

PROOF OF GUILT

PRESUMPTION OF INNOCENCE - Requires the government to prove the guilt of a criminal D and relieves D of burden to prove their innocence

- Why do we have it?
 - Cost-benefit determination - some errors were worse / more costly than others
 - Reduces the risk of error
 - Commands the respect of citizens
- **Proof Beyond a Reasonable Doubt**
 - Proof of such a convincing character that you would be willing to rely and act upon it without hesitation in most important of your own affairs
 - Differing instructions:
 - **The “Moral Certainty” Instruction** - If the juror cannot say to a moral certainty that they feel an abiding conviction, after all evidence is compared, considered
 - **The “Firmly Convinced” Instruction** - If juror believes there is not a real possibility of the D being not guilty
 - **The No Waiver or Vacillation Instruction** - If juror’s feeling is one that is not stable but wavers or vacillates then there is reasonable doubt
 - **The “No Real Doubt” Instruction** - Not to mathematical certainty but reasonable/real doubt exists about non guilt
 - **The “Thoroughly Convinced” Instruction** - No explanation of grounds but rather in their truth of conscience being thoroughly convinced of their impression of the evidence

PRINCIPLES OF PUNISHMENT

Theories:

- **RETRIBUTIVIST**
 - *Goal:* to make the D suffer in order to pay for their crime
 - Punishment is justified because people deserve it (eye for an eye)
 - Personal blameworthiness, social harm caused
 - Looks backward to punish for the crime
 - Two categories:
 - **Negative Retributivism** - an innocent person ought not to be punished; insists that punishment is justified only if it is deserved
 - **Positive Retributivism** - Should punish the guilty, to the extent they deserve
 - Assaultive - hating criminals
 - Protective - criminals have the right to be punished
- **UTILITARIANIST**
 - *Goal:* to protect society from dangerous people; to deter crime in the future either of an individual or society as a whole
 - Where Utilitarianism DOES NOT Apply:
 - Where it is groundless to punish - no mischief
 - Where it is inefficacious - where it cannot prevent the mischief
 - Where it is unprofitable or too expensive, where the mischief it would produce would be greater than what it prevented
 - Where crimes are less serious - fines are better method of punishment because they confer benefit while still a detriment to the criminal

- **General Deterrence** - One's punishment may deter themselves from committing again or others. Lower chance of getting caught ought to activate a more severe punishment
- **Individual Deterrence** - Punishment creates fear in offender that if he repeats his act, he will be punished again. Sharper lesson than seeing someone else punished for same act. Explanation for more severe punishments for repeated offenders
- **Incapacitation and Risk Management** - Imprisonment puts convicted criminals out of general circulation as does death penalty. Prohibitions, probation are lesser forms of this risk management.
- **Reform** - Punishment may reform criminal so they no longer commit crimes, become happier and more useful person

People v. Du - the Judge used the these considerations when reducing D's sentence:

- 1) To protect society, 2) to punish the D for committing a crime, 3) to encourage the D to lead a law-abiding life, 4) to deter others, 5) to isolate the defendant so other crimes by them can't be committed, 6) to secure restitution for victim, 7) to seek uniformity in sentencing

ACTUS REUS | VOLUNTARY ACT

ACTUS REUS - Physical or external part of the crime, typically consists of 1) the crime itself AND 2) the harmful result of the crime

- **Elements**
 - Voluntary act
 - Causes
 - The social harm result of the offense
- **Conduct v. Result Crimes**
 - E.g. #1 - Murder (result crime): purpose is to punish prevent the harmful result
 - E.g. #2 - Operating vehicle while intoxicated (conduct crime): driving while drunk does not interrogate the end result of conduct but the mere bad conduct itself is unlawful

INVOLUNTARY VS. VOLUNTARY

- **Voluntary**: Freely undertaken act (ie. not a reflex, spasm, etc.)
 - D knowing she has propensity for seizures, doesn't take her meds, gets in car and ends up killing someone when she has a seizure. Voluntary act / Actus reus?: YES. The voluntary act is not actively having seizure but decision to get into car when prone to seizures. Next: analyze mens rea (no intent so probably recklessness)
- **Decina** - D has epileptic seizure, he knows he's prone to, strikes and kills four school girls. Since spasm in epileptic seizure was involuntary, when determining culpability you can only look at his decision to get in the car and potentially knowing or recklessly undertaking the risk of endangering others.
- **Martin** - A man taken from his home, while drunk, to public street, against his will, is not voluntarily undertaking conduct within an offense.
- **Utter** - Drunk WWII vet with PTSD stabs son. TC instructed jury as to his mental incapacity, which does not equate to involuntary movement, on appeal D argued conditioned response ("any act or pattern of activity occurring so rapidly, so uniformly as to be automati in response to certain stimulus"). Mere physical acts do not impose criminal liability but willful consumption of drugs or alcohol does NOT excuse liability.
 - **Rule**: Manslaughter (D's conviction) and murder (D's charge) and respective actus reus require minimal mental element of volition to establish homicide so conditioned response instruction is needed where the voluntary/involuntary act was at issue.

ACTUS REUS | OMISSIONS AND SOCIAL HARM

OMISSIONS (“NEGATIVE ACTS”)

- **Duty to Act**
 - Statute imposes duty to act
 - Status relationship or contractual duty to care
 - E.g. nurse-patient, babysitter-child
 - E.g. no duty to act - standerby at pool watching someone drown (unless it is their own child, or it's a lifeguard)
 - Voluntary assumption of care that secludes person from others
 - E.g. making someone's condition worse is a voluntary assumption of care
 - Maybe: Accidental risk creation
 - E.g. Striking a pedestrian, though no fault of own, then fleeing the scene
- **Scope of Duty to Act**
 - If duty to act exists, it may not be unlimited
 - E.g. Doctors have a scope in duty to act to patients but not continuing ineffective treatment or if family does not consent
- **Reasons Why Law is Permissive Toward Omissions:**
 - Inherently ambiguous, difficult to uncover motives, non-doer might not appreciate seriousness/fatality of someone else's predicament, paralyzed with fear, difficult to draw the line (how many people could have done something), bystanders may cause more harm than good, US values liberty, freedom not to do an affirmative act
- **Misprision of a Felony**
 - No legal duty to inform cops of another person's plans to commit a criminal offense.
 - Mere nondisclosure of knowledge of a crime committed by another does not constitute misprision.
 - Must prove active concealment of known felony to prosecute
- **Model Penal Code**
 - Omission satisfies conduct element of crime when
 1. Statute defining the offense *expressly states* that failure to act is a crime, or;
 2. The D has a duty to act
- **Beardsley** - a man having an affair with a woman did not have duty to act, or legal obligation, toward his female companion who overdosed on pills.
- **Barber** - Removing life tubes was an omission, not an act, thus only criminally liable if Dr had duty to act. Dr.-Patient status that imposes a duty but no duty to continue treatment once it was proven ineffective

