1. **Purpose** of Criminal Law and Punishment
   1. Specific deterrence – Deter specific person from committing another criminal act
   2. General deterrence – deter society as whole – can justify punishment in cases such as lifeboat case punishment reinforces society’s absolute prohibitions of certain acts, eliminating the series of one-off exceptions.
   3. Incapacitation – lock away the perpetrator for a long time
   4. Retribution – straight punishment
   5. Rehabilitation – make the person a better person to benefit society
      1. Two part test to determine if a release condition reasonably relates to statutory purpose
         1. Whether the sentencing judge imposed the conditions for a permissible purpose
         2. Whether the conditions are reasonable related to the purpose.
   6. **Proportionality** of punishment
      1. 8th Amendment – limited proportionality requirement in “cruel and unusual punishments” – only invoked for extreme cases
      2. Generally, the legislature defines the offense and punishment, not the court.
      3. **Legislature** typically has almost complete authority to impose punishments – 3rd felony, theft, 25-life ok.
      4. Three part test for disproportionality
         1. gravity of the offense and harshness of penalty
         2. sentences imposed on other criminals in the same jurisdiction
         3. sentences imposed for commission of the same crime in other jurisdiction
2. General Requirements of Criminal Laws
   1. **General Elements** – each of these must be proven beyond a reasonable doubt:
      1. Mens rea – intent or state of mind
      2. Actus rea – the act- generally, Criminal law punishes Acts, not omissions, except in specific circumstances
      3. Causation – that the act or omission brought about the result – ex: lifeboat, any shortening of life is causation for murder
      4. The social harm we want to prevent
   2. **Burden of Proof**:
      1. Presumption of innocence part of due process clause of 14th Amendment, and burden to prove all elements of a crime are on the State.
      2. Variety of legal standards – two most common for Criminal Law are:
         1. Clear and convincing evidence (~66% certainty) – rare in criminal law
         2. Beyond a reasonable doubt (~90-95% certainty) – never absolute certainty, just have to prove no other fair and rational alternative, but do not have to rule out speculative or hypothetical theories (ex: aliens).
   3. **Legality**
      1. Legislature just needs to provide sufficient specificity so as to give notice via clear statute – presumption of notice.
      2. Common Law crimes disfavored– this is so people can know what behavior they must conform to
         1. Sometimes still exists as gap-fillers – ex: killing unborn baby case
         2. If the statute is unclear, look to the assumptions made by the drafters of the statute, or the pre-existing common law.
         3. However, it is possible for the court to go beyond the point where there is fair notice
      3. Rule of Lenity – ambiguity in a statute is construed against the state – killing unborn baby case again.
         1. Overly broad statutes may be filtered through common law analysis, but are generally ok – peeping tom
         2. Vague statutes may be unconstitutional if they
            1. Fail to provide adequate notice to enable ordinary people to understand what conduct is prohibited
            2. Or Authorize or encourage arbitrary and discriminatory enforcement – anti-loitering statute case, it is unclear what “apparent purpose” is, thus no notice.
3. **Actus Rea** (The Act)
   1. Requires:
      1. There must be some act
      2. The act must be voluntary – generally required, or assumed as it makes no sense to punish someone for something they cannot control.
         1. Seizures, accidental acts, reflexes, unconsciousness, hypnosis, or forced acts (cops drag drunk out of house) are not voluntarily acts.
         2. Except: We look at the timeframe of the entire act, not just the voluntary part, thus seizure while driving causing accident with knowledge that D is subject to seizures can be reckless act, same as drunk driving.
   2. Omissions – Generally, courts do not hold people responsible for omissions – higher standard for convictions
      1. Why not?
         1. Omissions are inherently more ambiguous than acts – paralyze with fear, not appreciate seriousness
         2. Difficult to draw the line of where liability stops
         3. Issues of freedom – individual liberty is highly valued, requiring an act cuts against this.
         4. Well meaning bystander can often make things worse.
      2. Exceptions:
         1. Where statute imposes a duty – ex: taxes
         2. Where one stands in a certain relationship to another – mother/child, husband/wife
         3. By contractual agreement
         4. If you have placed the other person in peril or risk – have to help if you hit another car
         5. If you have commenced rescue and by doing so, dissuaded or prevented others from rendering aid.
4. **Mens Rea** (“Guilty mind”)
   1. Broad meaning would be a generally culpable or blameworthy state of mind. Not really used.
   2. **Elemental meaning** – the statute specifies a mens rea requirement, that relates back to the crime that the criminal must have.
