

CRIMINAL LAW

- I. Basics
 - a. Effectiveness: Primary addressee must know
 - i. Of its existence and content in relative respects
 - ii. Of the circumstances of fact that apply
 - iii. Must be able to comply with it
 - iv. Must be willing to do so
 - b. Principles of Punishment
 - i. Retributivist
 - 1. Punishment is justified because people deserve it
 - 2. Backward looking
 - ii. Utilitarian
 - 1. Punishment is justified because of the useful purposes it serves
 - 2. Forward looking
 - 3. Consequentialist or Instrumentalist
 - c. Characteristics of Punishment
 - i. Performed at and directed by agents who are in some sense responsible
 - ii. Designedly harmful or unpleasant
 - iii. Consequences usually preceded by judgment of condemnation
 - iv. Imposed by one with the authority to do so
 - d. Benefits of punishment Utilitarian
 - i. General deterrence
 - ii. Individual deterrence
 - iii. Incapacitation and other forms of risk management
 - iv. Reform
 - e. Other
 - i. Burden on prosecution at trial, Δ on appeal.
- II. What is a crime?
 - a. Actus Reus
 - i. Physical part of the crime
 - ii. Very narrow definition, tiny kernel of mental state
 - iii. Taking the action
 - iv. Duty to act
 - 1. Five times
 - a. Statutory duty
 - b. Status of relationship
 - c. Contract
 - d. Voluntarily assumed care
 - e. Created the initial harm
 - v. Attendant circumstance

1. Some thing that must be proved but is not necessarily in Δ control
- b. Mens Rea
 - i. Model Penal Code
 1. **Four mindsets**
 - a. **Purpose – conscious object**
 - b. **Knowledge – aware that his conduct is of that nature or circumstances exist or that it is practically certain his conduct will cause such will cause such a result**
 - i. **Established if aware of a high probability of the risk**
 - c. **Reckless – consciously disregards a substantial and unjustifiable risk**
 - d. **Negligent – should be aware of a substantial and unjustifiable risk**
 - ii. Willful Blindness
 1. MPC
 - a. “deliberately shutting your eyes” is knowing of awareness or results.
 2. Common law
 - a. Knowing requires actual knowledge awareness of circumstances or results
 - iii. Strict Liability
 1. Absence of mens rea element does not mean strict liability
 2. Usually public safety violations, punishment merely a fine
 3. State must prove Δ was aware
 - iv. Mistake
 1. Mistake of fact
 - a. MPC
 - i. Basically mens rea analysis
 - ii. No mens rea = mistake of fact
 - iii. Except!
 1. You’d have been guilty if the circumstances had been how you thought they were
 - a. Then guilty of the crime you thought you were committing
 - b. Common law
 - i. Strict liability?
 1. Mistake of fact never a defense
 - ii. Specific intent
 1. M.O.F. must be specific to the intent portion

iii. General intent

1. Examine 3 approaches

- a. Reasonableness of mistake
 - i. Negligence standard
- b. Moral wrong
 - i. Not aware of the moral culpability of the wrong
 - ii. Actions immoral even if not illegal then still guilty
- c. Legal wrong
 - i. If you thought you were committing one crime but committed another, still guilty
 - ii. Even if extreme difference in crimes

2. Mistake of law

- a. Can only argue misreading of the statute if relying on official interpretation by attorney general or such.

3. Sometimes, mistake regarding a different law will negate an express element of the criminal offense.

- a. Understood the crime under which you're charged, but the application of another law makes yours criminal.
 - i. Married someone, prosecuted for bigamy, thought your divorce was legal, but it was invalid

III. Homicide

a. Degrees of Murder

i. First Degree (cold blooded)

- 1. Intent/express malice (willful)
- 2. AND
- 3. Premeditated/Deliberation
 - a. plotting/planning

ii. Second Degree

- 1. Intent/Express Malice
- 2. NOT
- 3. Premeditated/Deliberation
- 4. OR
- 5. Implied Malice

- a. Reckless Plus ("extreme indifference to the value of human life")

