

Criminal Law Outline

Proof of Guilt

- Conviction based off circumstantial evidence alone is not to be sustained unless the circumstances are inconsistent with any reasonable hypothesis of innocence.

Elements of a crime

I. Actus Reus

1. Components of actus reus

- a. A voluntary act
 - i. An act has some bodily movement or muscle contraction.
- b. That causes
 - 1) Cause-in-fact
 - 2) Proximate cause
- c. A social harm
 - 1) Result crimes: crimes defined in terms of some prohibited result.
 - 2) Conduct crimes: crimes defined as harmful conduct, even where there may not be a harmful result.
 - i. Attendant circumstances: A condition that must be present, in conjunction with the prohibited conduct or result, to constitute a crime.
 - a. EX: Burglary: the breaking and entering (conduct) of a dwelling (AC) of another (AC) at nighttime (AC) with the intent to commit a felony therein.

2. A voluntary act is a bodily movement that follows from a person's volition; it is a willed act.

3. Model Penal Code (MPC)

- a. Involuntary
 - 1) Reflex or convulsion
 - 2) Bodily movement during unconsciousness or sleep.
 - 3) Conduct during hypnosis or from hypnotic suggestion.
 - 4) A movement not a product of effort or determination of the actor.

4. Omissions

- a. In America, a person has no legal duty to act to prevent a harm, except:
 - 1) Children and Spouse (special relationship).
 - 2) Assigned a duty of care (contractual).
 - 3) Created the harm (maybe).
 - 4) Statute (e.g. taxes).
 - 5) Voluntary assumption of the duty that excludes others.

II. Mens Rea

1. Uses of mens rea

- a. Culpability-person committing the act has some morally blameworthy state of mind.
- b. Elemental meaning-person committing the act has the particular state of mind specified in the offense (i.e. intent, maliciously, recklessly, etc.) toward the social harm.

2. Maliciously means purposefully or recklessly.
 3. Mens rea terms in Common Law
 - a. Intentionally-his desire to cause a social harm or acts with knowledge that it is a virtual certainty to occur.
 - b. Knowingly or with knowledge
 - c. Willfully-an act done with a bad purpose.
 - d. Negligence-a deviation from the standard of care that a reasonable person would have observed.
 - e. Recklessly-requires proof that defendant took a risk of which he was aware and consciously disregarded.
 - f. Malice-
 - 1) Intended to cause the social harm.
 - 2) Recklessly caused the social harm.
 4. General v. Specific Intent crimes.
 - a. General is the culpability model.
 - 1) An offense with an actus reus but with no listed mens rea terms.
 - 2) The law implied a mens rea of a morally blameworthy state of mind.
 - b. Specific intent expressly identifies the mens rea term.
 5. Mens rea in MPC
 - 1) Purposefully
 - 2) Knowingly
 - 3) Recklessly-Consciously disregards a substantial and unjustifiable risk.
 - 4) Negligently-when he should know of a substantial and unjustifiable risk.
 - b. One of the terms applies to the offense.
 - c. If no mens rea, then purposefully, knowingly, or recklessly is used.
 - d. When lower mens rea applies, so do the ones above it. (i.e., if negligence is sufficient, so is recklessness, knowingly, or purposefully; if recklessness, than knowingly and purposefully, but not negligently)
 6. Mens rea can be inferred from the surrounding circumstances. A person intends the natural and probable consequences of an action.
 7. Transferred intent is allowed in criminal law.
- III. Strict liability
1. No mens rea requirement, only actus reus.
 - a. A mens rea will be read in, particularly when given consideration of the record.
 2. Rules to determine a Strict Liability crime:
 - a. The statutory crime is not derived from the common law.
 - b. There is an evident legislative policy that would be undermined by a mens rea requirement.
 - c. The standard imposed by the statute is reasonable and adherence is to be expected of a person.
 - d. Penalty is not severe.
 - e. Conviction does not “gravely besmirch.”
 3. Statutory rape often does not include a mens rea and is considered a Strict Liability crime.
 4. MPC
 - a. General rule is that some mental state is required.