   3. Majority of the time, we don’t care about what a reasonable person would think, but of the subjective thoughts of the actual person in the case.
   4. **Intent can be inferred** from D’s actions, circumstantial evidence, or confession – One intends the natural and probable consequences of his actions.
   5. **Model Penal Code Intent**:
      1. Model Penal Code levels of state of mind:
         1. **Purpose** – conscious objective to engage in conduct or cause certain result
         2. **Knowledge** – awareness that the result is practically certain. Desire is not needed
         3. **Reckless** – consciously disregarding a substantial and unjustifiable risk – so aware of a substantial (as opposed to a practically certain) risk, and disregarding it.
         4. **Negligence** – should have been conscious of a substantial and unjustifiable risk. Same level of risk as reckless, but no conscious awareness of the risk is required, just constructive awareness – should have been aware.
      2. Under MPC, when the requisite required mental state is not provided, it is assumed to require at least recklessness. The MPC has a strong presumption against liability for negligence.
      3. **Willful blindness** problem for knowledge or intent – person may willfully try to avoid knowledge so as not to achieve a certain level of state of mind
         1. Under MPC, knowledge may be shown by a deliberate or intentional ignorance to the existence of a fact
         2. Not all states recognize this – MO, underage stripper case, didn’t know her actual age.
   6. **Common Law Intent**
      1. **General Intent** – simply the intent to commit the act constituting the crime. Ex: battery as “intentional application of force upon another.” Intentional refers to the state of mind the actor regarding the act.
         1. Can be inferred by the fact that D engaged in the act.
      2. **Specific Intent** – a special mental element above and beyond any mental state required for the act. Can be:
         1. Intent to commit a future crime – burglary – enter building with intent to commit a felony therein
         2. A special motive or purpose – offensive contact with intent to cause humiliation
         3. Awareness of attendant circumstances – sale of obscene literature to person known to be under 18.
         4. Willful blindness can be an issue here also.
   7. **Transferred Intent**
      1. When a D commits an act that results in a particular social harm, but hits someone he doesn’t intend to hit, the intent that D had for their intended target transfers to the person he actually hit.
      2. Applies to both MPC and CL
   8. **Strict Liability**
      1. Typically, Criminal law requires a specific mental state – mens rea, except strict liability offenses – no mens rea element for strict liability – if you did it, then you are guilty.
      2. Strong presumption against SL offenses, esp. in the MPC
      3. Crimes most likely to be SL are those that have little or no jail time, and public welfare offenses
      4. If the criminal statute is silent on mens rea, look to see if mens rea should be read into it. Some factors:
         1. Are prison terms or harsh punishment specified?
         2. Did the legislature include a mens rea requirement in part of the statute, but not other parts?
         3. Possible policy arguments for and against, keeping in mind SL is disfavored.
         4. Does the statute regulate potentially harmful or injurious items such that D should know they are dealing with a dangerous device (ex: grenade).
            1. 1st and last reasons enough to keep SCOTUS from applying SL to possession of automatic weapons
      5. Statutory rape is a permissible SL offense b/c it attempts to prohibit potential significant harm to another
         1. MPC allows SL for statutory rape of victim under 10 as there can be no reasonable mistake.
      6. **Arguments against** SL
         1. They do not deter since the actor may not be aware of the facts that render their conduct dangerous
            1. Counter – SL will make a person engaged in certain activities more careful because of SL governing
            2. Counter – presence of SL will keep large class of persons from engaging in certain types of activities
         2. It is unjust to condemn a person who is not morally culpable.
         3. If penalties are minimal, then SL may be treated merely as a license to continue in regulated activities.
      7. Strict Liability statutes typically are not prosecuted against the class they are trying to protect – generally, young people in statutory rape cases are not prosecuted, but this is a prosecutor discretion.
   9. **Mistake of fact**
      1. **Model Penal Code Mistake of Fact**
         1. Affirmative defense, can be used to negate the mens rea of a crime.
         2. Just need an honest MoF for Purposefully, Knowingly, and Recklessly
         3. MoF needs to be honest and reasonable for Negligence.
         4. No moral/legal wrong doctrines.
      2. **Common Law Mistake of Fact**
         1. Affirmative Defense, thus burden is on the D to prove.
         2. Negates the mens rea element, if proven, thus D lacks the specific mental state necessary for the crime
         3. For **General Intent** – D must have a reasonable and genuine mistaken belief (subjective and objective).