SOCIAL HARM

- **Result Crimes**
 - Loss of community, sense of security
 - E.g. Robbery, murder, criminal homicide
- **Conduct Crimes**
 - Creating a risk without necessarily any result or harm
 - Intent is to avoid crime occurrence
 - E.g. Driving intoxicated, recklessly endangering another, threats
- **Attendant Circumstances**
 - A condition that the P must prove in addition to the prohibited conduct or result
 - Part of the actus reus of the offense
 - E.g. - Liquor store owner selling liquor to 21 year old (OK); Liquor store owner selling liquor to a 19 year old (NOT OK). Age of the buyer is the attendant circumstance here.
- **Example:**

- MPC 2010.1 A person is guilty of criminal homicide if he “purposely, knowingly, recklessly, or negligently causes the death of another human being”
 - Result: death
 - Attendant circumstance: that it’s a human being (not a mannequin, animal, already dead person)
 - Mens rea: “purposely, knowingly, recklessly, negligently

MENS REA | IN GENERAL

MENS REA - a guilty mind; a guilty or wrongful purpose; a criminal intent; vicious will; immorality of motive; morally culpable state of mind; D is guilty if they commit social harm of the offense with any blameworthy state of mind.

- **Narrower definition:**
 - Mental state the D must have had with regard to social harm elements of the offense
 - ie. if D is reckless and causes the social harm, result, but requisite intent element for the offense is purposeful, then he cannot be found guilty of that offense
- **Elemental Approach vs. Culpability Approach**
 - **Elemental Approach**
 - Court interrogates the particular mental state provided for in the definition of the offense
 - Modern view
 - **Culpability Approach**
 - General immorality of D’s motive - does not necessarily view in context of charged crime
 - Older view, not really used nowadays
- **Cunningham:** D did not act innocently when stealing meter money, but maliciousness element must be satisfied in regards to causing the endangerment of the neighbor that is attached to the charge. TC used culpability approach - D was acting with a wicked state of mind in general so he can be guilty for this offense too. Appeals Court reversed and used elemental approach.
- **Conley:** D commits battery but claims he didn’t intend to permanently disfigure victim. If D had the “conscious objective” AND was at least “consciously aware” that he would cause the social harm of the statute - “great bodily harm, permanent disability, or disfigurement - then D has the requisite intent. Court does not have to find that D intended the precise injuries suffered by victim.

MODEL PENAL CODE - FOUR LEVELS OF CULPABILITY

- **Purpose**
 - Knowledge that the requisite legal, attendant, circumstances exist (same as Knowledge), AND;
 - **Conscious objective** to perform an action of that nature **or to cause such a result** - applies to result and conduct
- **Knowing**
 - Do not need conscious objective to perform an action of that nature or to cause such a result; it is enough if D is simply aware that his conduct is of the required nature or that prohibited result is **practically certain** to follow from his conduct
 - **Transferred Intent Doctrine** - It is not required that practical certainty of harmful result need be aimed and resulted in particular person D intended to harm
 - Some jurisdictions use “willful blindness” as sufficient for “Knowledge”
 - Willful Blindness - Some jurisdictions have the WB rule that a deliberate or wilfull blindness to existence of a fact and avoiding learning it, that is sufficient to satisfy knowledge
- **Reckless**

- Conscious risk creation
- Like acting “knowingly” in that a state of awareness is involved, but awareness pertaining to risk, so probability of the prohibited result occurring is less than ***substantial certainty***.
 - E.g. Drunk driver knows he is unjustifiably risking danger of killing someone, but risk, knowledge of someone being killed is less than substantially certain
- Risk must be ***substantial and unjustifiable***
 - Judged by standard of conduct that a law-abiding person would observe
 - Judged from actor’s perspective
 - Substantial and unjustifiable risk are required elements but do not need to be equally as weighty (e.g. a bomb going off on a plane, when someone brings on a bomb without intending to set it off, is not highly likely to lead to the bomb exploding but the conduct is so unjustifiable that it would be reckless)
- **Negligent**
 - Does not involve a state of awareness, but rather a reasonable person would be aware
 - ***Inadvertently*** create a substantial and unjustifiable risk of which you ought to be aware
 - Judge the substantiality and justification for it, and judge conduct by standard of care that would be exercised by reasonable person
 - E.g. a reasonable person would know to send baby to the doctor if it’s sick but it might be an inadvertent lapse in one’s judgment
- **Statutory Interpretation**
 - **Silent Statutes** - if a statute is silent as to material element, Court may use any level of culpability element ***except negligence*** (ie. apply recklessness)
 - Analyze - Did Legislative Intent suggest to impose strict liability?
 - Probably not. Unless it’s a statutory rape offense or public welfare offense
 - THEN apply recklessness
 - Culpability level extends through entire provision, if it is not distinguished for some material elements. BUT- placement of culpability level after the phrase that describes conduct of offense does NOT modify preceding section
- **Nations** - even if D was conscious of substantial and unjustifiable risk that child was under 17 and disregard was “gross deviation from norm”, this does not fall under the requisite “knowledge” level of culpability stated in the Missouri statute’s definition, but is mere recklessness (ie. not enough for a conviction for this offense).

MENS REA | STRICT LIABILITY

STRICT LIABILITY - All that needs to be proven is actus reus. The most common exception to the mens rea principle.

- **Principle of Strict Liability**
 - If punishment of the wrongdoer far outweighs regulation of the social order as a purpose of the law in question, then mens rea is probably required
 - If the penalty is light, involving a relatively small fine and not including imprisonment, then mens rea is probably not required
- **Criticisms:**
 - **Unable to deter bad behavior** - actor cannot not intend to act criminally when he is unaware of facts of his conduct that would render it dangerous
 - **Unjust** - it is unjust to condemn a person who is not morally culpable
 - **Unconstitutional?** - If you isolate the actus reus elements of crime and they constitute crime on their own then strict liability is constitutionality (e.g. marrying second husband when believing

divorce with prior husband was final, it is unconstitutional to punish the potentially innocent behavior of marrying someone because of mistaken notion)

- **Staples** - Even if statute is silent to mens rea, doesn't mean it is a strict liability offense. In consideration of whether a statute shall impose strict liability, ask: 1) Is there anything here that suggests strict liability (minor public welfare offense etc.) or 2) is it one that warrants strict liability (ie. extremely dangerous weapon possession);3) examine legislative intent.
- **Garnett** - Strict liability offense negates evidence of attendant circumstances, knowledge about circumstances etc. Garnett was a low-IQ individual who was given misinformation about girl's age and had plenty of reason to think she was older than statutory age but court found all of that inadmissible.