- b. Strict liability if the penalty is a fine or forfeiture, but not incapacitation.
- IV. Mistakes and Mens rea
 - 1. Mistake of fact occurs where defendant is unaware of, or mistaken about, a fact pertaining to an element of the offense.
 - a. Mistake of facts negate the mens rea requirement; failure of proof defense.
 - b. Common Law rules for Specific Intent v. General Intent
 - 1) SI: a defendant is not guilty of an offense if his mistake of fact was made in good faith, this negates the specific intent portion of the crime, whether that mistake was reasonable or not.
 - 2) GI: A defendant is not guilty of an offense if his mistake of fact was reasonable, but he is guilty if his mistake was unreasonable.
 - c. MPC
 - 1) Not guilty unless the act was done purposefully, knowingly, negligently, or recklessly.
 - 2) Rejects general intent crimes.
 - 2. Mistakes of Law is no excuse, unless:
 - a. Reasonable reliance where defendant relied on an interpretation later deemed in error.
 - 1) Reliance on own interpretation does not work.
 - 2) Reliance on private consul does not work.
 - 3) Works if defendant reasonably relies on an official statement later determined to be erroneously obtained from a public body with responsibility with interpretation, administration, or enforcement (e.g. Supreme Court or Attorney General).
 - b. Constitutional exception
 - c. Knowledge of the law is an element of the crime (e.g. “a person knowingly violates this statute”).
 - d. Different law mistake exception
 - 1) Not a defense to strict liability crimes
 - 2) Claim relates to another law other than the criminal offense the defendant is charged with.
 - i. O takes car to M for repairs, refuses to pay and M keeps the car. O takes car back and is prosecuted for larceny. O was unaware that law says a mechanic can keep vehicle until the bill is paid. O is not guilty because he did not have the necessary intent to trespassorily take.
- V. Causation
 - 1. Link between the voluntary act and social harm
 - 2. Only shows up in result crimes, not conduct crimes.
 - 3. 2 types:
 - a. Actual Causation (in-fact)
 - 1) “But for defendant’s voluntary act, the social harm would not have occurred when it did.”
 - 2) An otherwise non-lethal act which is concurrent with the lethal act that **ACCELERATES** death is an actual cause.

- 3) Concurrent sufficient causes-But for defendant's voluntary act, would the social harm have occurred when it did and as it did?
- b. Proximate Cause
 - 1) Intervening causes, which are superseding, break the causal chain.
 - 2) Intervening causes:
 - a) Another "but for" cause **AFTER** the defendant's "but for" cause, that falls in the causal chain leading to the harm.
 - b) Typical pattern: 1) Defendant greatly harms the victim (actual cause); (2) another force intervenes as a second actual cause; 3) the intervening cause aggravates or accelerates the victim's inevitable harm.
 - 3) Superseding cause: an actual cause is a superseding cause when it breaks the causal chain as to the defendant and thereby negates any finding of proximate causation to the defendant.
 - 4) Factors of Intervening cause →superseding cause
 - a) Defendant's cause de minimis contribution to social harm.
 - i. Act of god.
 - b) Foreseeability of Intervening cause:
 - i. Responsive Intervening cause: an act occurs in response to defendant's wrongful act.
 - A. Rule: Responsive intervening causes do not negate criminal liability unless response was unforeseeable and highly abnormal.
 - ii. Coincidental Intervening cause: an act that is not in response to defendant's wrongful conduct.
 - A. Rule: an act does not result in liability unless coincidental intervening cause was foreseeable.
 - c) Defendant's mens rea (intended consequences doctrine)
 - i. Defendant intends intervening cause to cause the consequence.
 - d) Dangerous forces that comes to rest (apparent safety doctrine).
 - e) Free, deliberate, informed human intervention.
 - i. More likely to break causal chain rather than a natural force.
 - f) Omissions.