         4. For **Specific Intent** – we look only at subjective belief – if D really believes they are mistaken, even if the belief is unreasonable, that is enough to establish mistake of fact.
         5. For Strict Liability, MoF is not a defense.
         6. **Moral Wrong Doctrine** – if your act involves a moral wrong, then MoF is negated (ex: running off with unmarried girl in reasonable belief that she is 18, when she is not, moral wrong is running off with her)
         7. **Legal Wrong Doctrine** – if D knows his act committed is a crime, say a misdemeanor, D can be convicted of a higher charge, say a felony, despite MoF – ex: misdemeanor to furnish 18+ with something, felony for <18, if you furnish for someone you think is 18+, but they are actually <18, can be charged with felony.
   10. **Mistake of Law**
       1. **Model Penal Code Mistake of Law**
          1. Pretty much the same as common law
       2. **Common Law Mistake of Law**
          1. General rule is that ignorance is no mistake, and thus not a defense and does not negate any type of mens rea requirement.
          2. **EXCEPT**: in case of reasonable reliance based on an official interpretation of law by someone who has the job of interpreting the law (and the interpretation is wrong). Much more likely to occur in cases in non-criminal law
          3. **Except**: where the specific intent requirement requires knowledge that the act is illegal.
       3. **Policy** – We want to encourage people to know the law, and to hold otherwise would be to encourage ignorance of the law. This works for crimes that by their nature, people should know. But lots of acts prohibited by legislation that are not obviously criminal, which is harder for people to conform to.
5. **Causation**
   1. **Actual Causation** – (Cause in fact)
      1. Acceleration – if D commits an act that speeds up death, even if only for a moment, it is enough for actual cause. Acceleration != aggravation – it is possible to make the pain more intense w/o shortening life.
      2. But-for causation (most common) – would the injury have occurred but for the actions of the D?
      3. Substantial factor test – If two acts are committed at the same time, when each alone is sufficient to cause the harm, then both of them satisfy the causation requirement.
      4. MPC would look to whom is more culpable in scenarios such as the hiker in desert with poisoned water which is stolen.
   2. **Proximate Cause** (legal causation)
      1. Determines who or what events satisfy actual causation should be held accountable for the resulting harm
      2. Basic premise same as torts – is the chain of events close enough to link the cause to the ultimate harm?
      3. Key issue is **forseeability**
         1. Question is whether the harm caused was foreseeable? If so, then the D can be held responsible.
         2. If there is a superseding, intervening cause, then the causal chain is broken and D is not responsible.
            1. Acts of nature tend to be more likely to be superseding intervening cause.
         3. No bright line rule here and jury is allowed fair amount of leeway.
         4. Drag race case – deceased participated in the race of his own volition, and was the cause of his death.
      4. **Apparent Safety** Doctrine can break causal chain – when a person reaches a position of safety, the original wrongdoer is no longer responsible for any ensuing harm – *Preslar*, husband threatens wife, she goes to parents, but doesn’t want to wake them up, sleeps outside, dies from cold, husband not guilty of homicide.
   3. Every case that provides for a harm, there must be an actual cause. You only look at proximate cause once you have actual cause, but in the end, you need both, so an actual cause that is not a proximate cause is not enough.
   4. MPC causal analysis is the same as CL, except no proximate cause analysis – focuses on mens rea of individual
   5. **Concurrence of elements**: Both actual and proximate cause must be present along with a culpable state of mind, and the social him at the same time for the crime to exist – car hit and dragged pedestrian case – if light was green, no negli, so no crime. If light was red/saw ped, then negli, but if ped not killed on impact, then no social harm of negli homicide. If dragged to death, then homicide.
6. **Homicide**
   1. State Statutes
      1. Only ones which provide for degrees
      2. Premeditation – involves a quantity of time taken by D to think of the matter beforehand- case-by-case basis, would seem to be only a brief moment is necessary, but no bright line rule here
      3. Deliberation – turns on “quality of time” – D takes time to think/reason about the act –encompasses premeditation, such that most cases would really turn on deliberation more than premeditation.
      4. Downside to this is that you have cases such as the shooting dying dad “mercy killing” cases where the D arguably fits into the box for deliberate killing with the highest level of punishment that arguably are not as bad as say a hitman or the Sopranos scenarios. You put the D in a box with less discretion by the jury/judge.
   2. Common Law – no degrees
      1. **Murder** - Unlawful killing of a human with malice aforethought
         1. Types of malice:
            1. Express Malice

