

Crime = Actus Reus (Voluntary/Culpable Act OR Omission (Duty + Failure to Act)) + Mental State + Result = Social Harm (Crime) - Defenses

Actus Reus – voluntary act + social harm, omissions do not usually count

| Common Law / NC | MPC |
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| <ul style="list-style-type: none"> - Requires voluntary act and a social harm - Act is voluntary if D willed the action of if she was sufficiently free that she could be blamed for conduct - Social harm = harm caused by D's voluntary act - A willed muscular contraction <ul style="list-style-type: none"> o <i>Involuntary Act</i> can negate the act/action and serve as affirmative defense | <ul style="list-style-type: none"> - 2.01: not guilty of offense unless liability if based on conduct that includes a voluntary act or omission to perform an act which he has duty to perform - Act or action is a bodily movement whether voluntary or involuntary - VOLUNTARY: <ul style="list-style-type: none"> o Coercion/Duress/Under Threat (will have Defense) o Habit o "Brainwashed" o Demanded by police/authority - NOT VOLUNTARY: <ul style="list-style-type: none"> o Reflex/convulsion/seizure (<u>UNLESS you know you are prone</u>) o Bodily movement during unconsciousness or sleep (sleepwalking scenarios) o Conduct during hypnosis o Bodily movement not a product of effort/determination of the actor <ul style="list-style-type: none"> ▪ Cop bringing drunk guy into public |
| <p>Possession – possession is act IF possessor <i>knowingly</i> obtained/received the thing possessed or <i>was aware</i> of his control of item for a sufficient period to have been able to terminate possession</p> <ul style="list-style-type: none"> o Knowingly taking control of something is an ACT o Failure to terminate is an OMISSION <p>- Actual: only one person has control over item</p> <p>- Constructive:</p> <ul style="list-style-type: none"> o Exclusive - lacking actual possession, but aware of item, and have ability and intent to maintain dominion/control over the item; provable by sufficient evidence o Non-Exclusive – need additional evidence to determine possession <ul style="list-style-type: none"> ▪ D's proximity to contraband ▪ Did D own/operate location where was found ▪ Did D have control of item that contraband found in ▪ D's had opportunity to place contraband where found ▪ Did D flee ▪ Did D engage in suspicious behavior ▪ Did D engage in drug activity, or high on drugs at the time ▪ Did D have personal items where contraband found | |
| <p>Exceptions that satisfy Actus Reus (Act) requirement:</p> | |
| <p>1. Omission: Legal Duty to act + Failure to Act (Generally, NO DUTY TO ACT unless legal duty)</p> <ul style="list-style-type: none"> - No crime unless there is a legal duty to act - Types of legal duties: <ul style="list-style-type: none"> o Statute – statute requires person to act (filing taxes) o Status (Relationship) – duty to protect another where special relationship (parent/child; husband/wife; innkeeper/guest; employer/employee; captain/passenger) o Contract – contract to come to aid of another (baby-sitter) o Creation of Risk: if you create risk which caused harm, you must act to absolve it o Assumption of Risk: if you begin to act voluntarily, you must continue acting (saving drowning child) - NOTE: for OMISSION to result in criminal liability, it must be proved that: <ol style="list-style-type: none"> 1. Conduct of accused in failing to act was accompanied by requisite mens rea 2. Accused was aware of facts giving rise to duty to act 3. Accused owed legal duty to victim 4. Causal relationship between omission and the result 5. Performing the duty was possible | |
| <ul style="list-style-type: none"> - DO NOT Fulfill ACTUS REUS REQUIREMENT: - STATUS <ul style="list-style-type: none"> o Criminal law cannot punish a person's status – 8th Amendment bans cruel and unusual punishment and 14th guarantees due process under the law o Can't be punished for being an addict or alcoholic o Status does not count as act or omission | |

Mens Rea = “an evil mind” - prosecution must prove a culpable mental state for each material element of offense

| C/L | NC | MPC |
|---|---|---|
| <p>Specific Intent (usually fall into 3 categories)</p> <ol style="list-style-type: none"> Requires an intention to perform an act above the “actus reus” of the offense (burglary) Requires intent to commit crime for particular purpose or a specific motive (larceny) Provides that actor must be aware of a statutory attendant circumstance (knowingly possessing stolen goods) <ol style="list-style-type: none"> Acts in addition to general intent <p>General Intent</p> <ul style="list-style-type: none"> Only mens rea required is a blameworthy state of mind Volitional doing of a prohibited act Can infer all mens rea from observing the conduct <p>Strict Liability</p> <ul style="list-style-type: none"> No mental state required. If you commit the act, you’re guilty <p>_____</p> <ol style="list-style-type: none"> Intentionally (Willfully) – consciously cause result or virtually certain that object will occur as result of conduct <ol style="list-style-type: none"> Willful Blindness – be aware of probably existence Recklessness – heightened criminal negligence / conscious disregard of substantial and unjustifiable risk Negligence – SHOULD be aware that conduct created substantial and unjustifiable risk that result would occur Maliciously – intentionally or gross recklessly causes social harm prohibited in statute <p><u>I’m Running Naked Man</u></p> | <ol style="list-style-type: none"> Knowingly Willfully Intentionally Wantonly Maliciously Negligently | <ol style="list-style-type: none"> Purposely – <i>conscious objective</i> to engage in conduct w/ intent to cause the result; aware of existence or believe/hope attendant circumstances exist Knowingly (Willfully)– awareness that conducts results are practically certain to occur <ol style="list-style-type: none"> Willful Blindness – if one deliberately avoids knowledge b/c of belief that knowing would be bad, then D satisfies Knowledge; requires HIGH PROBABILITY Recklessness (default when no mens rea) – conscious disregard of a substantial and unjustifiable risk; actual awareness of gross deviation from standard law-abiding citizen – I know, but I don’t care Negligently – SHOULD be aware that the substantial and unjustifiable risk is gross deviation from standard law-abiding citizen – clueless person <p><u>Prince Knits Really Nicely</u></p> |