STRICT LIABILITY OFFENSES

- **"Public Welfare Offenses"**
 - E.g. minor violations of liquor laws, pure food laws, anti-narcotic laws, motor vehicle and traffic regulations, sanitary, building factory laws, etc.
 - **Rationale**: Administrative regulation to protect increasingly complex social order is unconcerned with questions of personal guilt. Collective interests over 19th century individualism
- **"Statutory Rape"**
 - Intercourse with a person below age at which law deems consent is possible, cannot be defended on grounds that one did not know of attendant circumstance or was mistaken of victim's age
- **Model Penal Code does NOT impose strict liability**

MISTAKES OF FACT AND LAW

MISTAKE OF FACT ("MOF") - Actus reus of crime present but no mens rea. When specific intent is requisite to an offense, MoF is a defense (in common law).

- **Analysis of a MoF: look at the mens rea of the charged crime first.**
- **Navarro** - Issue on appeal was whether D, in order to be acquitted for taking logs without their owner's permission, whether that belief must be a reasonable one as well as a good faith MoF. Court held that it did not have to be reasonable MoF, just one in good faith.
- **Specific Intent Crimes**
 - Includes intent or purpose to do some future act or achieve some further consequence beyond conduct or result that constitutes actus reus
 - MOF is exculpatory if it negates the particular specific intent element of the crime, whether unreasonable or not
- **General Intent Crimes**
 - Anything that is not specific intent (e.g. battery)
 - Does MoF negate actor's moral culpability? Three approaches:
 - **Examine reasonableness of mistake** - circumstances, behavior, setting
 - **Moral wrong** - court still may punish D if it involves a general moral wrong
 - **Legal wrong** - court still may punish D based on his perceived MoF for the more serious offense because of his general unlawful behavior (e.g. D getting charged for possession of heroin when he mistakenly thought it was marijuana instead of the more serious drug)
- **Strict Liability Crime**
 - MoF is NOT a defense because there is no requisite specific intent
- **Model Penal Code**
 - Unlike common law - no distinction between general and specific intent; uses elemental approach

- MoF is a defense if the MoF negates mens rea required to establish a material element of the offense OR the law provides that a state of mind established by the MoF constitutes a defense
- MoF defense NOT available if D would be guilty of another offense had the situation been as he supposed - MPC reduces grade of offense as if it was what D thought he was doing

MISTAKE OF LAW (“MoL”) - Misreading or misunderstanding of a statute (MoL) is not a defense unless there is some very narrow circumstance.

- **Weiss:** Mistaking a collateral fact (or authority, non-authority to do something) is a different type of MoL and not necessarily a claim of misinterpreting law itself, and it may be a valid defense.
 - Rare: statute will explicitly say MoL is a defense (e.g.
 - Relying on official statement of law
 - Generally: Even most reasonable misinterpretation of law is still not a defense because of MoL

CAUSATION

CAUSATION

- **Cause-in-Fact-Test**
 - Apply “But-For” test
- **Substantial Factor Test:**
 - Two Ds are both “substantial factor” when acting independently, not in concert with each other, commit two separate acts, each of which alone is sufficient to bring about prohibited result as when two Ds concurrently inflict mortal wounds upon human being, each of which is sufficient to cause death
- **Oxendine:** Two Ds act separately and not in concert and combination of injuries ultimately kills child, P only needs to prove Oxendine was a cause that accelerated or led child to his death (but experts could not testify with medical certainty, so Manslaughter conviction reversed)
- **Proximate Cause**
 - Act that is the direct cause of harm satisfies PC
 - Issues arise when there are intervening causes (IC) of social harm
 - No precise rule or formula, but only factors to consider
 - Was IC a superseding cause (SC)?
 - No criminal liability where IC is SC.
- **Rideout:** Balancing test to determine when IC rises to SC and does/doesn’t cut criminal liability
 - **Foreseeability**
 - Reasonable foreseeability to social harm relative to D’s conduct
 - **De Minimis Causes**
 - When D’s act that was a but-for cause was so trivial that it shouldn’t lead to criminal liability of social harm
 - **Voluntary Act by Victim**
 - Did victim return to safety then revisit a dangerous position hence possibly breaking causal chain
 - **Apparent Safety Doctrine**
 - Dangerous force comes to end and free deliberate choice of victim to remain safe after D’s conduct but consciously returned to dangerous condition
 - **Intended Consequences of the the D**

- Even if an intervening cause is unforeseeable, initial cause is still proximate if the intended consequences of D’s actions were fully realized by the fatal IC
 - Omissions - as an IC, rarely a SC
 - E.g. D recklessly slams car into V killing him and V would have survived if he was wearing a seatbelt
 - Even when there’s a duty to act (e.g. parent to child) as this is about culpability rather than civil liability
- **Responsive IC vs. Coincidental IC:**
 - Responsive IC (usually does not break causal chain)
 - IC is a likely foreseeable response to D’s conduct that ultimately causes harm
 - Coincidental IC (might break causal chain/liability)
 - Unforeseen incident/IC might break causal chain and be SC
- **Model Penal Code and “Proximate Cause” Factors:**
 - D’s Conduct was Actual Cause - D’s conduct/causing of result is “antecedent but for which the result in question would not have occurred
 - No Substantial Factor Test - D’s conduct need not be “substantial factor” in cases of concurrent but sufficient causes of the harm, but what matters is that **result would have occurred when and as it did**
 - Not Too Remote - If D’s conduct related to result harm is too remote or is accidental then D is not PC

DEGREES OF MURDER

<u>Murder 1*</u>	<u>Murder 2*</u>	<u>Manslaughter</u>	<u>Crim. Negl. Homicide</u>
Intent	Intent	Intent BUT provocation (heat of passion)	No intent
Express malice	Express malice	OR	Not conscious of risk
AND	<u>NOT PREMED.</u>	No intent but reckless (conscious disregard of risk)	EX: mother not taking her child to hospital when limb falling off or running red light and killing someone b/c of distraction
Premed./Deliberation/Willful	BUT Implied malice (reckless plus / willful and wanton disregard for life)		

**First question should be: Does jurisdiction distinguish between Murder 1/Murder 2 (e.g. MPC does not)*

HOMICIDE:

- **Depraved Heart Murder**
 - M1 and M2
 - Extreme Recklessness regarding homicidal risk
 - **Wanton and wilful disregard** for unreasonable human risk, wickedness of disposition, cruelty etc. may lead to murder liability, even if D did not have “any actual intent to kill or injure”
- **Guthrie:** Trial court erred when it equated premeditation and deliberation (M1 requirements) to mere intent- question is: did D actually only commit M2? If jurisdiction distinguishes between M1 and M2,

differences must have meaning. Split second intent (as D became enraged in single altercation at work) is not necessarily sufficient for premeditated/deliberated intent/M1.