Intent to kill

Intent to inflict grievous bodily harm

* + - * 1. Implied Malice

Depraved heart murder – no intent to kill, but D acted in a way that suggests a depraved mind or an abandoned and malignant heart, that is in wanton and willful disregard to human life or extreme recklessness (ex: driving 120 mph in a school zone)

Felony Murder – no intent to kill, but a death occurs during an intentional commission of a particular type of felony

Eliminates need to prove mens rea for murder, just have to prove mens rea for the felony

Some juri have specific list of felonies that fall under felony murder, others rely on the judge

These felonies are “inherently dangerous” – look to the underlying felony statute in abstract, not in this particular case, to determine whether it is inherently dangerous. Thus burglary can bring felony murder, but eluding a peace officer can’t.

Hard to separate out hindsight in such cases (so look at underlying felony in the abstract – also want to set precedent), also allows for weird results.

Merger Doctrine – Independent Felonies

Applied when the underlying felony is an integral part of the homicide and it is included in the facts with the offense charged.

Generally includes only manslaughter and assault. Burglary with assault + death, assault would be merged, but the burglary charge would be independent.

To allow otherwise would all you to get around mens rea requirement for murder, and all murder cases would be felony murder cases.

Two approaches for felony murder for group felonies (ie. Pair of burglars A and B)

**Agency approach** - A/B are agents of each other, if B kills someone, both can be charged with felony murder. However, if cop C kills anyone while trying to catch A/B, no FM.

**Proximate causation** (minority rule) – Felony murder turns on forseeability of death – so if cop C kills someone X, A/B will fall under FM, **even if A/B is killed by C**.

Ultra minority is FM when bystander kills bystander while felony in progress, but not FM if C kills A/B

Upside to Felony murder – don’t have to prove mental state of D. Originally no big deal b/c punishment for all felonies was death.

Downside – today there are a lot more felonies with a wide variety of punishments. Also, it is questionable if this deters anything as generally, death in these scenarios are accidental – the person stealing tires does not really consider the possibility for felony murder.

* + 1. **Voluntary manslaughter** –D intends to kill, but does so in the heat of passion (finds spouse sexing it up, kills)
       1. Requirements:
          1. Adequate provocation

Words alone are NOT enough.

For some jurisdictions, minor physical acts not enough – generally need conduct indicating a present intention and ability to cause bodily harm (wife step on D’s back + pull hair not enough)

Limited number of acknowledged scenarios – catching cheating spouse, mutual combat, assault and battery, unlawful arrest, watching injury to a loved one.

Domestic arguments can easily escalate into furious fights, to allow downgrade for killing would encourage killing in such scenarios.

* + - * 1. Killing in the heat of passion
        2. No adequate or reasonable opportunity to cool down – CL requires immediate action.
        3. A causal connection between the provocation, the passion and the fatal act.
      1. Under CL, a CoA is more likely to overturn TC not presenting a downgrade option to jury than MPC.
    1. **Involuntary manslaughter** – death results due to reckless activity, but activity is not so reckless as to fall under depraved heart murder.
       1. Behavior must be substantial and unjustifiable
       2. In analyzing, start with involuntary manslaughter and try to work up to “wanton and willful” – looking for Extreme Recklessness. Compare the below factors – these are objectively measured.
          1. Probability of death
          2. Anti-social motive of behavior
       3. Thus an act with a high probably of death and is highly anti-social is likely enough for murder charge. Extremely high probability of death or extremely anti-social behavior alone may be enough though. However, this is a subjective std
    2. 1 year and 1 day rule – death as a result of the act must occur within 1 yr and a day of the act-most states have abolished this rule though.
  1. Model Penal Code – no degrees
     1. **Murder**
        1. D acts purposefully to kill
        2. D acts knowingly to kill
        3. D acts recklessly (with extreme indifference to the value of human life) and kills – similar to depraved heart murder of CL.
     2. **Voluntary manslaughter** – “extreme emotional disturbance” causes a person to commit a homicide – can be broader than “heat of passion” category from CL.
        1. Requires:
           1. Adequate provocation – subjectively, was D having extreme emotional disturbance? - words alone can be enough under MPC
           2. Is the provocation reasonable?

Old trend was to use a reasonable person std

New hotness is to use a reasonable person in D’s position, taking into consideration of the individual idiosyncrasies.

* + - * 1. Cooling off requirement is a lot looser than CL
        2. Causal link is a lot looser as well than CL
      1. Effect is that under MPC, it’s almost always possible to get the downgraded Manslaughter charge in front of the jury, but the jury doesn’t have to buy it. CoA is also less likely to overturn a jury verdict.
    1. **Involuntary manslaughter** – essentially the same as under CL, again, try to ratchet up to murder.
    2. **Negligent homicide** – no comparable liability under CL.
       1. D didn’t actually know of the risk they were taking, but should have known.
    3. No Felony Murder under MPC, but in case of certain felonies, reckless and indifference to human life (depraved heart category) is presumed for **robbery, rape, arson, burglary, kidnapping or felonious escape**.
  1. **Capital Punishment**
     1. Originally two types:
        1. Guided discretion – courts decide whether they jury would be able to decide on death penalty
           1. Struck down by SCOTUS for being arbitrary.
        2. Mandatory death penalty – thinking was SCOTUS can’t say it is arbitrary, but still struck down.
     2. Today, murders eligible for the death penalty have to have **aggravating factors enacted by statute**, and provide for a **bifurcated proceedings**, and **allow the D to show mitigating factors**
        1. Substantial Prior record of capital felony, while engaged in capital felony, using a weapon dangerous to more than one person, murder for hire, murder of judicial officer, directing an agent to murder, if it was outrageously or wantonly vile, horrible or inhuman, against a peace officer, committed during an escape, or while avoiding arrest.
     3. Discrimination – proof that the death penalty is discriminatory is not enough, a D needs to prove that the system discriminated against the D personally.
     4. No death penalty for rape or rape of a child, most felony murders, mentally retarded, and juveniles under disproportionality theory.
     5. Victim impact testimony is allowed