VI. Concurrence of the elements

1. Temporal concurrence: the defendant must possess the requisite mens rea at the same moment that his voluntary conduct causes the social harm.
2. Motivational concurrence: the defendant's conduct that caused the social harm must have been set into motion by the thought process that constituted the mens rea of the offense.
 - a. Ex: test firing a gun, but killing the person you intended to kill.

Substantive Crimes

I. Homicide

1. Killing of a person by another human being.
2. Criminal Homicide: Killing of another person without justification or excuse.

3. 2 types of Criminal Homicide
 - a. Murder: Killing of a human being by another with malice aforethought.
 - b. Manslaughter: Killing of another human being without malice aforethought.
4. Malice aforethought
 - a. Intent to kill.
 - b. Extreme recklessness
 - c. Intent to cause grievous bodily injury.
 - d. Intent to commit a felony
5. Mens rea of Manslaughter
 - a. Heat of passion (voluntary manslaughter) upon adequate provocation.
 - b. Involuntary manslaughter
 - 1) An unintentional killing that result from an act, lawful in itself, but done in an unlawful manner and without due caution.
 - 2) Unintentional killing that occurs during the commission of some unlawful act, which is not a felony (misdemeanor manslaughter).
6. Degrees of murder:
 - a. 1st Degree:
 - 1) Statutorily specified manner.
 - 2) Willful, deliberate, and premeditated.
 - i. To premeditate is to think about beforehand.
 - ii. To deliberate is to measure and evaluate. Enough time for a reasonable person to take a second look.
 - iii. Undisturbed by hot blood.
7. MPC Model:
 - a. Guilty of criminal homicide if, without excuse or justification, a person takes the life of another human being purposefully, knowingly, recklessly, or negligently.
 - b. 3 forms: Murder, manslaughter, and negligent homicide
 - 1) Murder is the killing of another person without excuse or justification and it was:
 - i. Purposefully or knowingly done.
 - ii. Recklessly done under circumstances manifesting extreme indifference to the value of human life.
8. Voluntary manslaughter:
 - a. A partial defense which mitigates from a second degree murder.
 - b. Common law rule: An intentional homicide which is committed in a sudden heat of passion which mitigates.
 - c. Common Law Elements:
 - 1) The defendant must have acted in the heat of passion.
 - 2) Passion must have been the result of adequate provocation.
 - a. Must be calculated to inflame the passion of a reasonable person of average disposition with a normal mental capacity and sober, and tend to cause him to act for the moment from a passion rather than reason.
 - b. Words are not enough.
 - c. Act must be in first cause of passion, not aggregation.

- ii. Mutual combat
- iii. Threat to a loved one.
- iv. Discovering one's spouse committing adultery.
- 3) The defendant must not have a reasonable opportunity to cool off.
- 4) Must be a causal link between the provocation, the passion, and the homicide.
- d. Misdirected retaliation rule: killing someone other than the person provoking is not a defense.
- e. MPC Rule: A homicide committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness is viewed from the viewpoint of a person in actor's situation.
- f. Differences between Common Law and MPC:
 - 1) A specific provocation is not required in MPC, aggregation is okay.
 - 2) Extreme emotional disturbance allows for more subjectivity in assessing what counts as adequate.
 - 3) Victim need not have committed the provocation.
 - 4) No fixed categories of adequate provocation and words are sufficient.
 - 5) No rigid cooling off period required.