| Purposely | Knowingly | Recklessly | Negligently |
|--|---|---|--|
| <p>Conduct AND Result = conscious object to engage in conduct of that nature, or to cause that result</p> | <p>Conduct AND Attendant Circumstances = AWARE that conduct is of that nature or that such circumstances exist</p> | <p>- Conscious (AWARE) disregard of substantial and unjustifiable risk that is a gross deviation from standard of conduct of a law-abiding person</p> | <p>SHOULD BE AWARE of a substantial and unjustifiable risk; failure to perceive the risk involves a gross deviation from standard of conduct of a law-abiding person</p> |
| <p>Attendant Circumstances = AWARE of existence of such circumstances OR believes/hopes they exist</p> | <p>Result = he is AWARE that it is PRACTICALLY CERTAIN that his conduct will cause such a result</p> | | |

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| Conduct | Bodily movement |
| Attendant Circumstances | Conditions |
| Result | Not always an element (i.e. result crimes) |

| Specific Intent | Malice | General Intent | Strict Liability – crimes w/ no mens rea |
|------------------------|-----------|----------------------------|--|
| 1. First Degree Murder | 1. Murder | 1. Rape | 1. Felony Murder |
| 2. Solicitation | 2. Arson | 2. Battery | 2. Statutory Rape |
| 3. Attempt | | 3. Extreme Reckless Murder | 4. Public Welfare Offenses – violations punishable by fines; not incarceration |
| 4. Conspiracy | | | |
| 5. Larceny | | | |
| 6. Robbery | | | |
| 7. Burglary | | | |
| 8. Forgery | | | |
| 9. False-Pretense | | | |
| 10. Embezzlement | | | |

SCALES FRBF (ForReal BestFriend)

Silent Statutes – no mental state in statute

| C/L | MPC |
|---|---|
| <p>LaFave Factors</p> <ol style="list-style-type: none"> 1. Legislative History/Context 2. Guidance from other statutes 3. Severity of punishment 4. Seriousness of public harm statute seeks to prevent 5. Defendant’s opportunity to ascertain the true facts 6. Difficulty of proving mental state 7. Number of prosecutions to be expected under statute <p>LGSSDDN</p> | <p>2.02(3) – when mens rea isn’t stated in statute, it’s satisfied if person acts w/ purposely, knowingly, or recklessly – must at least prove reckless</p> <p>2.02(4) – when there is a mens rea requirement in statute it will apply to all material elements unless explicitly contrary</p> |

STRICT LIABILITY

| C/L | MPC | NC |
|---|--|--------------------|
| <p>Public Welfare and traditional crimes</p> <ul style="list-style-type: none"> - Not extreme punishment - Generally, involve conduct that is not morally “right” - Created by STATUTE | <p>2.05(1)(a)</p> <ul style="list-style-type: none"> - SL crimes are generally restricted to violations that are punishable by fines, not incarceration – public welfare crimes - Absolute liability | <p>Same as C/L</p> |

CAUSATION - (causation only required for result crimes)

CAUSE IN FACT/Actual Causation

| C/L | MPC | Difference |
|---|---|---|
| <p>“But For” Cause – If it wasn’t for D’s voluntary act, would the social harm have occurred when it did?</p> <ul style="list-style-type: none"> o If YES, D is NOT the but-for cause <p>Substantial Factor Test – Was D’s voluntary act, combined w/ other forces, a substantial factor in causing the harm?</p> <ul style="list-style-type: none"> o If D’s conduct accelerates a death, his conduct IS a substantial factor - Would result have happened anyway if not for D? - For D to be the cause, victim must have been alive at time - D does not need to be sole cause | <p>ONLY requires CAUSE IN FACT/ACTUAL CAUSE and uses same “BUT-FOR” Test as C/L</p> | <p>MPC only requires actual causation</p> |

PROXIMATE CAUSE – jury decides “is it fair to hold D liable?”

| C/L | MPC | Difference |
|--|--|--|
| <ul style="list-style-type: none"> - Foreseeability Test – whether actor was the direct cause and whether there were any intervening actors or causes that sever the causal chain back to D <ul style="list-style-type: none"> o No intervening causes unless the cause is foreseeable or too minimal <p>An independent intervening cause is one that was not reasonably foreseeable or else too remote to fairly hold the defendant responsible. If an intervening cause is considered independent, then it breaks the chain of causation between the defendant's act and the victim's harm.</p> <ul style="list-style-type: none"> - Intervening Acts: acts that can sufficiently break the chain of causation; - Dependent Intervening Act: where intervening actor acts b/c of a condition brought upon by D’s prior conduct – doesn’t break chain unless dependent actor was grossly negligent - Voluntary Intervening Act: occur where the intervening actor acts voluntarily – intentional acts ALWAYS break the chain of causation | <p>MPC handles proximate cause within mens rea as to results</p> <p>Whether the result was too distant or accidental in occurrence to have a just bearing on D’s liability or on gravity of offense</p> <p>If result deviates too far from what is foreseeable, then one will be exculpated for purpose and knowledge crimes – if NOT, D will be convicted even if there is an intervening actor</p> | <p>Purposely/knowingly: causation not established if result was not what actor intended, UNLESS:</p> <ul style="list-style-type: none"> - Plaintiff just a different person (TRANSFERRED INTENT) - Injury was less than intended <p>Recklessly/Negligently: causation not established if result is not within the risk the actor was or should have been aware of, unless:</p> <ul style="list-style-type: none"> - Plaintiff just a different person (TRANSFERRED INTENT) – court will transfer intent towards attempted victim to the actual victim - Mistaken identity is NOT a defense - Injury was less than intended |