1. **Rape**
   1. Common Law
      1. Carnal knowledge of a woman, forcibly and against her will. Elements:
         1. Carnal knowledge – intercourse
         2. Of a woman – only a woman could be a victim, and only a man could be the perpetrator
         3. Forcibly
            1. Actual force – more force than that to achieve penetration – resistance is best indicator for force.
            2. Threat of force

Threat of serious bodily injury or death,

Or using enough force to overcome V’s resistance.

V must show a reasonable threat of force – subjective fear is not enough

* + - 1. Against her will
  1. Reformed Jurisdiction (MPC ignored for rape)
     1. Rape/Sexual Assault (merged) Elements
        1. Lack of **consent**
           1. Can be withdrawn at any time
           2. Must be communicated to D and D must ignore it

Mistake of Fact is a defense available here.

Rape is general intent crime, so MoF needs to be honest and objectively reasonable

There needs to be some evidence to allow the use of the defense.

* + - * 1. Consent by Fraud

**Fraud in the factum** – consent fails because act consented to is not consistent with act D did

Ex: Dr. says going to use a tool, uses something else instead

Fraud in the **inducement** – tricking V to sleep with you

This NEVER eliminates consent though!

The fraud induces the sex, but the V was aware and consented to the sexual act

* + - 1. Enough force for penetration – no extrinsic force needed.
  1. Rape shield laws
     1. D cannot introduce evidence about V’s prior sexual history (we prosecute the crime, not the criminal, don’t want to deter V from coming forward)
     2. Exception – if evidence goes to V’s tendency to fabricate stories

1. **Inchoate Offenses** – Failed/Foiled crimes
   1. **Attempt** – separate offense from the target offense, but **merges** with the target offense if D is convicted of it, but can charge both attempt and the actual crime
      1. Requirements
         1. Intent – culpable mental state
            1. Intent is a **specific intent** crime – even if the target offense is a general intent crime

To prove the mens rea of intent, you have to have the intent to commit the act that makes up the actus rea of the **target** crime.

So if murder requires knowledge, you have to have knowledge at the outset and you have to perform the attempt with the specific intent to perform the crime

You cannot have attempt for reckless or negligence as you cannot form the necessary mens rea to complete the crime – planning would bring it up to knowledge in all likelihood.

You cannot have attempted felony murder either – there can be the specific intent to commit the underlying felony, but there is no intent to commit felony murder. If there is, you can get them for attempted murder.

* + - 1. An Act – some substantive act, more than mere preparation
         1. Under CL we look forward to what remains to be done, 6 different tests

**Last Act** test – no place uses – only convict if D commits the last act necessary for the crime – pulling the trigger. Basically impossible and only gets the failed crimes.

**Physical Proximity** test- Convict when the target crime is within the perpetrators grasp and can be committed almost immediately – finger on the trigger, aiming at target

**Dangerous Proximity** test – how close is D to finalizing and committing the crime-similar to physical proximity, but maybe looser.

**Indispensable Elements** test – when D has all the necessary instrumentalities to commit the crime – gun + bullets

**Probable Desistance** test – is D past the point at which no ordinary person would turn back – hard test to apply

**Unequivocality** (Res Ipsa) test – focuses on actions themselves, - watching TV without sound, convict when there is no logical other action but to complete the crime.

* + - * 1. Under MPC, we look backwards at what the D has already done

Substantial step test - Have they completed a substantial step toward the commission of the crime?

possession of materials to be used which has no other lawful purpose,

Possession of materials to be used in the crime near the place of the crime, where having such materials serves no lawful purpose under the circumstances

MPC allows earlier conviction than some CL tests

* + 1. **Defenses to Attempt**
       1. Impossibility, 3 types
          1. **Legal Impossibility** – usually a good defense

Actor engages in conduct that he believes is criminal but its not

(Conduct, even if completed, does not constitute a crime)

Ex. Stealing Ketchup Packets from McDonalds –they are free, so you can’t steal them

* + - * 1. **Factual Impossibility** – never a defense

When consequences sought by D are criminal, it is no defense that D could not succeed in reaching his goal b/c of circumstances unknown to him.

