarting the success of the conspiracy

Defenses: Justification and Excuses

I. Justification and Excuses: General

a. General:

i. Justifications and excuses are ways of defeating criminal liability

1. **Justification:** Those who act with a legal justification exercise a privilege and act in conformity with the law → is a defense
2. **Excuse:** The violation is unjustified but seeks to exempt the particular actor from responsibility from the unjustified act. Here, arguing that the actor is not personally responsible for having committed the act

II. Self-Defense of others

a. General

i. When individuals are faced with immediate aggression and the police cannot protect them, the individual right of survival reasserts itself

ii. The focus is on reasonableness and imminence

b. MPC Self Defense:

i. *Focuses on perception of actor about whether force is immediately necessary to protect rather than whether other party is imminently planning to use force against the actor.*

ii. Not liable for crimes requiring purpose or knowledge but may be for reckless or negligent crimes.

1. No reasonableness requirement

2. Individualized standard

c. Analysis:

1. Actual Belief

2. Reasonable Belief

3. Imminence

4. Necessity

5. Proportionately

d. Self-Defense and Domestic Violence

i. General:

1. Self-defense arises in many factual contexts. One such instance is in the domestic violence context

ii. State v. Norman (i.e.)

1. Facts: Δ was extremely battered by her husband who had forced her into prostitution. She finally got a gun and killed him.

2. Rule: Our law of self-defense has required that a Δ claiming that a homicide was justified, and, as a result, inherently lawful by reason of perfect self-defense must establish that she reasonably believed at the time of the killing she otherwise would have *immediately* suffered death or great bodily harm

3. Dissent: The instruction of self-defense is proper because 1) it appeared to the Δ that it was necessary to ill the deceased in order to save herself from death or great bodily harm, 2) the Δ 's belief was reasonable in that the circumstances as they appeared to her were sufficient to create a belief in the mind of ordinary firmness, 3) the Δ was not the aggressor in bringing on the affray, and 4) The Δ did not use excessive force or more than was necessary.

iii. So 4 factors for **perfect self-defense**

1) The Δ believed it necessary to kill the deceased in order to save himself from death or great bodily harm

2) The Δ's belief was reasonable in that the circumstances as they appeared to him at the time were sufficient to create such a belief in the mind of a person of ordinary firmness

3) Δ was not the aggressor in bringing on the affray

4) Δ did not use excessive force or more force than was necessary

e. Retreat

i. 2 ways to go about it

1. Traditionally, a non-aggressor was not required to retreat before employing force, even deadly force, if the requirements of self-defense were otherwise met.

2. More recently, however, after the MPC was developed, jurisdictions have begun adopting retreat requirements.
- ii. Exception: Castle Rule:
 1. No retreat is required from one's home, sometimes limited when situation involves a co-habitant or co-worker.

f. Initial Aggressor Rules

- i. Initial aggressors generally lack the right to resort to defensive force.
- ii. Under certain circumstances, however, they can gain the right to use defensive force.
 1. The actor withdraws/abandons from the encounter and
 2. The actor clearly communicates his intent to do so but the other person continues or threatens the use of unlawful physical force.

III. Necessity

a. Necessity: General

- i. A necessity defense can be triggered when an actor engages in what would otherwise be a crime in order to avoid a greater harm.
 1. I.e. trespassing onto someone's land to avoid being hit by a speeding car
 - a. Avoiding the greater harm of serious bodily injury justifies the trespass and exonerates the actors.
- ii. More about "natural evils"
- iii. Necessity is a justification and a "true affirmative defense"
- iv. NY Penal Law on Necessity:
 1. Conduct which would otherwise constitute an offense is justifiable and not criminal when: Such conduct is **necessary** as an emergency measure to avoid an imminent or public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor.

b. MPC Treatment of Choice of Evils

- i. When conduct which the actor believes to be necessary to avoid a harm or evil to himself or another is justifiable when:
 - 1) Threat of imminent injury to person or property
 - 2) Δ acts to prevent an equal or more serious harm
 - 3) Δ reasonably anticipates a direct causal relationship between his/her conduct and the harm to be averted
 - 4) **No reasonable alternatives to commission of the crime**
 - 5) Δ must not have created the conditions of his/her own dilemma
 - 6) Not available to one taking the life of an **innocent** person

c. Limits on Necessity

- i. Some jurisdictions require that necessity result from natural forces
- ii. Applicability to homicide questionable (especially to murder)
- iii. Some jurisdictions do not allow necessity for protection of financial interests or good name.