- **Midgett**: D repeatedly beat son, eventually killing him, but no sufficient evidence to deem victim's killing was premeditated or deliberated, but merely D had intention to abuse son and rather was recklessness plus, heat of the moment killing, if killing was at all intentional.*

* some states may statutorily impose aggravated battery (what D was convicted of) that results in death of child as sufficient for felony-murder but not the case in this state)

- **Forrest**: Even when intentions are sincere effort to reduce pain and suffering of father, the evidence of premeditation (bringing a gun with him) and deliberation (while in and out of the hospital room) and shooting him four times was sufficient for a M1 conviction

- **Deliberation v. Premeditation (M1)**

- Deliberation - Measuring, evaluating major facets of a choice or problem - cannot be done in an instant.
- Premeditation - Killing is done after a period of time for prior consideration
- Willful - Specific intent to kill

MANSLAUGHTER

PROVOCATION AND MANSLAUGHTER

- **Provocation - elements**

- Adequate provocation (objective question)
- Actor must have acted in heat of passion (subjective question)
- No cooling off period between provocation and killing
- Causal connection between provocation, passion and fatal act
 - I.e. A cannot be enraged at B, who provoked A, and then in his rage kill C.

- **Commonly Recognized Provocation Categories Mitigate Murder to Manslaughter**

- Discovering one's spouse in the act of sex with another
- Mutual combat (e.g. a bar fight with both sides participating and one dies)
- Assault and battery
- Injuries to one of the D's relatives or to a third party

- **Insufficient Categories**

- Trivial battery or assault
- Words (non-informational)
- Discovering *someone else's* spouse in bed with someone else
- Killing cheating wife after news is no longer fresh

- **Reasonable/Ordinary Person Standard**

- Provocation Test
 - Subjective element is actual inflamed passion
 - Objective element is reasonableness of emotional reaction
- Who is "Ordinary Person?"
 - Average disposition (not a person overly willing to fight)
 - Sober at time of provocation
 - Normal mental capacity at particular age of D

- **Personal Characteristics**

- Two ways to consider D's personal characteristics:
 - How do they relate to adequacy of provocation
 - Gravity of situation relevant

- E.g. it is generally perceived as worse to trip a pregnant woman than a non-pregnant woman
 - How'd they affect D's level of self control?
 - Gravity of situation **NOT RELEVANT**
 - Apply reasonable person standard and not subjective reaction/sensitivity of a pregnant woman
- ***Girouard***: Words alone can rarely ever be legally adequate provocation. The only exceptions are typically "informational words" (e.g. "I'm cheating on you", "I killed your husband") instead of plain insults.
- **Extreme Mental or Emotional Disturbance (EMED)**:
 - Mitigates murder to manslaughter if D acted while suffering from an EMED for which there is reasonable explanation or excuse
 - Affirmative Defense
 - Determined from viewpoint of person in actor's situation under circumstances as he believes them to be/ subjective D's internal state of mind and exterior, objective circumstances
 - Not relative to "heat of the passion" or "spontaneity" - How significant was the mental trauma affecting D's mind- substantial period, or simmering in unknowing subconscious and then coming to fore
- ***Cassassa***: Did D act in Extreme Mental or Emotional Disturbance (EMED) and thus mitigating liability from murder to manslaughter? No. Mental illness of D not sufficient b/c the particular act was so peculiar to him, even with his prior mental health issues, that it did not mitigate killing to manslaughter. TC added that D acted in malevolence rather than act that deserved mercy.
- **Model Penal Code - more generous with Provocation and EMED**
 - No need for specific provocative act
 - If there is provocation, need not fall into fixed category
 - No rule about cooling-off period

UNINTENTIONAL KILLINGS | FELONY MURDER

UNINTENTIONAL KILLINGS | UNJUSTIFIED RISK-TAKING

- ***Murder of the depraved heart***
- ***Blameworthy Negligence*** - Gross deviations from standard of care used by ordinary person where negligent conduct can reasonably said to manifest into "wanton or reckless" disregard for human life (e.g. involuntary manslaughter)
- ***Civil Liability*** - Incontestable fault and perhaps heavy civil liability but something less than criminality
- ***People v. Moore***: D making a hit and run, while travelling 80-90 mph in a 35 mph zone, and not stopping when knowing people were likely dead, had implied malice (abandoned and malignant heart) and was subject to Murder 2
- **Implied vs. Express Malice**
 - ***Implied Malice*** - when the killing is proximately caused by an act, the natural consequences of which are dangerous to life, and was deliberately performed by person who knows his conduct endangers life of another and acts with conscious disregard
 - ***Express Malice*** - Manifested a deliberate intention to take away life of a fellow creature
- **Model Penal Code**
 - MPC doesn't distinguish between Murder 1/2 so conscious disregard for the risk manifested extreme indifference to value of human life (recklessness plus) is enough

FELONY MURDER - one is guilty of murder if a death results from conduct during commission or attempted commission of any felony (felony + killing = FM)