In other words, “If the facts were as I believed them to be, the crime would have been committed. Therefore, I am guilty of attempting that crime

* + - * 1. **Hybrid Legal Impossibility**

Actor’s goal is illegal, but commission of offense is impossible due to a factual mistake regarding the legal status of some attendant circumstance that is an element of the charged offense

Ex: shooting a stuffed deer when you think it’s a real deer

Majority rule and MPC – defense abolished

* + - 1. **Abandonment**
         1. Voluntary Abandonment – of D’s own free will and desire (not b/c he thought he would get caught)

MPC Rule – D must prove that he (1) voluntarily AND (2) completely renounced his plan

Complete defense to crime of attempt

* + - * 1. CL – courts go both ways
        2. Doesn’t really work in last act jurisdictions as everything is done at that point.
  1. **Solicitation**
     1. requests/hire/solicits another person to commit a crime, at common law, usually a felony
     2. Solicitation is complete the moment you ask.
        1. Even if the person you ask does nothing.
        2. Even if it turns out impossible to commit, you can still be convicted of solicitation
     3. It is a specific intent offense – you have to have the intent to encourage/hire/ask/encourage, and intend that that person actually commit the specific crime
     4. Typically merges with the committed offense.
     5. MPC is pretty much the same except the punishment is typically heavier since MPC punishes intent.
  2. **Conspiracy**
     1. This is the crime of agreeing to commit a crime
     2. **Common Law Conspiracy**
        1. Actus Reus
           1. CL Old Rule – The agreement to conspire itself is the actus reus, nothing more.
           2. Modern CL view - Requires an overt act in furtherance of the agreement, in addition to the agreement to conspire. The overt act need not be illegal and may be trivial.
        2. Mens Rea
           1. **Specific intent** mens rea – 2 separate intents:

The intent of 2 or more people to agree to do something, AND

The intent to commit the target offense

* + - 1. Conspiracy does NOT merge (though attempt can)
      2. Once you join a conspiracy, you are liable for:
         1. Conspiracy
         2. Every other criminal offense committed by any co-conspirator, if that offense is in furtherance of the conspiracy

This is true even if you are not present for the criminal offense

* + - 1. Bilateral Conspiracy
         1. At least 2 people must have necessary mens rea to carry out target offense (ie – if you have an undercover cop as one of the people, no way to prosecute for conspiracy)
         2. Mental incapacity can also negate a bilateral conspiracy
    1. **MPC Conspiracy**
       1. Conspiracy only applies for knowledge or purpose mens rea – you can’t conspire and have the intent to commit a reckless crime
       2. Conspiracy merges under MPC
       3. Under MPC, only guilty of crimes you are an accomplice to, **not** the ones your co-conspirators committed in furtherance.
       4. Unilateral Conspiracy
          1. MPC – only one person needs to have the intent to agree to commit an offense
          2. Inquiry – did the person we are trying to convict intend to agree to the commission of the offense?
    2. Conspiracy can be inferred from the circumstances.
    3. Mere knowledge of criminal activity is not enough to involve you in the conspiracy, but “Knowledge plus” may be enough:
       1. Inflated price
       2. Disproportionate number or means
       3. No lawful purpose for those goods/services (tough to find)
    4. Accomplice liability and Conspiracy - You can be guilty of one and not the other (and vice versa), even though most times you are liable for both
    5. Defenses to Conspiracy
       1. CL:
          1. “**Withdrawal**” Rule – You cannot withdraw from a completed crime of conspiracy

BUT, you can withdraw from ongoing conspiracy so you will not be liable for future acts of your co-conspirators

Not easy to withdraw – must walk away, AND communicate to *all* other co-conspirators that you are withdrawing

* + - 1. MPC:
         1. “**Abandonment**” (same thing as CL withdrawal) – like CL, only applies to future crimes.
         2. **Renunciation** (new Aff. Def.) – relieves D of liability for conspiracy AND future crimes

Proof – D, member of conspiracy, must come forward, completely and voluntarily withdraw from the conspiracy, and help thwart the conspiracy