IV. Duress

a. Duress: General

- i. The defense of duress serves to excuse behavior where extrinsic circumstances compel a person to perform unlawful acts, which he did not otherwise do.
 1. I.e. a stranger holds a gun to an actor's head and threatens him with instant harm if the actor does not commit a crime—here the actor is making a reluctant but conscious decision
- ii. Duress is an excuse—therefore the **burden** is on the defense to prove that the act was a result of duress.

b. MPC and Duress—§ 2.09

- i. It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat of use of unlawful force against his person or the person of another, that a person of reasonable firmness in his situation would have been able to resist.
 1. So "reasonable person of firmness" standard instead of "immediate bodily injury" standard

- ii. Exception: Duress is not a defense if the actor **recklessly** placed himself in a situation in which it was probable that he would be subjected to duress
- iii. Exception: Duress is also not a defense if the actor was **negligent** in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.
- c. The Contento-Pachon Case
 - i. Facts: Δ taxi driver was approached by his passenger/drug trafficker and was told to smuggle drugs. The next day he says no and the lives of his family are threatened. In the US he submits to screening.
 - ii. Rule: 3 elements of duress:
 - 1. An immediate threat of death or bodily injury
 - 2. A well-grounded fear that the threat will be carried out
 - 3. No reasonable opportunity to escape the threatened harm.
- d. Our Analysis for Duress:
 - 1. An imminent threat of death or serious bodily harm
 - 2. Well-grounded fear (i.e. reasonable belief) that the threat will be carried out
 - 3. No reasonable opportunity to escape the threatened harm
 - 4. Not available to one taking the life of an innocent human being.

V. Insanity and Mental State

- a. General
 - i. Insanity: relates to the defendant's mental state at the time the offense was committed.
 - 1. It is an affirmative defense
 - ii. Diminished Capacity: (effect on the required mental state): relates to the defendant's mental state at the time of the offense was committed
 - iii. Incompetence: Here, we look at the Δ 's mental condition and ability to understand the criminal proceedings \rightarrow Focuses on a different time period than insanity/diminished capacity
- b. Choosing an insanity test
 - i. There are two famous and widely used tests to define "insanity"
 - 1. **M'Naghten Test** (What is no longer really used—cognition)
 - a. At the time of commission
 - b. Mental Disease or defect
 - c. The Δ does not know
 - i. The nature and quality of his acts OR
 - ii. That his acts were wrong
 - 2. **MPC Standard: American Law Institute Test**
 - a. "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of the law"
 - b. Analysis
 - 1) Δ is incapable of knowing or understanding the nature or quality of her act OR
 - 2) Δ is incapable of distinguishing right from wrong
 - 3) At the time of the commission of the offense

Theft

I. Theft: General

a. Custody

- i. A person has custody of personal property when he or she has physical control over it, usually for a very short period of time and usually for a very limited purpose

b. Possession

- i. Possession is similar to custody but involves a legally greater dominion over the property
- ii. Someone who is in possession of property has actual or constructive control of the property with the intent to possess it and the right to exclude others from possessing it at that time

c. Title

- i. Title = ownership

d. Bailees

- i. A bailment is a relationship in which one person, the bailor, entrusts property to another person, the bailee, for a particular purpose

e. The three traditional forms of theft

- i. (1) Larceny (includes Larceny by trick), (2) embezzlement, (3) false pretenses

II. Larceny

a. Definition:

- i. Theft of personal property

b. Elements

i. Analysis

- (1) Taking and
- (2) Carrying away (i.e. asportation)
- (3) Personal property
- (4) Owned or possessed by another
- (5) By trespass (i.e. without consent or permission)
- (6) With the *specific intent* to deprive the alleged victim permanently of the property

ii. Trespassory taking

1. The key issue in deciding whether a taking was trespassory is ascertaining whether the victim consented to the Δ 's removal of the property.