- **Examples**
 - Stewie robs Peter, who died from fright-induced heart attack
 - Brian steals wallet from Lois' purse and accidentally discharges weapon concealed inside. Lois is struck and dies.
 - Quagmire robs Cleveland and shoots him to avoid having a witness (sufficient for both M1 and FM, can be both)
- **Rationales**
 - *Deterrence* - be more careful when you commit felonies
 - *Sanctity of Human Life* - commission of felony involving death more serious
 - *Transferred Intent* - Felon's intent to commit felony transfers to more serious social harm of homicide
 - *Easing Prosecutor's Burden of Proof* - FM doctrine is used to avoid having to prove mens rea even when there was malice
- **Criticisms**
 - *How do you deter unintentional act?* - disproportionately small number of killings occur in incidence of other felonious activities (e.g. robbery very rarely results in homicide)
 - *Transferred Intent Doctrine fictitiously expands scope of murder* - distinct and separate intents needed to commit a felony and culpability for intent to kill someone
 - *Retributive Rationale Incompatible With Criminal Law Fundamental* - Criminal law is not merely concerned with guilt or innocence in abstract or morality but rather with degree of criminal liability
- **FM Limitations**
 - *Inherently Dangerous Felony* - Predicate felony must be inherently dangerous
 - *Merger* - Predicate felony, of which homicide is an integral part, cannot be charged as felony murder
 - Is predicate felony assaultive in nature
 - Does predicate felony not have independent purpose
 - Rape, arson, robbery, burglary (with intent to steal, not to kill) do not fall victim to merger, because they are independent purpose and are inherently dangerous
 - Predicate crime can be violent, but must have another independent purpose
 - Aggravated assault with a deadly weapon is inherently dangerous but does not have an independent purpose and is assaultive in nature so no FM
- **Analysis of FM**
 - First look at predicate crime (is it inherently dangerous, and is it assaultive in nature and not have independent purpose?)
 - Analyze elements of felony in the abstract and NOT the specific/particular facts
 - Can felony be committed without creating a substantial risk that someone will be killed?
- ***Fuller***: Can FM rule apply to unintentional death following commission of a nonviolent felony? (e.g. vehicle burglary, here.) In FM jurisdictions, yes. FM statute here states: "All murder committed in perpetration of, or attempt to perpetrate arson, rape, robbery, burglary, mayhem or lewd acts with a minor is M1."
- ***Smith***: Assaultive child abuse in which homicide is "integral part" and "and included in fact," and there was no independent purpose to D's abusive conduct so no FM application

FORCIBLE RAPE - Rape is typically defined as sexual intercourse with another by force and without consent; rape looked in the light most favorable to the state (the victim)

- **Traditional Statutes**- focus on forcible rape or sexual intercourse achieved forcible, against the will of the female, and without her consent (gender specific); a husband could not rape a wife
- **Modern Statutes**- does not prohibit non-forcible, but non-consensual forms of sexual intercourse (i.e., with an unconscious or drugged female)
- **Consent** - state must show that victim affirmatively and freely consented; a person can withdraw consent at any time.
 - **Traditional View** - Subjective analysis- focused on victim's subjective state of mind and burden on the victim
 - **Modern View** - objective analysis; shifts the focus away from the victim; The factfinder must decide whether the defendant's act of penetration was undertaken in circumstances that led the defendant reasonably to believe that the alleged victim freely given affirmative permission to the specific act of sexual penetration
 - **Mens Rea** - If accused thinks person is consenting but victim does not, what is the issue? Look at the requisite mens rea of the relevant charged statute.
- **What Can Establish Force?**
 - **Traditional/Narrow View**: required proof the sex was secured by force; intercourse secured by a non-physical threat doesn't ordinarily constitute forcible rape
 - **Modern View**- modern statutes typically provide that non-consensual intercourse obtained by threat of force constitutes forcible rape
 - **Resistance** - Requirement of "strong resistance" eroded, but not eliminated; still relevant even where not required. "Utmost resistance" not required but requires "earnest resistance" or resistance sufficient to establish sex was without consent and by force.
 - Considered by be part of the force element; there can be no force without resistance on the other side (if there was no resistance, there would be no force)
- **Alston**: Was there sufficient evidence to convict D of rape based on D's force (was it actual or constructive threat of force) and against the victim's will?
 - No sufficient evidence of actual or constructive force because, though there was some threats, they were not sufficiently tied to the precise act of sex.
 - **General fear is not enough**
 - Totality of circumstances matter, in making reasonable inference that unspoken purpose of threats were to force victim to submit to unwanted sexual intercourse
 - But inference between the threats and unwanted sex must have a sufficient nexus
- **Rusk**: State has to prove woman either "resisted or her resistance was overcome by force or threat of force."
 - *How does the court require resistance if the word "resistance" isn't present in the statute?*
 - The court says this element is implicit
 - "against the will"- The resistance is the manifest from the lack of consent
 - "force"- implies/suggests that that something is pushing back on the other side (how could there be force without something pushing back?)
 - First, CoA finds insufficient force to cause a reasonable fear which overcame victim's ability to resist was a question of law but then it is reversed that it is a matter for the fact finder
- **Forcible Compulsion**:
 - Definition

- D walks out store door with tie still in hand, clearly not what shop owner intended when they gave D a restricted use of the tie in store. D intends to take tie out of constructive custody of shop owner permanently since it no longer had a nexus to shop owner
 - D now has possession.

Hypos:

- #1 | D test drives car. Dealer comes along. Who has possession?
 - D has custody; Dealer has constructive possession b/c Dealer still has nexus with physical thing
- D takes it upon himself to abandon Dealer by driving away after dropping him off in lot.
 - D now has taken possession without consent of Dealer -> **Larceny**
- #2 | D test drives car alone. Dealer stays behind at dealership.
 - D has custody; Dealer has no possession, b/c nexus between him and physical thing too attenuated
- D takes it upon himself to keep car and not give back to Dealer while Dealer is still behind at Dealership.
 - D has taken possession but was given thing consentually and still not in Dealer's nexus to constitute his constructive nor actual possession of thing -> **NO Larceny** (still a crime...)
- #3 | D, an employee, takes truck upon employer telling him to drive it to mechanic for work.
 - D has custody, employer has constructive possession
- D decides to drive out of town without employer's permission
 - D now has taken it from employer's constructive possession -> Larceny
- #4 | D, the employee, takes truck to mechanic and leaves to come back later
 - D had custody but then transfers actual possession to Mechanic, Employer no longer has constructive possession
- D takes possession again of the truck and starts driving it back to employer but then decides to joy ride
 - D has actual possession from Mechanic and Employer still has no possession -> NO Larceny
- #5 D never fully transfers possession of truck to Mechanic and sticks around while Mechanic fixes car, then D joyrides
 - Employee never transfers possession to mechanic so Employer still has constructive possession when D takes physical possession without consent -> Larceny
- #6 D carries Amazon box for old lady and meanwhile he takes contents from inside box. Who is he trespassing? Amazon? Old lady never had possession because she never exerted physical control over it.