II. Risk Taking

1. Common Law liability for risk taking

Degree of risk	Justification	Awareness	Mens rea	Liability
Unreasonable risk of injury	Unjustified	Not aware	Civil or ordinary negligence	Civil liability
High degree of risk of serious injury or death	Unjustified	Not aware	Criminal or gross negligence	Involuntary manslaughter
High degree of risk of serious injury death	Unjustified	Aware and consciously disregards	Recklessness (extreme recklessness, or depraved heart)	Murder (second)

2. MPC liability for risk taking

Degree of risk	Justification	Awareness	Mens rea	Liability
Substantial	Unjustified	Not aware	Negligence	Negligent homicide
Substantial	Unjustified	Aware	Recklessly	Manslaughter
Substantial under circumstances manifesting extreme indifference	Unjustified	Aware	Recklessly	Murder

3. Second degree murder has malice but not "willful, premeditated, and deliberate."

a. An abandoned and malignant heart:

- 1) A conscious disregard for the harm the defendant caused.

- 2) Defendant aware of the risk to another
- 4. Felony Murder Rule
 - a. A person is guilty of murder if they kill another while committing or attempting to commit a felony.
 - b. A defendant is strictly liable; it does not matter if the killing was done negligently or accidentally.
 - c. Predicate felony must be proved beyond a reasonable doubt and the actus reus of homicide.
 - d. Certain felonies may be first degree, other second degree.
 - 1) CA: arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or other enumerated sexual offenses are equal to first degree murder.
 - e. Limitations on Felony murder rule
 - 1) Inherently dangerous felony: court makes a determination as to whether the felony was inherently dangerous.
 - i. In the abstract test-court ignores the particular facts and only the elements of the offense as defined by statutes to determine if the felony was inherently dangerous.
 - ii. Facts of the case test-court considers the facts and circumstances of the particular case to determine whether felony, as it was committed, was inherently dangerous.
 - 2) Independent felony limitation (merger rule): the predicate felony must be independent of the homicide, otherwise the felony merges with the homicide; there is no independent felony and the Felony Murder Rule does not apply.
 - 3) The Res Gestae requirement (things done to commit the felony)
 - i. FMR applies when the homicide occurs within the res gestae of the felony. Must be some proximity between felony and the homicide in terms of both time and distance.
 - a. Distance: the relevant period begins when the actor could be prosecuted for attempt and continues until all elements of the crime are completed, including fleeing.
 - b. Time: What's important is when the killing conduct occurred, not the death itself.
 - 4) Killing by a non-felon
 - i. Most courts do not apply FMR if a person involved in the situation who is not a felon takes some action that kills a third person.
 - a. Ex: A robs B and C tries to shoot A in defense of B, but kills B instead.

III. Rape

- 1. The carnal knowledge of a woman forcibly and against her will.
 - a. Actus reus: intercourse
 - 1) Attendant circumstances:
 - i. Force: Actual or threat
 - A. Resistance requirement as a proxy for force and non-consent, given evidentiary challenges.

- b. Mens Rea: none stated, general intent crime.
 - 2. Modern reforms
 - a. Types of forces include physical and mental or psychological threats.
 - b. Drop/diminish resistance.
 - c. Mere act of penetration is sufficient force.
 - d. Drop consent.
- IV. Theft Crimes
1. Theft: the involuntary and unlawful transfer of property
 - a. Crimes against property.
 - b. Synonymous with stealing.
 - c. Larceny, embezzlement, false pretenses, robbery, and burglary.
 2. Larceny
 - a. The trespassory taking (caption) and carrying away (asportation) of the personal property of another with the intent to permanently deprive the possessor of the property.
 - 1) Don't have to damage, destroy, or convert property.
 - 2) Asportation is almost any movement of property away from point of caption.
 - b. Possession: A person has possession when she has sufficient control to use it in a reasonably unrestricted manner.
 - c. Tacking is equal to transferred possession
 - 1) Lawful
 - i. Turns on consent, not ownership.
 - 2) Unlawful
 - i. Trespassory taking occurs when the defendant takes the victim's property without consent.
 - d. 3 questions to ask:
 - 1) Who initially had possession of the allegedly stolen property? Must be the victim.
 - 2) Whether and to whom the possession was transferred? Must be the defendant.
 - 3) Whether such transferred possession occurred lawfully or trespassorily? Must be trespassorily.
 - e. Custody: A person has temporary and extremely limited authority to use property.
 - 1) Victim retains constructive possession.
 - 2) Custody often occurs within the possessor's view.
 - f. If someone has lawful possession and then takes, they cannot be guilty of larceny.
 - g. Bailees are given possession of the bale (container) not the contents (custody)- Breaking bulk rule.
 3. Larceny requires an intent to deprive **permanently**; not just an intent to deprive.
 4. "Continuing trespass" covers a later intent to permanently deprive to allow a concurrence of the elements.
 5. Larceny by trick: Fraudulent intent creates custody, not possession.
 6. Embezzlement
 - a. The fraudulent conversion of personal property per which one has lawful possession with the intent to defraud.