Defenses

Justification – conduct is criminal, but justified under circumstances either “right” or “not wrong”

1. **Necessity** – defense should not be used unless it is necessary/ imminent threat / no deadly force if non-deadly will suffice
2. **Proportionality** – must use force in proportion to harm threatened
3. **Reasonable Belief** –
 - a. **Subjective** – must have subjectively believed he needed to use deadly force to repel
 - b. **Objective** – killing is justified is belief is objectively reasonable, even if mistaken

SELF-DEFENSE

| C/L | NC | MPC |
|--|--|---|
| <p>D, if not the aggressor, is justified in using force if:</p> <ol style="list-style-type: none"> 1. <i>Honest/Reasonable belief of death/serious bodily injury</i> <ol style="list-style-type: none"> a. Reasonable Person: <ol style="list-style-type: none"> i. Physical attributes ii. Prior experience iii. Present situation 2. <i>Imminent</i> <ol style="list-style-type: none"> a. Presently Happening: <ol style="list-style-type: none"> i. Objective/Traditional: “Battered-Spouse, sleeping husband = not imminent SBI threat ii. Subjective/Modern: imminent threat can be ongoing, likely to happen at any moment 3. <i>Not excessive force</i> <ol style="list-style-type: none"> a. Only use amount of force he believes is reasonably necessary to prevent harm b. Deadly force may be used if deadly force is threatened/necessary to defend oneself 4. <i>Not Aggressor</i> <ol style="list-style-type: none"> a. First aggressor may not assert self-defense unless he retreats and other person becomes aggressor 5. <i>Unable to retreat</i> <ol style="list-style-type: none"> a. Minority view/MPC b. Castle Exception = D does NOT have to retreat within D’s own dwelling even if one could do so in complete safety <p>Mistake?</p> <ul style="list-style-type: none"> - Reasonable: SD is still a defense - Unreasonable: judged by objective standards, SD not a defense | <ul style="list-style-type: none"> - No duty to retreat - Perfect Self Defense: <ul style="list-style-type: none"> o Not guilty o All elements satisfied - Imperfect Self Defense: <ul style="list-style-type: none"> o Voluntary Manslaughter o Only satisfies 3-4 elements o “Battered Women’s Syndrome” | <p>D, if not the aggressor, is justified in using (deadly) force if:</p> <ul style="list-style-type: none"> - D honestly believes such force is immediately necessary to protect D’s person - Harm is unlawful <p>Deadly force is justified if one faces a threat of <u>death, SBI, forcible rape, or kidnapping</u> – a threat w/o that purpose is not deadly force, even if a weapon backs up the threat</p> <p>If D knows/realizes he can be completely safe by retreating, D must retreat UNLESS in own dwelling/place of work</p> <p>Mistake? MPC/Modern: even an unreasonable mistake (but genuine) as to need for SD will protect D, UNLESS reckless or negligent</p> |

DEFENSE OF:

OTHERS

Majority/NC

- D may use force in defense of another if he reasonably believed that person he assisted would be justified in using force to protect himself

Minority

D “steps into shoes” of person he defends – if that person didn’t have right to SD then neither did D

PROPERTY

- Non-deadly force may be used to prevent wrongful entry on one’s real property or wrongful taking of property
- Deadly force may NOT be used, except in situations involving one’s dwelling where person reasonably believes that force is necessary to prevent entry by a person who intends to commit felony

NECESSITY

C/L and NC

- D is justified if he reasonably believes that he is avoiding the greater evil or prevent greater harm
- D may not have created the necessity

MPC

- Actually avoiding greater harm
- Harm is greater than the harm by law
- There is no IMMEDIACY requirement

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| <ul style="list-style-type: none"> - Court reluctant to allow D to take another's life out of necessity - Non-human threat – natural force created necessity - Must not be an alternative | <ul style="list-style-type: none"> - D may take a life if the balance of evils is positive <ul style="list-style-type: none"> o May apply to homicide - D's reasonable belief must actually be true - Doesn't apply if actor was reckless or negligent in bringing about the situation |
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Excuse – wrongful conduct, but under circumstances, D is not morally culpable/blameworthy

DURESS

| C/L and NC | MPC |
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| <ul style="list-style-type: none"> - Imminent threat of death or Great Bodily Harm to self or family member - Reasonable Fear – reasonable belief deadly force is imminent - Must be immediate – not a future harm - D must not be at fault - Person of ordinary/reasonable firmness would yield to immediate threat - HUMAN THREAT - <u>Not an excuse to homicide</u> | <ul style="list-style-type: none"> - D was compelled to commit the offense by use or threatened use of force by coercer upon her or another (does not require it to be family) - Unavailable when any offense for which recklessly placed themselves in situation - Person of reasonable firmness in D's situation would have been unable to resist coercion - Unlike C/L, DOES NOT REQUIRE IMMINENCE - Unlike C/L, Available for homicide unless D recklessly places self in situation - Unlike C/L, Does not require deadly force, just unlawful force |