LEGAL FICTION OF CERTAIN PARTIES

- For Bailees
 - When they go beyond their authority of bailment such as opening contents of box they have possession over (and custody of contents within until it is opened)
- For Employer/Employee
 - Employer's goods/property is in employer's constructive possession UNTIL employee goes beyond authority with thing even though the physical nexus was already weak when he is traveling with thing to get it from A to B

BAILMENTS

- Bailee - Person or party to whom goods are delivered for a purpose, such as custody or repair, without transfer of ownership

Mafnas

- Mafnas (Employee of "Service," who was hired by Bank) takes bags of money:
 - Who has possession of bags? Mafnas/Service
 - Who has possession of the money inside? Bank (b/c Mafnas nor his employer had consent to possess money inside bags)
- When did Mafnas take possession of the money?
 - Upon opening the bag; Mafnas had permission to carry bags and money as bailment but not to possess money inside

MENS REA of LARCENY- Intent to permanently deprive possessor of property

- Exceptions That Satisfy Intent to Permanently Deprive
 1. D intends to **“sell”** property back to its owner
 - Right to sell property is an assertion of a right to ownership + evidence of intent to permanently deprive. Substantial risk of non-returned property b/c if owner does not buy back his property it is likely D will keep it to conceal theft
 2. D claims **“reward”** over taken property
 - Right to claim reward still indicates D intended to deprive owner of “portion of value of property” that was already his, and therefore an assertion of an ownership right
 - Return of object is contingent on victim providing satisfactory reward to D’s discretion
 3. D claims **“refund”** over taken property
 - D not getting a refund he hoped will likely result in him not returning the thing, and substantial risk of permanently depriving rightful owner
 - **Davis**: D still on hook even though he claims he never meant to permanently deprive store of t-shirt, but court finds it’s still asserting right of ownership by claiming a refund for shirt that rightful owner might not get back if department store fails to offer a refund adequate to D’s standards.
- Continuing Trespass Doctrine
 - Requisite intent to permanently deprive may occur after possession happens, and as long as D continues to possess thing. (IE. D can take something, intend to only have it temporarily, but then still have the thing and change his mind that he wants to keep it permanently)

EMBEZZLEMENT-

- Elements:
 1. Criminal conversion of property received by wrongdoer in nontrespassory manner /with consent
 2. An element of entrustment
- EX: Gets car with consent, as driving keeps driving, decides to keep and joy rides, 1) consent , 2) trust >?????

Bazeley

- Agent of Gilbert goes to bank to give bank note to bank teller who credits Gilbert’s account then keeps it in his pocket for his own purposes.
 - Gilbert had actual possession; gave custody to his agent to deliver to Teller;
 - Teller had actual possession with consent from Gilbert’s agent who lost possession and Gilbert lost constructive possession.
 - Bank never had possession of note, and teller took note with Agent’s consent, so it cannot be a trespassory taken -> NO LARCENY
- But these facts satisfy embezzlement.

LARCENY BY TRICK-

- V has no intent to give up thing for good, and was induced by the trick, V is merely intending to give up possession and not intent to relinquish possession for good
- Trespassory because D is tricking you in order for you to give it up

Rex v. Pear

- D rents horse from V with intent to sell it, which he did immediately.
 - D takes actual possession from V, consensually
- Trespassory taking even though transfer was “consensual”?

- Yes. Larceny by Trick. D takes thing with consent but on basis that P is being tricked in order for him to give to consent to D, so it is really not consensual transfer

FALSE PRETENSES-

- V intends to part with thing, but intention is direct result of fraud
- Elements
 1. Defendant made false pretense or representation
 - Misrepresentation must cause victim to pass title to his property or money to D
 - But NEED NOT be the SOLE cause of inducing the transfer
 2. Representation was made with intent to defraud owner of his property, and
 - Any express, or implied, symbol, act, word, or token calculated and intended to deceive
 - Non-disclosure is not enough to be basis of representation (unless D had affirmative duty / omissions)
 3. Owner was in fact defrauded in that he parted with his property in reliance upon the representation
 - Must be some reliance of misrepresentation, in that V intentionally parted with thing
 - Reliance or causation element of crime may be found lacking in these 3 situations:
 1. Where P knew representation was false or did not believe it to be true
 2. Where, even if he believed it, he did not rely on it, but investigated for himself or sought and relied on other advice
 3. Where, though some false representations are proved, P parted with his property for other reasons or in reliance on other representations shown not to be false

Whight

- D charged with obtaining property by **false pretenses**
- D argues the Safeway store he used to get money from was relying on Wells Fargo system rather than D's misrepresentation
- Court held- Safeway took a risk in using machine that accepted cards when it takes too long to verify card in moment; but doesn't negate D's culpability and their reliance on him using machine without defrauding them. **Misrepresentation need not be the only thing V relied upon**, for D to still be liable

SELF DEFENSE

SELF DEFENSE

- Elements
 1. **Threat - actual or apparent - of the use of deadly force against the defender**
 - a. Deadly force is force likely to cause or intended to cause death or serious bodily harm
 - b. Apparent threat = fake gun that looks very real
 2. **Threat was unlawful and immediate**
 - a. "Lawful" force - ie. police officer restraining someone - cannot provoke SD
 3. **Actual and reasonable belief of peril or death or serious bodily harm**
 - a. Actual belief - Subjective, or D actually believed he needed to use deadly force to defend himself
 - b. Reasonable belief - Objective, reasonableness based on circumstances facing D in his situation
 - i. Factors to determine reasonableness
 1. Relevant knowledge D had about aggressor
 2. Parties' physical attributes

3. D's prior experiences that could provide reasonable basis for belief that other person's intentions were to injure him or use of deadly force was necessary under circumstances
 - ii. **Goetz:** Objective reasonable test cannot be based on what was possibly reasonable to Goetz *himself* at the time but rather what the reasonable person would believe based on Goetz's personal situation, facts (ie. knowledge of high crime rates on subways in NYC at the time, Goetz's previous mugging, etc.)
 - c. MPC - Purely Subjective
 - i. All subjective, does not look into reasonableness of D's conduct. If it is unreasonable though, it is just likely D will be guilty of a mitigated homicide (ie. reckless or negligent homicide)
- 4. Response to threat necessary to deflect threat**
- a. Subjective - Did D subjectively believe his response was necessary to save himself?
 - b. Objective - Would a reasonable person, in D's situation, have felt that response was necessary to save himself?
 - i. Responsive threat has to be proportional to the threat you are facing
 - ii. Can't use deadly force in defense of property or a misdemeanor (e.g. theft)
 - iii. Can't use deadly force against a person if some non-deadly response will suffice
- Different Approaches: When Right of Self Defense is Forfeited
 - **If defender is the aggressor, or at fault in any way**
 - **Aggressor**
 - One who provokes physical conflict by words or actions calculated to bring about assault
 - Merely starting non-deadly conflict
 - Can be a deadly or non-deadly aggressor
 - **Aggressor can regain right of self defense**, depending on jurisdiction, if he:
 - **Withdraw:** He must communicate to his adversary an intent to withdraw and in good faith attempts to do so - evidenced by words or acts indicating intent to withdraw
 - When a victim of non-deadly assault escalates altercation by using deadly force onto original aggressor, the aggressor immediately regains right to SD
 - **Any illegal behavior**
 - **If you can safely retreat without using deadly force**
 - **Rule of Retreat** - If a person can safely retreat and, therefore, avoid killing aggressor, deadly force is unnecessary
 - Majority (no retreat rule) - a non-aggressor is permitted to use deadly force to repel an unlawful deadly attack even if he is aware of a place to which he can retreat in complete safety
 - Minority - innocent person threatened by deadly force must retreat rather than use deadly force if
 - (1) he is aware (subjective) he can do so
 - (2) in complete safety
 - Exception to Retreat Rule
 - **Castle Doctrine** - a 1) *non-aggressor* attacked 2) *in his own dwelling* place by no fault of his own, need not ordinarily retreat even though he knows he could do so in complete safety before using deadly force in self-defense