Note – any previous crimes committed by conspiracy are still actionable

* 1. **Accomplice** Liability
     1. No agreement is necessary, just need proof that accomplice helped or assisted.
     2. DERIVATIVE liability
        1. Accomplice liability is not its own crime; it is derived from the target offense
        2. The illegal actions of the principle become the illegal actions of the accomplice
     3. Actus Reus – aiding and/or abetting of the principal
     4. At CL, must be some type of **actual** help provided
        1. Actual assistance requires ***more*** than mere presence under CL, but, assistance can be moral support or encouragement
     5. MPC
        1. Can be held liable as an accomplice for **attempting** to aid/abet
     6. There is no “but-for” causation requirement (either under MPC or CL)
        1. Accomplice is guilty of offense if he provides assistance – does NOT matter that assistance wasn’t necessary for commission of the crime
     7. Natural and Probable consequences – if you are accomplice, and you assist P in committing a crime, you are guilty of that crime (derivative liability)
        1. CL – Accomplice derives liability from D for crimes that are natural and probable consequences of committing original crime
        2. MPC rejects this idea – focuses on personal culpability – guilty of primary intended crim, not the unintended crimes of the accomplice.
     8. Mens Rea (MPC and CL)
        1. Accomplice liability is a specific intent crime
           1. Intend to assist the P, AND
           2. Intend that P carry out the target offense
     9. Limits on Accomplice Liability
        1. tend not to hold someone responsible as an accomplice if the law is trying to protect that person (ie, statutory rape)
        2. Abandonment from accomplice liability is the same as conspiracy
     10. **Defenses**:
         1. Justification
            1. Rule – justification defenses apply to the world
            2. Result – Help principal, AND help accomplice
         2. Excuse – “I should not have done that, but don’t hold me responsible”
            1. Rule – excuse defenses are personal to the principal

Incompetence

Insanity

* 1. **Vicarious Liability** – holding someone liable for the actions of another
     + 1. Almost always rejected in criminal law
          1. Except when absolutely clear that legislature intended vicarious liability, a narrow public safety offense and penalty is light – fine or other civil penalty
  2. **Corporate liability**
     + 1. We impute intent and actions of persons w/in a Corp to the Corp itself
          1. Agent was acting w/in scope of employment
          2. Agent was furthering the Corp’s business interests, AND
          3. Criminal acts were authorized, tolerated, or ratified by Corp Mgmt

1. **General Defenses**
   1. Justification Defenses – these acts as a complete (affirmative) defense
      1. **Self-Defense**
         1. **Self Defense** (**Common Law)** - Issues stem from idea of Necessity
            1. Imminence

If threat (real or constructive will suffice) is not imminent, you cannot respond w/ appropriate force

* + - * 1. Proportionate response

Minimum level of force to safely stop crime against you

Ie, threat of battery does not give rise to use of deadly force

* + - * 1. Unclean Hands

An aggressor cannot later claim self-defense

Even if the victim responds with deadly force, the aggressor cannot respond in kind.

BUT, if aggressor successfully retreats and then later has to defend himself, can claim self-defense

* + - * 1. Retreat

No duty to retreat under the common law

* + - 1. **Self-Defense** – **MPC**
         1. Imminence

Whether force is needed immediately, even if threat is not imminent when force is used

Focuses on actor’s perspective rather than the threat of force

Note – possible MPC imminence expansion to “battered spouse syndrome”

* + - * 1. Proportionate response

Never get to use deadly force in response to non-deadly force

* + - * 1. Unclean Hands

Just b/c you are aggressor does not mean you forfeit right to self-defense

Ie, you are non-deadly force aggressor, but disproportionate response requires you to later use deadly force – SD ok

* + - * 1. Retreat

For deadly force, must first retreat as far as humanly possible.

* + - 1. **Mistake of Fact and Reasonable belief** requirement
         1. General Rule – no self-defense claim for mistake, unless mistaken belief is objectively reasonable
         2. For deadly force, D must think he faces imminent death, and his thoughts must be objectively reasonable, for self-defense
         3. Wanrow – reasonable person *in the D’s position*
         4. Under **MPC** - “incomplete self-defense”

If D subjectively believes use of deadly force is necessary, but belief is objectively **unreasonable**, may mitigate from murder charge to manslaughter

* + 1. **Defense of Others**
       1. Modern – can use force/deadly force to defend others from wrongful harm
       2. Maj Rule – intervenor must reasonably believe that defense of another is necessary
    2. **Defense of Property/Habitation**
       1. General defense of habitation
          1. Old CL rule – D can use deadly force if he thinks it is reasonably necessary to prevent an imminent and unlawful entry into the habitation/real property
          2. MPC – must reasonably believe that intruder is trying to dispossess you of the home (ie, minor theft would not be enough here)
       2. Spring Guns
          1. MPC – Never allowed for self-defense claim
          2. CL – could use and claim self-defense only if resident would have had an actual claim of self-defense
       3. Personal Property (Initial force application to protect)
          1. CL – no deadly force, even if only way to protect the property
          2. MPC – general rule is no deadly force

Exception – is permissible to use deadly force if using non-deadly force is not possible to prevent commission of the crime

* + 1. **Necessity**
       1. Justification defense (ie, You did that and it was okay to do; you should do it again)
          1. Contrast w/ duress
       2. “Choice of evils” defense – necessity requires picking lesser evil
       3. Must come from a natural condition
          1. Contrast w/ Duress
       4. Common law Requirements
          1. imminent danger
          2. D must reasonably believe his action will stop the danger
          3. No available legal method to stop the danger
          4. Balancing of harms – Harm that D will cause must be less than harm of the imminent danger
          5. D is supposed to have clean hands.