INSANITY

| C/L and NC | MPC |
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| <p>M'Naghten Rule – D if insane if, <u>at time of criminal act</u>, he was laboring under such a defect of reason, arising from a disease of the mind, that he:</p> <ol style="list-style-type: none"> 1. Did not know the nature and quality of the act he was doing; OR 2. If he did know, he did not know what he was doing was wrong <p>Irresistible Impulse Test: D was insane if:</p> <ol style="list-style-type: none"> 1. Acted from an irresistible and uncontrollable impulse; 2. D's will has been otherwise than voluntarily, so completely destroyed that her actions are not subject to it, but are beyond her control <ol style="list-style-type: none"> a. NOT just an impairment of thinking, D suddenly can't control conduct <p>Pure Cognitive Test: whether D has ability to appreciate the nature and quality of his conduct?</p> | <p>Substantial Capacity: one is not responsible for criminal conduct if, at time of the act, as a result of a mental disease or defect:</p> <ul style="list-style-type: none"> - D lacked substantial capacity to: <ul style="list-style-type: none"> o appreciate the wrongfulness/criminality of D's conduct; OR o to conform their conduct to the requirements of the law <p>i.e. – can prove insanity if can prove that D didn't know conduct was wrong OR couldn't control his conduct</p> <p>MPC is revised version of M'Naghten Test + Pure Cognitive Test</p> |

INTOXICATION

| C/L AND NC | MPC |
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| <ul style="list-style-type: none"> - GENERALLY, not a defense regardless of intent required – BUT may be a Defense against the SPECIFIC INTENT element of a crime - In NC- Defense if the voluntary intoxication negates the Specific Intent of a specific intent crime <ul style="list-style-type: none"> o If General Intent crime, voluntary intoxication DOES NOT negate the mens rea of the offense o Defense depends on whether Specific or General Intent crime | <p>2.08: any form of intoxication is a defense if it negates an element of the offense</p> <ul style="list-style-type: none"> - BUT, if RECKLESS is charge, intoxication is not a Defense if D would have known the consequences of his actions when sober - Involuntary Intoxication – can be an "EXCUSE" Defense b/c lack voluntariness |

General

MISTAKE OF FACT

| DEFENSE | C/L AND NC | MPC | STRICT LIABILITY |
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| Honest Belief Only (subjective) | Specific Intent YES | General Intent NO | YES – negates required mental state |
| HONEST and Reasonable Belief (Subjective and Objective) | YES | Yes... Except: - Moral Wrong - Legal Wrong | YES |
| | Moral Wrong Test: person can make a reasonable mistake regarding an attendant circumstance and yet be culpable (mens rea is not negated) | 2.04 – if granted MoF, D will be held for a lesser offense when the situation as he supposed it to be, his | MPC/CL: NO mistakes get you off for strict liability |

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| | Legal Wrong Test: person can make a reasonable mistake of fact and yet still be guilty of the greater crime, if the situation were as he believed | conduct constituted this lesser offense Must negate the mental state required to establish any element of the offense | |
| MISTAKE OF LAW | | | |
| C/L AND NC | | MPC | |
| NO DEFENSE, BUT EXCEPTIONS: - Mistake must be reasonable and honest - Collateral Law - Reliance on Official Statement or erroneous advice from official charged w/ law - No reasonable notification/publishing - Specification in Statute that knowledge of law is required | | MPC codifies the C/L Reasonable Reliance doctrine | |
| IMPOSSIBILITY OF FACT | | IMPOSSIBILITY OF LAW | |
| C/L | MPC | C/L | MPC |
| NONE | | NONE – cannot punish for a crime that is not a crime regardless if D thinks it’s a crime <u>Hybrid Legal Impossibility</u> : where the actor’s goal is illegal but impossible due to a factual mistake of a legal status of an attendant circumstance | |

Elements of a CRIME

1. Voluntary act
 - a. Or duty + failure to act
2. Social Harm
3. Mens Rea
4. Actual Cause
 - a. “but for” cause
5. Proximate Cause
 - a. Legal Cause – is it fair?
6. W/O Legal Justification
7. W/O Legal Excuse
8. Concurrence
 - a. All happening at once