- b. substantial and unjustifiable risk
- c. know the risk is there
 - i. conscious disregard of the risk of death, not merely bodily injury
 - ii. satisfied by an awareness of the risk, no matter how small
 - iii. the more unjustifiable the risk, the less risk there needs to be

b. Manslaughter

- i. Intent but provocation (heat of passion)
 - 1. Voluntary manslaughter
 - a. NEVER “is the killing reasonable”
 - b. ALWAYS “is the loss of self control reasonable”
 - 2. Provocation (old common law)
 - a. Mutual combat
 - b. Sudden discovery of adultery
 - c. Commission of serious crime against close relative of defendant
 - d. Illegal arrest
 - e. Aggravated assault or battery
 - 3. Provocation (common law)
 - a. Elements
 - i. Heat of passion
 - ii. Result of provocation
 - iii. No reasonable opportunity to cool off
 - iv. Causal link between provocation, passion, and homicide
 - b. Provocation would cause an ordinarily prudent person for the time being incapable of that cool reflection that makes it murder
 - c. provocation is sufficient to cause an ordinary man to lose control of his actions and his reason
 - d. BUT words alone are still not enough.
 - 4. Provocation (MPC)
 - a. look at factual situation *as Δ perceived it to be* and ask if that would be reasonable cause for Δ to be that upset
 - 5. Traditional Categories of provocation
 - a. Adultery discovery
 - b. mutual combat
 - c. assault and battery

- d. harm to close relative
 - e. illegal arrest
 - i. substantially whittled away
 - f. Anger the only emotion allowed
 - ii. OR
 - iii. No intent but reckless (conscious disregard of risk)
 - 1. Involuntary
 - 2. Depraved heart
 - c. Criminal Negligent Homicide
 - i. No intent
 - ii. not conscious of the risk
 - d. Felony Murder
 - i. Death in commission of a felony is Murder
 - 1. outdated, harsh
 - ii. Rationale
 - 1. transferred intent
 - 2. ease burden on prosecutor
 - 3. sanctity of human life
 - 4. deterrence
 - iii. Limitation
 - 1. inherently dangerous felonies
 - 2. if the felony cannot be committed without the risk of death or endangering human life, *then* felony murder applies
 - iv. Merger rule
 - 1. If predicate murder could lead to death on its own, no felony murder
 - 2. assault, battery, manslaughter, etc.
 - 3. if harm is the predicate crime, felony murder cannot apply
- IV. Mitigation of Murder charges
 - a. Provocation
 - i. Actual or subjective provocation
 - 1. everything about the Δ is relevant
 - ii. Objective or evaluative assessment
 - 1. reasonable person would have lost control
 - iii. TEST
 - 1. Actually inflamed passion
 - 2. and
 - 3. objective element is reasonableness of emotional reaction.
 - a. Any disposition
 - b. sober

- c. normal mental capacity
 - d. of the same sex
 - i. not *really* used
 - e. Same age
 - 4. Δ Characteristics
 - a. relate to adequacy of provocation or
 - b. affect accused level of self control
 - iv. Being drunk vs. being an alcoholic.
 - b. Extreme Mental and Emotional Disturbance
 - i. manslaughter if acted while suffering from EMED for which there is reasonable explanation or excuse
 - ii. what's reasonable?
 - 1. Determined from a viewpoint of a person in the actor's situation under the circumstances as he believed them to be.
 - 2. Affirmative defense
 - a. burden on Δ
 - 3. except
 - a. not adopting Δ sense of reasonableness
 - iii. MPC EMED vs. Provocation
 - 1. No need for provocative act
 - 2. provocation need not fall into a category
 - 3. no rule about a cooling off period
- V. Rape
- a. Elements
 - i. Traditional
 - 1. vaginal intercourse
 - 2. by force
 - a. evidence of resistance always relevant
 - b. threats can be express or implied
 - c. do not have to be stated
 - 3. against the victim's will
 - b. Resistance Req'ment
 - i. For
 - 1. harsh penalty, she should fight
 - 2. helps show there was force
 - 3. "virtuous woman would fight to the death" antiquated
 - ii. against
 - 1. where does lack of consent and resistance split
 - 2. How much does one have to resist?
 - c. Three approaches to rape

- i. physical violence
 - 1. Force must mean physical violence or threat of physical violence.
- ii. Forcible compulsion
 - 1. more factors taken into account
- iii. Only violation of consent
 - 1. consent must be affirmative and freely given
 - 2. requires a yes

VI. Theft

a. Larceny

- i. Definition
 - 1. Trespassory taking and carrying away fo personal property of another with intent to permanently deprive the possessor of the property
- ii. Actus
 - 1. Trespassory taking and carrying away of personal property
- iii. Mens
 - 1. intent to permanently deprive
- iv. Attendant circumstances
 - 1. personal property of another
- v. Conduct, not outcome
- vi. crime against possession, not ownership or interest
 - 1. physical possession
 - a. not ownership
 - b. not rights
- vii. Not larceny if you intend to bring it back
- viii. Possession
 - 1. taking possession can happen even if it was stolen in the first place
 - a. Because Can possess things you don't own
 - 2. Someone always has possession
- ix. Analysis
 - 1. Who initially possessed it?
 - 2. Whether, when, and to whom it was transferred
 - 3. did Δ take it trespassorily?
- x. Custody
 - 1. handing an object to someone briefly is custody.
 - 2. Not always transferring possession
 - 3. Analysis
 - a. temporary and limited?
 - b. From an employer?
 - c. Enclosed in a container as a bailee