Note – necessity does not apply to murder or intentional homicide

* + - 1. MPC requirements
         1. No blanket prohibition on unclean hands
         2. Focuses on mens rea

Necessity defense available to knowing/intentional crimes

Unavailable to reckless/negligent crimes

Note – original crime’s mens rea does not matter

* + - * 1. Necessity can be a defense to murder/intentional homicide
        2. Note – necessity defense usually unavailable for civil disobedience crimes
  1. Excuse Defenses – Personal to Actor
     1. **Duress**
        1. Note – at CL, duress never applied to intentional murder
        2. MPC – duress can apply to an intentional murder
           1. Note – can be hard to separate from a necessity / justification defense, sometimes easy (Dudley)
        3. Elements
           1. Another person must threaten to kill or grievously injure D or his family

Note – Duress defense applies only to human threats

This is what separates duress from necessity (natural threats)

* + - * 1. Actor must reasonably believe that threat is genuine
        2. Threat must be imminent
        3. No reasonable escape from the threat
    1. Intoxication
       1. Must separate b/t voluntary and involuntary intoxication
          1. **Voluntary** – actor is culpable for becoming intoxicated

Common Law - Voluntary Intoxication is never a failure of proof or a defense for a general intent crime

BUT, it CAN be a failure of proof for **specific intent** crimes

Majority of Courts reject Graves holding and vol intox is not a defense for specific intent crimes.

MPC Approach

MPC looks at D’s culpable mens rea (no specific/general intent inquiry)

If standard is purposeful or knowledge, D’s V/I will be considered to mitigate this mens rea culpability

Note – cannot apply to a crime of recklessness

* + - * 1. **Involuntary** – actor somehow not responsible for intoxication

Note – No “alcoholic” defense to involuntary intoxication

IS allowed a defense

Type of excuse defense

Must prove 1 of 3 things

D was coerced to take intoxicant

D ingests intoxicant by mistake

D becomes intoxicated by a prescription medication

To invoke this, D must not have reason to know that medication(s) have an intoxicating effect

* + 1. **Competency**
       1. Examines whether D is able to stand trial at the very moment of the trial
       2. There is a presumption that D is competent
          1. D has burden of disproving presumption

Note – D can be medicated to foster competency

* + - 1. If D disproves presumption, proceedings are stayed until D is found competent
    1. **Insanity**
       1. **M’Naughten Test** – Person is insane when the D is wavering under a disease of the mind that makes him unable to know the nature and quality of the act he was doing or if he did know the nature or quality of the act, he is unable to recognize that it was wrong.
          1. Purely Cognitive Test
          2. Very Rigid Test – unable to know nature of harm = completely incapacitated.
          3. This makes it an all or nothing test – D is able to know right and wrong or not able to know right or wrong.
          4. According to many this defines insanity too narrowly because some can recognize difference between right and wrong that wouldn’t be insane under this test.
          5. Psychological community would be forced to testify only to the standard of right and wrong which makes it inconsistent with basic psychology.
       2. **Irresistible Impulse Test** – This test is usually added to the previous test. Person knows the action is wrong but they are driven by an insane impulse to do it anyway.
          1. It is a volitional test.
          2. It is very hard to prove whether it is irresistible. Very difficult to separate one with an irresistible impulse vs. an impulse not resisted

Then who does it apply to?

* + - * 1. It is an all or nothing test just like the M’Naughten test.
      1. **Products (Durham) Test** – Accused is not criminally responsible if the unlawful act is the product of mental disease or mental defect.
         1. Pushes towards expert testimony.
         2. Problem with this is that it puts enormous responsibility in the hands of an expert witness to determine what the product is. Two problems with this:

Very hard to know what the product of the disease is, and expert can’t just tell juries what the conclusion is.

* + - * 1. Product test doesn’t define mental disease.
        2. Products test generally rejected by jurisdictions because it becomes a battle of experts
      1. **MPC Test** – A lot like the first two with small variations: D is relieved of criminal responsibility if as a result of mental illness he lacks substantial capacity to appreciate the criminality of his conduct or he lacks substantial capacity to conform his conduct to the requirements of the law.
         1. First part is cognitive, second part is volitional.
         2. More nuanced because it does not require total incapacity, requires substantial incapacity so it’s not an all or nothing test.
         3. It doesn’t demand that the D have knowledge of the wrongfulness, instead it has nuanced language of the D not appreciating the wrongfulness.
         4. MPC is more reasonable, more allowable of insanity tests. This is because it deals with substantial incapacity and not total, and it deals with appreciation of wrongfulness and not knowledge.