- 1) AR: Lawful possession and fraudulent conversion.
 - 2) MR: Intent to defraud at the time of the conversion.
- b. Covers cases of breaking bulk.
7. False pretenses: knowingly and designedly obtaining title to the property of another by means of false representations of fact with the intent to defraud.
8. Federal Theft crimes: Mail and wire fraud
 - a. Elements
 - 1) Defendant engaged in a scheme to defraud.
 - 2) Scheme involved material misstatements or omissions.
 - 3) Defendant acted with intent to defraud.
 - 4) Scheme resulted in or would have resulted in loss of money, property, or honest services.
 - 5) The U.S. Mail, a private courier, or interstate or international wires:
 - i. Were used in furtherance of the scheme to defraud; and
 - ii. The defendant used, or caused to be used, these services.

Defenses

- I. A set of conditions which, if proven, prevent conviction or result in a conviction for a lesser offense.
 - a. Total Defense=acquittal.
 - b. Partial defense=mitigation to lesser offense.
- II. Types
 - a. Failure of proof defense: unable to prove one of the elements of the crime beyond a reasonable doubt.
 - b. Affirmative defenses: Elements satisfied but the defendant was not culpable.
 - 1) Justifications: a set of conditions which prevents conviction because the otherwise criminal act was the correct or permissible action in this instance; did not cause a social harm.
 - 2) Excuse: a set of conditions which prevent conviction because the actor, while committing an otherwise criminal act, is not morally blameworthy.
- III. Self-Defense
 - a. A non-aggressor is justified in using force upon another if he reasonably believes such force is necessary to protect himself from imminent use of unlawful force by the other person.
 - b. Components:
 - 1) Necessity: force should not be used against another person unless, and only to the extent, that it is necessary.
 - i. Imminence Rule: use of force in self-defense is permissible only where the threat of force is just moments away.
 - A. MPC: "if the actor believes that such force is immediately necessary"
 - ii. Provocation Rule: the right to use deadly force in self-defense is not available to someone who provokes a conflict or is the aggressor in it, unless the defendant first withdraws from the conflict in good faith and informs the other parties to the conflict of that withdrawal by words or acts

- A. MPC: if a person can avoid an act that is not a legal duty.
 - iii. Retreat Rule: a person cannot invoke the doctrine of Self-Defense where that person had some means to safely retreat and avoid the harm
 - A. Most states reject.
 - B. Castle doctrine: a non-aggressor is not ordinarily required to retreat from his dwelling, even though he knows he can do so in complete safety, before using deadly force.
 - 2) Proportionality: a person is not justified in using force that is excessive in relation to the harm threatened.
 - 3) Reasonable belief
 - i. Subjective: person must believe that she needed to use force to repel.
 - ii. Objective: person's belief must be one a reasonable person in the same situation would have possessed.
 - c. Defense of property: A person may use non-deadly force against a would-be dispossessor if she reasonably believe it necessary to prevent imminent, unlawful dispossession of property.
 - d. Defense of habitation: A person may use deadly force if she reasonable believe such force is necessary to prevent an imminent and unlawful entry of her dwelling.
 - e. Defense of others:
 - 1) Same as self-defense
 - 2) Only requires that the "victim" would apparently be justified.
- IV. Necessity
 - a. Components
 - 1) Clear and imminent danger
 - 2) Reasonable belief that otherwise unlawful act will abate the danger.
 - 3) No adequate alternative to avoid the danger.
 - 4) Harm cause not disproportionate to harm avoided.
 - 5) None of the following:
 - i. Defendant did not cause the danger.
 - ii. Some states limit to naturally caused emergencies.
 - iii. Legislature not strike a different balance.
 - iv. State does not prohibit application to homicides.
 - b. MPC:
 - 1) No imminence requirement
 - 2) No loss of defense simply because you caused the danger.
 - 3) Not limited to natural caused emergencies.
 - i. No imminence.
 - ii. Not limited to threats of death or SBI.
 - iii. Maybe allowed for homicide.
 - c. Necessity promotes the general welfare and is in incidents of natural emergencies.
- V. Duress
 - a. Components:
 - 1) An immediate (imminent) threat of death or serious bodily injury.