- b. Larceny by trick
 - i. possession by misrepresentation
 - 1. I want this horse to take a trip
 - 2. If never intended to give it back or take a trip, Larceny by trick
 - c. False pretenses
 - i. Possession *and title* by misrepresentation
- VII. General Defenses
- a. All elements are present, but Δ should not be convicted
 - i. i.e. statute of limitations
 - b. Justification
 - i. Social harm of punishing Δ would be greater than the one cause by the crime
 - c. Excuse
 - i. *social harm still there* but circumstances outside their control make them not culpable
 - ii. e.g. insanity
 - d. Self defense
 - i. justification
 - 1. attacked and defend
 - ii. excuse
 - 1. Thought, reasonably, going to be attacked, and defended, but were wrong
 - iii. Elements
 - 1. threat, actual or apparent of the use of deadly force against defender
 - 2. threat was immediate and unlawful
 - 3. actual and reasonable belief of peril or death or serious bodily harm
 - a. MPC removes reaonability requirement
 - b. person who behaves unreasonably will have a defense, just not a complete one
 - 4. response to threat necessary to deflect threat
 - iv. Retreat rule
 - 1. If there is a route to safety you know about and can take without harm, you must take it
 - a. law does not expect you to put yourself in peril
 - 2. cannot claim self defense if you are the agressor
 - a. agressor
 - i. person who starts the altercation

- ii. Duress
 - 1. usually comes up because of individual's actions
 - 2. elements
 - a. immediate fear of death or serious bodily injury
 - b. well grounded fear threat will happen
 - c. no reasonable opportunity to escape
 - iii. At common law, both defenses to blood or marital relatives too
- VIII. Inchoate Offenses
- a. Attempt
 - i. punish less severely
 - ii. Problems
 - 1. proof?
 - 2. No social harm to punish
 - a. could prevent social harm
 - 3. tried to commit, so could punish for breaking social unity and the mens rea
 - iii. Types
 - 1. complete attempt
 - a. take all actions to commit, but fail
 - 2. incomplete or inchoate
 - a. missing some action
 - b. failed to pull the trigger
 - iv. Common law tests
 - 1. dangerous proximity
 - a. temporal and physical
 - 2. equivocal
 - a. behavior consistent with the crime
 - b. not consistent with innocence
 - 3. probable desistance
 - a. what are the chances he'll pull out
 - v. MPC
 - 1. takes subjectivist approach
 - 2. concerned with mens rea
 - 3. punish attempts the same as an actual crime
 - a. except death penalty
 - b. cannot get death for attempt
 - 4. intent or with knowledge
 - 5. 5.01

- a. acting with the kind of culpability otherwise required for the commission of the offense (Conduct crimes and attendant circumstances)
 - b. purpose of causing or with the belief that it will cause such a result (result crimes)
 - vi. ambiguous behavior might not be attempt. If there's an innocuous interpretation that may remove some of the culpability
 - vii. cannot attempt implied intent crimes. Must have intent to commit the target offense
 - viii. Actus Reus
 - 1. only incomplete attempts
 - 2. Preparation vs perpetration
 - a. Common law (50% of jrxs)
 - i. must have been *very* close to the crime to have attempt – focus on what's left
 - b. MPC § 5.01(2)
 - i. subjectivist
 - ii. focus on intent, less req'd for attempt
 - iii. substantial step
 - 1. strongly corroborate the intent
 - 2. examples
 - a. lying in wait
 - b. possession of materials
 - c. following the victim
 - iv. more liability than common law
 - v. focus on what's done, not what's left
 - ix. Mens Rea
 - 1. must have intent towards conduct or result
 - a. purpose or knowledge
 - 2. attendant circumstance, only need the culpability
 - a. common law: if didn't know of AC no attempt
 - b. MPC if target crime didn't require you to know of AC, still attempt if you didn't know
- b. Defense
 - i. Abandonment
 - 1. only relevant if they've gone from preparation to perpetration
 - 2. and must *voluntarily* renounce criminal purpose and *completely* renounce purpose, not just postpone
 - 3. No abandonment at common law
 - a. so close to the crime, no time to abandon