CRIMES

| HOMICIDE | | |
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| C/L | NC | MPC |
| <p>MURDER – killing of another w/ malice aforethought</p> <p>- Four Possible States of Mind:</p> <p><u>Express Malice</u></p> <ol style="list-style-type: none"> INTENTION to kill another human <ol style="list-style-type: none"> Use of deadly weapon implies Intent <p><u>Implied Malice</u></p> <ol style="list-style-type: none"> SBI – intent to inflict serious bodily harm (great bodily harm) OR likely to inflict great bodily harm Gross Recklessness (Malignant/Depraved Heart Murder) – unusually high-risk conduct that will cause death or serious bodily injury under certain exceptional circumstances Felony Murder – during the commission or attempted commission of a felony in which death occurs – <i>see section below</i> | <p>1st Degree Murder</p> <ol style="list-style-type: none"> WPD (Willful/Premeditated/Deliberate) – Specific Intent to murder; can use intoxication/Mistake of Fact Enumerated Felony Murder – act causes a death regardless of felony committed <ul style="list-style-type: none"> In the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon Specialty – thermo nuclear, biological weapon, chemical weapon; POISON, Lying in Wait, Imprisonment, Starving, Torture <p><u>DEFENSES</u>: Insanity, Mistaken ID, Self-Defense, Heat of Passion (mitigates to manslaughter)</p> <p>2nd Degree Murder</p> <ol style="list-style-type: none"> Extreme Recklessness (R++) – killing caused by dangerous conduct and the offender’s obvious lack of concern for human life SBI (Serious Bodily Injury) – intent to inflict serious bodily injury NO WPD – an intentional killing that is not premeditated or planned, nor committed in a reasonable “heat of passion” <p><u>DEFENSES</u>: insanity, Self-Defense</p> <p>MUST prove D realized that his conduct posed a risk to human life</p> <p><u>Willful</u> – purposeful</p> <p><u>Premeditated</u> – to think about beforehand</p> <p><u>Deliberated</u> – weight the facets of a choice or problem – if you deliberate, you automatically premeditate b/c deliberating takes time</p> | <p>MURDER</p> <ol style="list-style-type: none"> Purposely – D’s conscious object to murder Knowingly – D was practically certain he’d murder Extreme Recklessness (R++) – D was reckless under circumstances manifesting extreme indifference to human life |
| <p>Voluntary Manslaughter – killing of another w/o malice aforethought</p> <p>- Intentional killing that is mitigated by passion and provocation</p> <p>D acts suddenly:</p> <ol style="list-style-type: none"> In Heat of Passion <ul style="list-style-type: none"> No Cooling-off period Can’t have malice aforethought and Heat of Passion After Adequate Provocation <ul style="list-style-type: none"> Legally Adequate Specific Categories: <ul style="list-style-type: none"> Aggravated assault or battery Infidelity/Adultery Battered Spouse Syndrome <u>W/ Causal Connection Between provocation, passion, and killing</u> | <p>Voluntary Manslaughter</p> <ul style="list-style-type: none"> <u>Provocation</u> – mitigates murder to voluntary manslaughter <u>Heat of Passion</u> <p>MUST BE:</p> <ol style="list-style-type: none"> More than mere words Adultery and killing must be severely proximate <ol style="list-style-type: none"> Mere suspicion, belief, or knowledge is not enough No rekindling or “last straw” situation Reasonable Person – jury decides if RP in D’s situation would have responded as D did Can be re-provoked after cooling-off period if provocation is continuous – D “snaps” | <p>Manslaughter</p> <ol style="list-style-type: none"> Reckless – substantial unjustified awareness of gross deviation from reasonable law-abiding person <ol style="list-style-type: none"> Conscious disregard of known risk Extreme Mental or Emotional Disturbance – homicide committed under the influence of extreme mental or emotional disturbance (SUBJECTIVE) for which there is reasonable explanation or excuse (OBJECTIVE) <ol style="list-style-type: none"> Can be built up over time – allows cooling off period Victim doesn’t have to be source of stress Reasonable excuse From viewpoint of person in actor’s situation under circumstances as he believes them to be Words alone can be adequate |

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| <p><u>Involuntary Manslaughter</u> – accidental death resulting from 1 of 2 causes:</p> <ol style="list-style-type: none"> <u>Criminal Negligence (Lawful act in Unlawful Manner)</u> <ul style="list-style-type: none"> Usually recklessly or w/ gross negligence <u>Misdemeanor Murder</u> <ol style="list-style-type: none"> Death resulting from unlawful act that isn't a felony | <p><u>Involuntary Manslaughter</u></p> <ol style="list-style-type: none"> Ordinary Recklessness <ol style="list-style-type: none"> Nature of risk (magnitude) Awareness of risk Justifiability of risk Degree of deviation from reasonable behavior Must Prove: <ol style="list-style-type: none"> Acted unlawfully Proximate Cause Criminal Negligence <ol style="list-style-type: none"> Killing resulting from gross negligence More than ordinary negligence <p>DEFENSE: no crime if w/o negligence or recklessness</p> | <p><u>Negligent Homicide</u></p> <ul style="list-style-type: none"> Disregard of a risk that D should have been aware of Substantial unjustifiable gross deviation from reasonable law-abiding person |
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Felony Murder Nuances

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| <ul style="list-style-type: none"> one is guilty if he kills another person, even accidentally, during the commission or attempted commission of a felony causation limitation requires that the killing be in furtherance of the felony No Felony Murder if person who commits the homicide is a non-felon who is resisting the felony Proximate Causation Test – holds a felon responsible for the killing by a non-felon if the felon proximately caused the death / set in motion the events that lead to the death Provocative Act Doctrine – D held responsible for the death of another at the hands of a third party, if the basis for the charge is founded on provocative act doctrine, which is simply a form of reckless homicide <ul style="list-style-type: none"> Example: a felon recklessly provokes a victim to shoot in self-defense, killing an innocent bystander | <p>1st degree murder - if you have intent to commit felony, attributes that intent to intent for murder – if felony is one of the enumerated felonies, then the M is 1st degree; if not, then it is 2nd degree</p> <p>Limitations</p> <ol style="list-style-type: none"> Enumerated: <ol style="list-style-type: none"> Arson Rape – sex crimes Burglary Robbery Kidnapping Inherently Dangerous: <ol style="list-style-type: none"> In the ABSTRACT, does the felony carry a high risk of death? AS APPLIED: look at felony in the particular case Merger Rule: the felony that forms the basis of the felony murder charge, must be a felony independent of the murder – if underlying felony is integral part of murder, it will merge <ul style="list-style-type: none"> a felony cannot be a predicate for felony murder unless the felony is legally distinct from the act of killing. In other words, if a felony by definition requires bodily harm or imminent threat of bodily harm, it can't support felony-murder liability. Prevents the felony-murder rule from turning virtually any attack that culminates in death into automatic murder <ul style="list-style-type: none"> This is so as not to allow every assault to be elevated to felony murder – b/c lack mens rea Agency/In Furtherance Of: felon is only responsible for homicides committed in furtherance of the felony <ol style="list-style-type: none"> Committed by felon, his agent, or someone under his control Police officer that killed another suspect did not count b/c the killing was against the felon Res Gestae: must be part of one continuous transaction <ol style="list-style-type: none"> Felony ends at break in chain of circumstances | <ul style="list-style-type: none"> Does not distinguish felony murder, but MPC raises a presumption of “recklessness and indifference to human life”; EXTREME RECKLESSNESS R++ If the D, during the commission or attempt of certain felonies Gross recklessness during a felony can be a predicate for felony murder <ul style="list-style-type: none"> Robbery Rape Deviate Sexual Intercourse by threat/force Arson Burglary Kidnapping Felonies escape |
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Theft Crimes