- 2) A well-grounded fear that the threat will be carried out.
 - 3) No reasonable opportunity to escape the threatened harm.
 - 4) Defendant not at fault for creating situation.
 - b. Common Law rules:
 - 1) Human beings, not natural forces.
 - 2) Could not be threat against property.
 - 3) Could not be a threat against a stranger.
 - c. Necessity v. duress
 - 1) Duress negates Mens Rea, while necessity negates the Actus Reus.
 - 2) Necessity protects the general welfare.
 - 3) Duress is from humans, necessity is from natural harm.
 - 4) Necessity=justification; duress=excuse.
 - d. MPC:
 - 1) Defendant was compelled to commit the offense by the use or threat of unlawful force by the coercer upon defendant or another; and,
 - 2) A person of reasonable firmness in defendant's situation would have been unable to resist.
- VI. Intoxication
- a. The disturbance of mental or physical capacities resulting from the introduction of any substance into the body, whether voluntarily or involuntarily.
 - 1) Voluntary intoxication can mitigate mens rea.
 - i. Often limited as a failure of proof defense
- VII. Insanity
- a. Procedure: Competency:
 - 1) At this point in time, whether they can stand trial:
 - i. Defendant lacks capacity to consult with her attorney with a reasonable degree of rational understanding.
 - ii. Defendant lacks a rational as well as factual understanding of the proceedings against her.
 - 2) Once competent, can stand trial; if not then civil commitment.
 - b. Tests:
 - 1) M'Naghten Test: A person is insane, if at the time of her act, she experienced such a mental defect that:
 - i. She did not know the nature and quality of the act she was doing; or
 - ii. If she did know, she did not know that what she was doing was wrong.
 - A. "Know" and "nature and quality" can be broad or narrow.
 - 2) Control Test (irresistible impulses test): In addition to M'Naghten:
 - i. She acted from an irresistible and uncontrollable impulse; or
 - ii. She lost the power to choose between right and wrong because her free agency was destroyed.
 - 3) Product Test: A person should be excused if her act was the product of some mental illness or defect.
 - 4) MPC: A defendant should be excused if, at the time of the conduct and as the result of some mental defect, the person lacked substantial capacity to:

- i. Appreciate the criminality (or wrongfulness) of her conduct; or,
- ii. To conform her conduct to the requirement of the law.

Inchoate Crimes

- I. There is always a target crime, but inchoate crimes are separate offenses.
- II. There is an actus reus and a dual mens rea requirement
- III. Stages of a crime
 - a. Conceiving the idea
 - b. Evaluating the idea
 - c. Forming the intent to go forward