Hypo:

- D invited some friends over to drink. One of his friends passed out, and awakes to find D in bed with his (the friend's) wife. The friend lunges at D in a fit of rage with a knife. D grabs a gun and shoots him.
 - Answer: Although initial aggressor can typically not claim SD (unless exception- verbal withdrawal of force), just because D slept with victim's wife, it is not being aggressor.
 - Actual and apparent: yes knife is actual and apparent threat of death or serious body injury
 - Unlawful and immediate
 - D likely had the reasonable belief given the circumstances of P's rage, he would be subject to his friend's deadly force
 - Proportionate? Maybe depends on size of knife but shooting friend in that circumstance is probably necessary to reasonable person

DEFENSE OF OTHERS-

- Traditionally:
 - Required special relationship to defend others (ie. mother, brother etc.)
 - If someone had mistaken but reasonable belief of danger and protected third party, killed inflicting party but was mistaken, he used to be able to use Defense of Others
- Now:
 - Parallel right of defense to the person you are defending that you'd have in SD (in terms of the four elements)
 - Mistaken, reasonable belief is valid in defense of other situation
 - Alter-Ego Rule (Minority)
 - Instead of reasonable, mistaken belief of person defending other person in harm, apply same standard as if defender was self defending (ie. does not matter if he perceives undercover cop doing unlawful conduct if it is actually a cop that is lawful)
 - Fetus: States (inc. Mich.) have held non-viable or viable embryos/fetuses apply to defense of others rule
 - Exception: States that categorize "Defense of others" to only other "persons" by statute
- MPC
 - Intervener has right to defend others if:
 1. Third party would be justified in using such force in self-defense, under circumstances the intervenor believes them to be (no alter-ego rule here)
 2. Intervenor is required to attempt to secure retreat if original victim would have been required to retreat in self-protection
 3. Intervenor believes intervention is necessary for protection of third party
 - Retreat Rules
 - Intervenor not required to retreat before using force in protection of other persons except in the unlikely circumstance that he or she knows such retreat will assume original person's complete safety
 - Intervenor is required to attempt to secure retreat if original victim would have been required to retreat in self-protection
 - Castle-doctrine applies

EXCUSES

NECESSITY DEFENSE

- Elements
 1. D faced with clear and imminent danger
 2. D must reasonably expect his action will abate feared harm
 - a. Judged from time of the incident

- b. Objective - not whether D believes he made right choice but whether value judgment was in fact correct
 - 3. No adequate legal alternative
 - 4. Harm caused must not be disproportionate to the harm prevented
 - 5. D did not create the dilemma
 - Exceptions
 - Emergencies created by natural forces
 - CL: Homicide - Necessity is not a defense for homicide
 - MPC: Homicide - Necessity may be defense for homicide if fulfills three elements (particularly #2)
 - Protecting persons or properties vs. economic interests or reputation
 - MPC Elements:
 1. He believes conduct is necessary to avoid harm to himself or others
 2. Harm to be avoided is greater than the harm sought to be avoided by the law prohibiting the conduct
 3. *If legislature raises the example that is the issue being raised, and still excludes it and refuses to make exception to statute, necessity defense cannot apply*

Nelson - applying Necessity test:

- Nelson drove car off highway into marshy area. Got dropped off at construction site and stole a dump truck to try and get his truck out of marsh. Dump truck then got stuck, got a front loader to try and get the dump truck and car out. Unsuccessful, so just fell asleep and then Nelson was placed under citizen's arrest.
 1. Clear and imminent danger? No. not imminent because he was worried car would "tip over" but over 12 hour period passed demonstrating no imminent danger, another friend actually slept in car
 2. Reasonably expect that his action will abate feared harm - could have subjectively believed he was in danger but circumstances would indicate better alternatives (calling for help, availability of passerbys)
 3. Legal alternatives? Passerbys could have helped, called for help
 4. Harm caused does not outweigh harm avoided? Potentially sunken car vs. property damage, joyriding, trespassing, grand theft auto, then causes those trucks to get stuck in same marsh
 5. D did not create dilemma? D drove off into marshy area himself, so he did create dilemma

DURESS:

- Elements
 1. **Immediate** fear of death or serious bodily injury
 - a. *Anderson*: Abuse victim's father telling woman "If you you don't kill this person (abuser), I will beat you up" is not an immediate threat, nor is the threat of getting beat up proportional to killing someone (and duress is not a defense for homicide in this jurisdiction anyway).
 2. **Well-grounded fear** that threat would be carried out
 3. **No reasonable** opportunity to **escape** threatened harm
- Rationale:
 - Duress or coercion is someone not acting on free will because of nature of threat, in terms of carrying out crime
- Defense to murder?
 - CL: No, does not even mitigate murder to manslaughter. Some states permit by statute.
 - MPC: Yes, duress can be asserted against all criminal charges

Contento-Pachon - Application of Duress

- D attempts to find job as taxicab driver but employer makes him drug trafficker instead and discovers D's personal facts and threatens his wife and child if he does not traffic the cocaine
- Immediacy of the threat of bodily injury or death?
 - D's family was in Columbia and Jorge "knew where they lived" and at any given time their life was at risk
- Well grounded fear threat would be carried out?
 - The facts and their specificity that Jorge knew were so personal (D's family, their location) and Jorge was long established drug trafficker that he had reason to be fearful of his propensity
- No reasonable escape to avoid threat?
 - D did not approach police because Colombia police were corrupt
- Why does D not have a defense of Necessity?
 - 1) No natural forces involved 2) nor were D's actions for the general welfare.