Larceny – Interferes w/ possession

C/L and NC

Misdemeanor

1. **Trespassory taking**
 - a. Severance of good from the owner
 - b. Not only move goods but have them in his possession, if only for a moment
2. **And carrying away**
 - a. 4-6 inches is enough – slightest movement AWAY is sufficient (shifting position w/o moving away is not enough)
 - b. DOES NOT have to be removed from possessor's premise
 - c. ANY assumption of control by D, however brief, satisfies this element
3. **w/o consent of the possessor**
 - a. if possession was taken lawfully, w/ consent, generally embezzlement
4. **w/ intent to permanently deprive the possessor of the property**
 - a. NOT REAL PROPERTY (land)
5. **knowing that they (taker) weren't entitled to it**
 - a. specific intent crime
 - b. mere temporary taking under circumstances in which the possessor is likely to regain possession does NOT satisfy element
 - c. MUST BE CONCURRENCE BETWEEN MENTAL STATE (INTENT TO TAKE) AND TAKING OF PROPERTY
 - d. **Continuing Trespass Doctrine** – when a person wrongfully takes possession of property, he commits a new trespass every moment possession is retained – if the D later forms the intent to steal, concurrence is met and the crime can be larceny
 - e. If believe the property is yours, taking it back, regardless if really is yours or not, is not larceny
 - f. “tree falls on land and person who cut it drags it off – not larceny; person leaves then comes back – larceny”

Felony

6. **in addition to one of the following:**
 - a. over \$1,000
 - b. was from the Person
 - c. committed during burglary, breaking/entering
 - d. explosive/incendiary device
 - e. firearm
 - f. record/paper from NC State Archive

Embezzlement – interferes w/ ownership

1. **fraudulently or knowingly or willingly**
 - a. Specific Intent Crime
 - b. Fraudulently = false representation
 - c. Knowingly = aware or conscious disregard
 - d. Willfully = wrongful doing of an act
2. **uses for a purpose other than that which the D received it to use (presumes some sort of consent)**
 - a. person trusted w/ property need not turn it to his/her own use
 - b. D's intent and willingness to return the property later is NOT a defense
3. **the property of another**
 - a. Money and Paper; not services
4. **held by the D under his or her care**
 - a. Involves entrustment of property, i.e., consent

False Pretenses – interferes w/ title

1. **Makes a representation of a past or existing fact or a future event**
 - a. Examples:
 - i. Promise that property is free of liens
 - ii. False statements as to identity of D
 - iii. Use of counterfeit money
 - iv. Worthless check
2. **That is FALSE AND**
 - a. D's honest belief that the representation was true may be a Defense
3. **Is calculated and intended to deceive AND**
 - a. Doesn't have to defraud a particular person
 - b. Failure to perform a contract doesn't prove intent to defraud
4. **Does in fact deceive another person AND**
 - a. Person can be corporation, partner, association, organization, or group
 - b. Actual loss is not required
5. **The person obtains, or attempts to obtain money, property (including land), services or some other thing of value from that other person**
 - a. Must gain actual POSSESSION of property, does not need title or ownership
 - b. Person must rely on false representation which induced them to give up property

c. If D makes false representation for reason other than obtaining property, crime has NOT occurred

| Larceny | Embezzlement | False Pretenses |
|--|--|---|
| <ul style="list-style-type: none"> - Larceny v. FP = does not require false representation - Larceny v. FP = property taken w/o consent - Larceny v. FP = D intent to take property away permanently - L v. E = trespass of property w/o consent <p>Legal Fictions in Larceny</p> <ul style="list-style-type: none"> - Larceny by Bailee: possession of package is custody; when “breaking the bulk” to get to content becomes larceny - Larceny by Employee: employer retains constructive possession – employee has mere custody - Larceny by Trick/Fraud – b/c of the trick, original possessor retains constructive possession – trickster gets mere custody - Lost or Mislaid Property – depends on 2 factors: (1) whether there is reasonable clue to ownership of the property when it was discovered AND (2) state of mind of the finder; larceny if at time of taking, intent to steal it - Doctrine of Recent Possession: inference of guilt based on D’s recent possession of stolen property after a recent larceny or breaking and entering: (1) property was stolen, (2) stolen good in D’s custody, subject to his control and exclusion of others, and (3) D came into possession recently after it was stolen | <p>Embezz. v. larceny = property comes lawfully into possession of taker and then is fraudulently/unlawfully appropriated by him</p> | <ul style="list-style-type: none"> - FP v. Larceny = requires false representation - FP v. Larceny = involves initial contact w/ person - FP v. Larceny = does not require intent to take away permanently |
| Possession | | Custody |
| <ul style="list-style-type: none"> - has sufficient control over item and can use it in a generally unrestricted manner - <u>Actual</u> (physical control) OR <u>Constructive</u> (not in physical control, but nobody else has actual possession of it – lost or someone else has “mere custody” of it) - Ownership is not the key – titles doesn’t matter | | <ul style="list-style-type: none"> - Has physical control, but his right to use is substantially restricted by the person w/ constructive - Temporary and extremely limited authorization to use property - Obtained property by fraud - Person has custody if he/she has temporary and limited right to use the property in the possessor’s presence |
| Burglary | | |
| MPC | | NC |
| <ol style="list-style-type: none"> 1. Breaking 2. Entering 3. Into the Dwelling House OR Sleeping Apartment 4. Of Another 5. At Night 6. To commit a felony therein | | <ol style="list-style-type: none"> 1. Breaking 2. Entering 3. W/O consent 4. Dwelling house/sleeping apartment/curtilage 5. of another 6. W/ Intent to commit any felony or larceny 7. (1st Degree) when occupied |