 - d. Preparing (when it can become criminal)
 - e. Commencing with the commission (perpetration)
 - f. Completing the crime.
- IV. Attempt:
 - a. Occurs when a person, with the intent to commit a target crime, performs some substantial step towards carrying out that intent.
 - 1) Incomplete attempt-defendant does some of the acts necessary to achieve the criminal goal, but quits or is prevented from moving forward before taking the final acts to complete the crime.
 - 2) Complete attempt-Defendant performs all of the acts that she set out to do to commit the crime, but fails to attain the criminal goal.
 - b. Common Law penalized attempts less severely than the target crime; generally half.
 - 1) MPC: attempt is same grade and degree as the most serious offense attempted, unless it is a capital offense.
 - c. Mens rea:
 - 1) The defendant must intentionally commit the act that constituted the actus reus of an attempt.
 - 2) Defendant intended to commit the target crime.
 - i. Cannot intend to commit an unintentional offense.
 - d. No attempted felony murder.
 - e. No intent to commit the target crime where the mens rea is something less than intent.
 - f. No definition of the necessary acts for actus reus.
 - g. Common Law AR: Preparation alone is not enough, there must be some appreciable fragment of the crime:
 - 1) Last act test: a criminal attempt only occurs when the person performed all of the acts necessary to commit the target offense.
 - i. Only reaches complete attempts.
 - 2) The physical proximity test: the act must stand as either the first or some subsequent step in a direct movement toward the commission of the offense after preparation has been made.
 - 3) Dangerous proximity test: similar to proximity test, but more flexible, taking account of several factors:
 - i. The nearness of the danger;
 - ii. The greatness of the harm; and

- iii. The degree of apprehension felt.
- 4) The indispensable elements test: attempt applies after defendant has secured every indispensable aspect of the crime.
- 5) The probable desistance test: a court will find an attempt when, in the ordinary course of events, without interruption from an external source, the defendant reached a point where it was unlikely that he would have voluntarily desisted from his efforts, judged by whether a reasonable person would have reached a point of no return.
- 6) The unequivocal test: an attempt occurs when a person's conduct, standing alone, unambiguously manifests her criminal intent.
- 7) MPC: What actual acts have occurred:
 - i. Completed attempts
 - a. Concerns conduct target crimes.
 - b. Concerns result target crimes.
 - ii. Incomplete attempts
 - iii. Substantial steps taken.
- h. Merger rule: cannot be guilty of attempt and target crime.
 - i. Defenses
 - i. Impossibility-Not a defense if the general elements are met.
 - ii. Abandonment
 - a. CL: many jurisdictions don't recognize it.
 - b. MPC and some jurisdictions do recognize if defendant voluntarily and completely renounces his criminal purposes.

V. Conspiracy

- a. An agreement between 2 or more persons to commit a criminal act, or to accomplish a legal act by an unlawful means (plus an overt act).
- b. Elements:
 - 1) An agreement (plus overt act) (AR)
 - 2) Dual MR:
 - i. Intended to agree.
 - ii. Intended that the object of the agreement be achieved.
- c. Agreement can be expressed or implied.
- d. Most states grade the punishment according to the target crime.
- e. MPC:
 - 1) Requires an overt act (except for a felony of the first or second degree).
 - 2) Punishment for conspiracy is the same as the target crime.
 - 3) Merger rule: cannot be convicted of target crime and conspiracy.
 - 4) Agreements only to a criminal act.
- f. Knowledge is sufficient when the intent necessary to satisfy the mens rea component of conspiracy is satisfied where a supplier knows the criminal activity connected with the supplies he furnishes and there is:
 - 1) Direct evidence he intended to participate; or
 - 2) Evidence that supports the inference that he intends to participate, based on:

- i. The defendant's special interest in the activity (stake in venture; no legitimate ends; high proportion of business).
 - ii. Aggravated nature of the crime itself.
- g. MPC: requires proof of purpose.
- h. Actus reus:
 - 1) The actus reus is an agreement to commit an unlawful act, or series of acts (plus some overt acts).
 - 2) The agreement can be implied; inferred based on circumstantial evidence.
 - 3) The parties to the agreement do not need knowledge of all of the details; only the essential nature.
 - 4) Where an overt act is required, any act no matter how minor, if in pursuance of the conspiracy, is sufficient.
- i. Pinkerton Doctrine: Where there is a conspiracy and the target crime is committed by one of the conspirators in furtherance of the conspiracy, and is reasonably foreseen as a necessary or natural consequence of the unlawful agreement, the other conspirators will be guilty for that substantive crime.
- j. Bilateral=2 people must agree (CL); unilateral=1 person intends to agree (MPC).
- k. Defenses:
 - 1) No impossibility.
 - 2) Abandonment allowed but not for conspiratorial liability for another's action.
 - 3) Wharton's rule: an agreement by two persons that by definition requires the voluntary concerted criminal participation of the persons, cannot be prosecuted as a conspiracy.
 - i. Exceptions:
 - a. Third party exception: if more than the necessary number of people agree.
 - b. If the two persons in agreement are not the two people involved in committing the offense.

VI. Solicitation

- a. Invites, requests, commands, hires, or encourages another person to engage in conduct constituting any felony, or a misdemeanor relating to obstruction of justice or a breach of the peace, with the intent that the other person commit the solicited crime.
- b. Elements:
 - 1) AR: invite, request, command, hire, encourage.
 - 2) Dual MR:
 - i. Must intend to invite, etc.
 - ii. Must intend to have act carried out.
- c. Merger rule: If target crime is carried out, no liability for solicitation.
- d. Guilty for attempt or conspiracy, no liability for solicitation.

Accomplice Liability

- I. A person is guilty as an accomplice in the commission of an offense if she intentionally assists another person to engage in conduct that constitutes a crime.
- II. Derivative liability, not vicarious liability.

- III. 4 areas of distinction.
 - a. Principal in the first degree: commits the crime.
 - b. Principal in the second degree: aided in the commission and the crime was committed in her presence.
 - c. An accessory before the fact: intentionally assisted in the commission of the crime but was not present when it occurred.
 - d. Accessory after the fact: with knowledge of another's guilt, he intentionally assists the felon to avoid arrest, trial, or conviction.
 - i. Law usually separates accessories after the fact.
- IV. Elements:
 - a. AR: gives assistance or encouragement
 - b. MR: A person is not guilty unless they share the criminal intent of the principal in the first degree (MPC agrees)
 - i. Intent to assist the principal to engage in the conduct that forms the basis, typically:
 - 1. Assistance by physical conduct.
 - 2. Psychological influence.
 - 3. Omissions
 - ii. The mental state required for the commission of the offense as defined for the substantive crime.
 - c. Accomplice liability covers those who share the same mental state for the commission of the crime (i.e., intent, recklessness, negligence).
- V. Natural and probable consequences doctrine:
 - a. An accomplice to a crime may be held liable not only for the target crime, but for any other offense that was a natural and probable consequence of the target crime.
 - i. "Natural and probable consequence" if it was a reasonably foreseeable consequence.
 - b. The accomplice need not share the principal's mental state under this doctrine.
- VI. Passive behavior such as mere presence, even continuous presence, absent evidence that the defendant affirmatively did something to instigate, incite, or embolden, or help others in committing a crime is not enough to qualify as encouragement.
- VII. Assistance can be trivial.
- VIII. Casually unnecessary assistance is sufficient.
- IX. MPC allows for attempt to aid for accomplice liability.
- X. Relationships between the accomplice and principal.
 - a. Principal is acquitted:
 - i. The defendant can be convicted as an accomplice even if the principal is not identified or convicted; however, an accomplice may not be liable absent proof of a criminal offense.
 - 1. Excuse defense of the principal does not bar conviction of accomplice.
 - 2. Justification defense of the principal does bar conviction of accomplice if principal is acquitted.
 - b. Principal is convicted of a lesser offense:
 - i. When the defendant has necessary mens rea as an accomplice, the defendant's guilt is based off all of the acts combined and that defendant's

own mens rea. If that defendant's own mens rea is more culpable, his guilt is greater. (Iago)