iii. Property in possession of another

1. Traditionally "property" referred to tangible personal property only (that was capable of being possessed by another), not intangible property, intellectual property or services
2. Modern statutes have updated the common law

iv. Abandoned property

1. Abandoned property is not considered to be the property of anyone and a Δ cannot be guilty of larceny if he finds and keeps truly abandoned

v. Intent to permanently deprive

1. "Permanently" doesn't mean permanently in some types of cases:
 - a. (1) Where Δ intends to "sell" the property back to its owner
 - b. (2) When Δ intends to claim a reward for "finding" the property, &
 - c. (3) When Δ intends to return the property to the owner for a "refund"
2. Mere borrowing is insufficient for the common law crime of theft.

c. Larceny: Actus Reus

i. General

1. The trespassory taking and carrying away of the personal property of another
 - a. "Trespassory taking" = non-consensual taking of possession of the property
 - b. Any slight movement of the taken property is usually sufficient

d. Larceny: Mens Rea

i. General

1. Specific intent to deprive the other of the property on a permanent basis
2. The wrongdoer must possess this intent at the time of the trespassory taking and asportation

ii. Larceny by Trick

1. It is larceny by trick when a Δ obtains possession, not title, because of misrepresentation

2. Elements:
 - a. Taking possession of the property of another
 - b. By knowingly making false representations as to material facts or making false promises
 - c. With an intent to defraud
 - e. Larceny: Defense
 - i. Claim of Right Defense
 1. A person is not guilty of larceny if he takes property belonging to another person based on good faith belief that he has a right to possess the property
 - a. The actor's belief negates the specific intent to steal
 2. Claim of right generally is not a defense to a theft crime that involves violence or the threat of violence, such as robbery or extortion
- III. Embezzlement:
- a. Embezzlement is the unlawful conversion of another's property that is already in the possession in Δ .
 - b. Elements:
 - i. (1) Entrust of property of another
 1. Victim entrusts property to the Δ voluntarily.
 - ii. (2) Conversion ("Misappropriation") of property of another
 1. There must be a serious interference in the owner's property rights by the Δ who takes the property for his or her own use.
 - iii. (3) Specific intent offense
 1. Δ must demonstrate his intent to fraudulently convert the property to personal use, but need not be to permanently deprive.
- IV. Embezzlement v. Larceny
- a. Embezzlement occurs when the thief obtains lawful possession then converts it to his or her own use
 - b. Larceny occurs when the thief takes the property from someone else's possession but is not given possession by that person.
- V. False Pretenses
- a. False pretenses is a statutory offense in which the Δ knowingly misrepresents a present or past fact which induces the victim to give the Δ title to property
 - b. Does not apply to:
 - i. -Opinions (i.e. puffery by seller's of products)
 - ii. -Misrepresentations regarding future conduct
 - c. Actus Reus
 - i. False representation regarding a past or present fact
 1. Omission may be the basis for false pretenses charge if the Δ has a duty to make the disclosure the victim
 - ii. Taking the title of the property of another
 - d. Mens Rea
 - i. Knowledge that fact is false
 - ii. Intent to defraud
 - e. Causation (Reliance)
 - i. The victim must rely on the false statement, which must be material to the transaction transferring title (i.e. important to it).
- VI. False Pretenses v. Larceny By Trick
- a. Both False pretenses and larceny by trick require intent to defraud
 - b. However, False Pretenses applies when the Δ obtains title (as opposed to possession) to the property through deceit. I.E.
 - i. If the victim thinks he is giving something to the Δ forever (Title), the crime = False Pretenses
 - ii. If the victim does not know he is giving up something forever (possession), the crime = Larceny by Trick
- VII. Larceny v. Larceny by Trick
- a. Larceny = Trespass or lack of consent by the initial possessor to part with possession of item

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- b. Larceny by Trick= Apparent or ostensible consent vitiated by the fraud or trick

VIII. Consolidation: Theft

- a. Modern statutes tend to group different types of theft crimes together to avoid arcane distinctions that lead to technical loopholes.

IX. MPC (823-825)

- a. Consolidation of Theft Offenses
- b. Theft by unlawful taking or disposition
- c. Theft by deception