Inchoate Crimes

Solicitation – focus on D’s Actions

C/L and NC

1. Entices, advices, counsels, incites, induces, orders, or commands another to commit a felony
 - a. Another person = even if person solicited is undercover cop who has NO INTENTION to carry out the crime
2. W/ the **SPECIFIC INTENT** that the other person commit the crime - does not require the crime actually be carried out

MPC

- **Mens Rea**
 - o Actor’s PURPOSE is to promote or facilitate the commission of a substantive offense; AND
- **Actus Reus**
 - o w/ such purpose, he commands, encourages, or requests another person to engage in conduct that would constitute the crime, an attempt to commit, or would establish the other’s complicity in its commission or attempted commission

Conspiracy – Completed Upon Agreed Upon Solicitation

1. Enter into an **agreement** w/ at least one other person
 - a. If D and COP (pretending to agree w/o intent to carry out) agree, NO conspiracy
 - b. D must know he is entering into an agreement
 2. To commit an unlawful act
 - a. NC doesn’t require overt act
 3. W/ INTENT at the time by D and at least one of the others that agreement be carried out
 - a. Enough if at least 2 parties have intent – even if several people in party have no intent
- **Wharton’s Rule:** no conspiracy when crime requires 2 people (bribery, adultery)
 - **Bilateral:** two or more persons must conspire w/ intent
 - Jointly Tried, allow in hearsay “in the furtherance of” conspiracy
 - Accomplice v. Conspirator?
 - o Accomplice requires crime be accomplished
 - Requires proof that second party intended to promote or facilitate
 - **Pinkerton Doctrine:** conspirator may be held liable for criminal offenses committed by a co-conspirator that are within the scope of the conspiracy, are in furtherance of it, and are reasonably foreseeable as a necessary or natural consequence of the conspiracy

1. **PURPOSELY** agree to aid or engage in crime w/ another
2. Joint liability w/ co-conspirators even if not known
3. Require an **overt act** EXCEPT when the crime is Felony of 1st Degree or 2nd Degree
 - a. **Overt Act** = In furtherance of the conspiracy
4. Person DOES NOT become a co-conspirator merely by aiding and abetting the conspirators, if he himself does not reach agreement w/ them
 - **Wharton’s Rule:** rejects rule; “as long as one has the intent to agree to the commission of a crime”
 - **Unilateral:** does not require more than one person (undercover officer)
 - **Co-Conspirator Liability:** only liable for the substantive crimes of co-conspirators where ACCOMPLICE liability can be found (intent to commit the substantive crime or reasonably foreseeable)

DEFENSE:

1. **Renunciation** – Affirmative Defense IF:
 - a. Completely and voluntarily renounce criminal intent; AND
 - b. Either persuade the solicited party not to commit the offense or otherwise prevent him from committing it

Attempt – falls short of completing the crime

1. **Specific Intent** to do something that is a crime
 - a. Inferred from facts and circumstances
 - b. Must have mental state of attempted crime
 2. At time person has intent, he/she performs a **substantial overt act** calculated and designed to bring about the crime AND
 - a. Overt Act = direct act toward commission of the crime
 - b. Act need not be the last proximate act to consummation of the offense but beyond mere preparation
 3. **Act comes close to bringing the crime about** had D not been stopped or thwarted
 - a. Mere preparation is not enough
- **Mens Rea**
 - o **For the attempt:** specific intent to commit acts or cause resulting target crime
 - o **For target crime:** intent necessary for target crime (specific or general depending on crime); for strict liability must only show intent to attempt, no mens rea
 - o **Reckless Crimes:** courts generally don’t try attempt for reckless crimes
 - o **Negligent crimes:** logically impossible to attempt an accident
 - **Actus Reus Tests**
 - o **Physical Proximity:** act must be sufficiently proximate to the intended crime
 - o **Last Act:** must be engaged in the “last proximate act”
 - o **Indispensable Element:** act is indispensable to the crime – criminal is not guilty of an attempt if they have no yet gained

1. **(Result Crime): Purposefully** engage in the **conduct** that would be criminal in **circumstances** as D believes them to be (required mens rea of target offense); OR
2. **(Conduct Crime):** does or omits to do anything w/ PURPOSE of causing or w/ the belief that it will cause such a result, w/o further conduct on his part; OR
3. **(Incomplete):** 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 crime

Actus Reus Test:

- **Substantial Step Test**
 - o Combination of “Proximity” and “Equivalency” test
 - o Conduct meets the requirement if, under the circumstances as D believes them to be:
 1. There occurs “an act or omission constituting a **substantial step** in a course of conduct planned to culminate in D’s commission of the crime – substantial step corroborated w/ mental state evidence; AND
 2. the act is “strongly corroborative” of the actor’s criminal purpose
 - a. **Examples of Sub. Step:**
 - i. Lying in wait, searching for, following contemplated victim

control over an “indispensable element” of the offense (i.e., do not have gun yet to commit murder) b/c haven’t crossed line of mere preparation