4. MPC includes because attempt occurs earlier
 5. never abandonment defense for complete attempts
 - a. can't abandon something that you've already done
- c. Assault
- i. Common law
 1. unlawful attempt
 2. coupled with present ability
 - a. unloaded gun would lack present ability
 3. to commit violent injury on another
 - ii. More recent common law (MPC 211.1)
 1. placing someone in reasonable apprehension of an injury even without intent
 2. merges assault and completed battery
 - a. applies attempt rules to battery
 - b. assault is attempted battery
- d. Conspiracy
- i. different from attempt
 1. multiple people
 2. less action req'd to prove
 3. conspiracy does not merge
 4. don't have to do anything major
 - a. show serious about committing
 5. **the agreement is the crime**
 - ii. MPC
 1. Agreement to
 - a. Commit an offense
 - b. Attempt to commit an offense
 - c. Solicit another to commit an offense
 - d. Aid another in the commission of an offense
 - iii. Common Law
 1. Agreement to do a criminal act or to do a lawful act in an unlawful or criminal or immoral way
 - iv. Pinkerton doctrine
 1. Conspirators are guilty of the crimes of other conspirators
 - a. if in the scope of the conspiracy OR
 - b. reasonably foreseeable consequence
 2. Huge potential for liability
 3. Why?
 - a. Group crimes are more dangerous
 - b. able to commit more complex crimes

- c. deterrence
 - 4. MPC
 - a. Ditches for aiding and abetting
 - b. Not guilty for crimes you didn't commit
 - 5. Must have intent to commit target act
 - a. cannot intend to do something unintentionally,
 - b. no conspiracy for implied intent crimes
 - c. this is specific intent
 - v. TWO intents
 - 1. intent to agree
 - 2. intent to commit the crime
 - vi. suppliers of illegal goods and conspiracy**
 - 1. factors**
 - a. stake in the conspiracy**
 - b. high % of profit or exceptional quantity of goods**
 - i. 300x normal amount of morphine**
 - c. no innocuous use of the goods**
 - d. seriousness of the crime**
 - vii. Actus reus
 - 1. Agreement is the actus reus
 - a. proving it is a problem
 - b. overt act
 - 2. must be a *prior* agreement
 - viii. conspiracy by choreography
 - 1. if actions are so coordinated they seem choreographed
 - a. might imply agreement
 - ix. Limitations
 - 1. Unilateral
 - a. only one person agrees
 - i. some jrxs allow this
 - b. one might be playing along
 - c. Also covered by solicitation
 - x. Wharton's rule
 - 1. Crime requires two people, no two people conspiracies
 - 2. victim cannot conspire.
 - a. No conspiracy with victim for adultery, statutory rape, etc
 - b. can still conspire with another to rape a third
- IX. Liability for the Conduct of another
 - a. Accomplice liability
 - i. Accomplice

1. One who intentionally assists someone in committing a crime, and actually does so
- ii. Attempt
 1. MPC
 - a. Can be liable for attempting to aid
 2. Common law
 - a. If try to aid and fail to do so (gun never given to P, P never sees the note)
 - b. Not liable
- iii. Liability *derives* from the principle actor
 1. S helps P rob V. P then robs V.
 2. S is guilty of ROBBERY.
 3. Accessory after the fact is its own crime, separate from attempt
- iv. Actors
 1. Principle 1st degree
 - a. Carried out the crime
 2. Principle 2nd degree
 - a. Assisted and present at the crime
 3. Accessory before
 - a. Not present at the crime, but assisted
 4. Accessory after
 - a. Helps perpetrator get away, no part before the crime
- v. Two Intentions
 1. Intent to assist
 2. Intent to bring about the successful crime
 3. Two actors
 - a. Must have intent to further the conduct of the crime
 - b. But the required mental state is that of the target offense
- vi. Linscott doctrine
 1. Accomplice held liable for the 'natural and probable consequences'
 2. Murder is probable in robbery by shotgun, accomplice liable for murder
 3. Steps
 - a. Did p commit the crime
 - b. Did s culpably assist
 - c. Did p commit other acts
 - d. Were they reasonably foreseeable
- vii. Accomplice felony murder
 1. Since recklessness occurs during the commission of the offense,

2. Yes, there can be accomplice felony murder
- viii. Actus
1. Must have some indication of assisting. Just being present is not enough to convict
 2. Some evidence of advising, instigating, encouraging, assisting, etc.
- ix. Need not be a but-for cause
- x. The crime must actually be committed