NECESSITY VS. DURESS

Necessity / "Lesser of Two Evils"	Duress
Imminent	Imminent
Natural Forces	Unlawful (human) threat - always a human force
No legal alternative	No escape of threat
Harm avoided > Harm caused	Harm avoided >, = or < Harm caused
Protection of person OR property	Protection of person ONLY
Can't be at fault, in causing the necessity	Can't be at fault in causing your predicament of duress (e.g. joining a gang, stealing something, is not duress)
No homicide	No homicide

Model Penal Code

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INVOLUNTARY INTOXICATION

- 4 Potential Types
 - **Coerced Intoxication** - Induced by reason of duress or coercion
 - **Pathological Intoxication** - Intoxication grossly excessive in degree, given amount of the intoxicant ingested that the actor doesn't know he is susceptible
 - **Intoxication by Innocent Mistake** - Innocent mistake by the D about character of substance taken, as when another person has tricked him into taking liquor or drugs
 - **Unexpected Intoxication Resulting from Ingestion of Medically Prescribed Drug**
- How does involuntary intoxication exculpate?
 1. If, as result of involuntary intoxication, the person doesn't form mens rea for offense (lacks the specific intent)
 2. If a person whose involuntary intoxication renders the individual "temporarily insane"; as result of intoxication, the actor's condition satisfies that jurisdiction's definition of insanity
- Specific Intent vs. General Intent
 - Involuntary intoxication exculpates general intent crimes too, though case law on topic is rare

VOLUNTARY INTOXICATION

- Different approaches
 - Specific Intent vs. General Intent (Majority, modern rule)
 - VI is only a defense when charged crime is specific intent
 - Voluntary Intoxication is never a defense (some states)

MPC:

- Non-Self Induced intoxication and Pathological Intoxication are valid defenses
- Voluntary Intoxication automatically consists of an "awareness" /ie. recklessness, regardless D claims to actually be aware of risks when intoxicated

INCHOATE OFFENSES

ATTEMPT:

- Two types:
 - **Complete** - Actor does ever act planned but is unsuccessful in producing the intended result (ie. shooting at victim, but missing target)
 - **Incomplete** - Actor does some of the acts that she sets out to do, but then desists or is prevented from continuing by extraneous factor (ie. police intervention)
- Mens Rea:
 - CL (More Lenient View):
 - Specific Intent / Purpose to commit result of crime (more than mere knowledge required)
 - Must know attendant circumstances of crime to have requisite intent to attempt
 - EX: for attempted selling alc to minor, must have reckless intent in regards to finding out/not finding out minor's age with specific intent (purpose) to selling alcohol
 - MPC:
 - Purpose *or knowledge* as to conduct or result
 - As to attendant circumstances, only need culpability required for target offense
- Statutory Rape:
 - Attempted SR does not necessarily require knowledge of AC (ie. victim's age), but mere intent to perform act
 - Exception: Some states will require knowledge of attendant circumstances by statute

- No such thing as Attempted Felony-Murder (no intent involved) or Attempted Involuntary Manslaughter (no intent involved)
- Actus Reus:
 - Where does “Mere Preparation” end and “Perpetration” begin?
 - CL:
 - Where does Preparation end and Perpetration begin?
 - Factors and considerations
 1. **Whether act comes dangerously close to tangible harm (Key question: is there a lot more to do to complete crime?)**
 2. **Seriousness of threatened harm**
 3. **Strength of evidence of actor’s mens rea**
 - a. Is there a possible innocent explanation to D’s conduct (ie. lighting a match in barn might not be attempted arson but merely a source of light or used to light a cigarette)
 - b. Ambiguity or equivocality of D’s actions
 - MPC:
 - Focuses on what’s already been done, rather than what’s still left to do
 - **Substantial Step** approach:
 - Conduct must strongly corroborate actor’s mens rea / criminal purpose
 - Examples of “Substantial Steps” as matter of law
 1. **Lying in wait (ie. D is armed and hiding in bush waiting for victim)**
 2. **Possession of materials to commit offense**
 3. **Following victim**
 - **Slight Step** may be sufficient if act is strongly corroborative of actor’s mens rea or design (e.g. Ann tells people she wants to kill Bob, and then one day she drives to his house with a loaded gun in her glove department)
- Hypo:
 - Liz decides to burn down her business to collect insurance proceeds. She douses place with gasoline and drops match, igniting a fire. She does not realize devoted employee Kenneth is still at work, and he narrowly escapes.
 - If Ken doesn’t die: No attempted murder b/c Liz’s conduct resulting in a killing is merely reckless, awareness of a substantial/unjustifiable risk but doing it anyway, but not requisite knowledge nor purpose for murder 1.
 - If Ken does die: Felony murder (Arson is a felony, inherently dangerous, independent purpose, can’t be done without creating danger of killing, and Ken died)
- Defenses to Attempt:
 - Abandonment
 - Relevant only *after* actor has crossed line from preparation to perpetration
 - Must completely and voluntarily renounce criminal purpose (can’t be because of intervention of cop, or non-permitting weather)
 - Defense not applicable if:
 - Abandoning b/c you think you will get caught by the cops
 - Changing your target to another victim
 - Postponing the conduct instead of abandoning altogether
 - Factual Impossibility
 - When person’s intended end constitutes a crime but she fails to consummate offense because of attendant circumstance unknown or beyond her control (EX. trying to fire an unloaded gun you think has bullets)

- Not a defense under CL
 - Legal Impossibility:
 - When the law doesn't proscribe goal that D sought to achieve (EX: when person performs lawful act with guilty conscious - thinking it's a crime but it's not)
 - CL: a defense
 - Assault vs. Attempt
 - CL:
 1. Unlawful attempt
 2. Coupled with present ability (have to actually be able to inflict it within reasonably close striking range)
 3. To commit violent injury
 - Placing someone in reasonable apprehension of an injury, even without intent (now includes eg. putting an unloaded gun in someone's face without them knowing it)
 - Intent to cause fear is now sufficient assault
 - MPC:
 - Merges assault and completed offense of battery
 - Applies normal attempt rules rather than strict common law requirements that actor comes close to success

CONSPIRACY AND ACCOMPLICE LIABILITY

CONSPIRACY

- Elements
 1. Unlawful agreement to commit illegal act
 2. Express or implied
 3. Between two or more people
- The Agreement (Actus Reus)
 - CL:
 - Parties need not know all details of conspiracy, but just essential nature of arrangement
 - Co-conspirator need not perform or facilitate each and every part of substantive offense
 - Co-conspirator need not know who/or the existence of every other co-conspirator involved
 - MPC:
 - Four types of agreement fall within conspiracy
 1. To commit an offense
 2. To attempt to commit offense
 3. To solicit another to commit offense
 4. To aid another person in planning or commission of offense
- Overt Act
 - Some jurisdictions do not require overt act
 - Conspiracy is complete upon formation of agreement - not necessary to establish an overt act in furtherance of conspiracy
 - Some jurisdictions require overt act (MPC)
 - Act must be in furtherance of conspiracy, but need not be a full-out attempt (ie. less than substantial step)
 - Even if act is trivial