- o **Dangerous Proximity:** guilty when her conduct is in dangerous proximity of success or when an act is so near the result that the danger of success is very great considering 3 factors – 1) nearness of danger, 2) greatness of harm, and 3) degree of apprehension felt
- o **Probable Distance:** past the point where most men, holding intention, would think better of their conduct and desist – passed point where voluntarily abandoned effort to commit crime
- o **Unequivocally Approach (Res Ipsa Loquitur):** act that “speaks for itself” which transform conduct from preparation to perpetration of a step toward commission – act standing alone unambiguously manifests criminal intent

DEFENSE:

- **NO Factual Impossibility:** D would have been unable to commit the crime even if D had gone through w/ it DOES NOT prevent conviction of attempt – impossible to complete but can be attempt based on facts
 - o **EXCEPTIONS:**
 - **Legal Impossibility:** actor engages in lawful conduct that he believes is illegal
 - **Legality Rule**
- **Renunciation/Abandonment** (few courts accept)
 - o Must be voluntary
 - o D must manifest “voluntary and complete renunciation of the criminal purpose”

Punishment – less than crime

- ii. Reconnoitering the place contemplated for commission
- iii. Unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed
- iv. Possession of materials to be employed, specifically designed for, or serve no lawful purpose
- v. Possess, collection of fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, if has no lawful use
- vi. Soliciting an innocent agent to engage in conduct constituting an element of the crime

Punishment – same as attempted offense b/c culpable state of mind

Defense:

Abandonment:

1. Abandons or prevent it from occurring
2. Conduct manifests complete/voluntary renunciation of criminal purpose

MPC: person is guilty if they agree to:

1. Commit an offense;
2. Attempt to commit an offense;
3. Solicit another to commit an offense; OR
4. Aid another in planning or commission

Merger?

| Attempt | Solicitation | Conspiracy |
|--|--|---|
| Merger – cannot be charged/convicted of BOTH attempted and completed crime | Merger – D who solicits another to commit a crime cannot be convicted of both solicitation and completed crime | NO MERGER – always can have whether act completed or not; “Prosecutor’s darling” |

ACCOMPLICE LIABILITY (Complicity) – partnership in doing wrong; intentionally assists another person in criminal conduct

| Principal in 1 st Degree | Principle in 2 nd Degree | Accessory Before the Fact | Accessory After the Fact |
|--|--|---|--|
| Actually engage in the act or commission that constitutes the criminal offense - ACTOR | Incites, aids, commands, encourages the Principal and is present, either actively or constructively at the time of the crime - PRESENT (aiding and abetting) | Person who aids, abets, or encourages the principal but are not present at the crime - Aiding/Abetting BEFORE | Person who assists principal after the crime - Aiding/Abetting AFTER |

NC collapsed three under NC Gen. Stat 14-5.2: abolished distinction between accessories before the fact and principals to the commission of a felony

- If perpetrator is justified, then there is no accomplice liability b/c there is no crime
- If perpetrator is excused, there may still be accomplice liability
- Mental States:
 - o Must possess BOTH:
 - Intent to do an act that help assist/encourage the crime
 - Intent to assist in the crime but doesn’t have to be physical (encouragement)(gun used in crime)
- Accomplice liability is generally liable for all crimes that are reasonably foreseeable result of contemplated crime
- **Aid must impact upon actual perpetrator but doesn’t have to be necessary for successful commission; nor does perpetrator have to be aware of assistance UNLESS it’s encouragement by accomplice**
- Accomplice can be convicted of any crime that the primary party is guilty of that is a direct result of their intentional assistance
- **Punishment** is SAME as for the crime accomplice to
- Mere presence alone is not enough, but mere presence w/ very little else will be enough

DEFENSES

- Withdrawal/Abandonment: MUST take place before the events are unstoppable
 - o Must communicate that doesn’t want to continue anymore
 - o Need to take back the instrumentality
 - o Tell the police in order to prevent crime

1. Felony was committed by another person AND
2. After felony committed, the person knowingly gave the principal person assistance in escaping or attempting to escape detection, arrest, or punishment
3. Knowing that the principle committed the crime

MPC Accomplice Liability

Types

- **Principal** – acting w/ requisite mens rea, actually engaging in the act or omission that causes the crime, or acts through an irresponsible or innocent agent (Innocent Instrumentality) to commit the offense
- **Accomplice** – incites or abets w/ requisite intent before or during the commission of the offense. Includes solicitation and omission when a duty is present

Mens Rea

- PURPOSEFULLY promote or facilitate in the commission of a crime – MUST act w/ culpability sufficient for the commission of the offense
- NOTE: in jurisdictions w/ felony murder, it makes an accomplice in the conduct (underlying felony) strictly liable for the resulting death b/c he had the requisite mens rea as to the result
- NO actual assistance for accomplice liability is necessary – agreement to aid is enough
- Accomplice can be convicted even if the perpetrator has not yet been prosecuted, has been convicted of lesser crime, has been acquitted, or is lying
- DOES NOT recognize the natural and probable consequence rule
- INCLUDES the crime of attempt to aid and abet

DEFENSES:

- **Protected Class Exemption:** underage girl in statutory rape – can't be accomplice in crime that law was made to protect

ABANDONMENT: An accomplice may abandon a conspiracy and thereby eliminate accomplice liability. In order to do so, the accomplice must generally 1) notify the principal that he or she is withdrawing from the conspiracy and 2) take some action to neutralize whatever steps he took to assist in the crime.

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