

CRIMINAL LAW OUTLINE
Professor Angela Davis □ Spring 1999

I. Introduction

B. Grounds to appeal conviction

1. Charge on which D was convicted is not a crime b/c
 - a. Legislature did not make it a crime
 - b. criminal proscription was unconstitutional
2. Evidence was insufficient to prove beyond a reasonable doubt
□ court may reverse conviction & double jeopardy rule bars trial/appeal.
3. Not all necessary elements of crime are alleged.
□ court may reverse conviction but court will permit retrial on corrected charge.
4. Jury was improperly instructed □ right to a new trial unless
 - a. properly instructed jury could not have convicted → drop charges
 - or b. eve if property instructed, jury would have convicted → affirm conviction
5. Trial court failed to comply with procedure or evidentiary rules

C. Sources of Criminal Law

1. Statutes (passed by legislatures □ individual states)
2. Precedent (common law)
3. Constitution

D. Analysis of Criminal Liability

1. Model Penal Code Scheme (American Law Institute)
□ model to individual states in passing criminal statutes
 - a. objective "act"
 - b. culpability "mental component"/mens rea
 - 1) purposeful behavior
 - 2) knowledge
 - 3) recklessness
 - 4) negligence

E. Burden of Proof and Due Process

1. Burden on State □ State has burden to prove each element of the offense(s) beyond a reasonable doubt.
2. Burden on Defendant □
 - a. Burden never shifts to D □ D has a constitutional right to remain silent
 - b. in some jurisdictions, burden is on D to present affirmative defenses
(ie, self-defense, insanity, duress, necessity, entrapment, consent)

F. Criminalization of Behavior

1. Which acts should be crimes?
certain acts that hurt other people
exceptions: alcohol, smoking, weapons/ammunition
-some acts that do cause harm are not criminalized
2. Decriminalization (*Kurt Schmoke, An Argument in Favor of Decriminalization*)
 - a. State criminalizes possession of drugs.
 - b. Schmoke proposes to reduce/eliminate penalties for possession or abuse of certain drugs.
 - c. not proposing that people have a right to use drugs (legalization).
 - d. Reasoning:
 - 1) If criminalize, create black market (like alcohol prohibition)
-people still want drug & price increases → profit → criminal market.

- leads to other crimes ie robbery, murders (kill to protect money/profits)
- 2) spread of AIDS from intravenous drug use
- 3) overload of criminal justice system & prison system
- e. But, *Supreme Court* has held that states cannot criminalize a status/condition. Addiction is a status. But it is a crime to possess drugs.
- 4. *Bowers v. Hardwick* (GA sodomy case where criminalized sodomy)
 - GA sodomy law criminalizes homosexual sodomy, but does not specify homosexual sodomy & does not differentiate sexual preferences (homosexual vs. heterosexual)
 - Private sexual act in the privacy of their homes, which are causing no harm to others.
 - a. *Issue*: Whether the Constitution confers a homosexual right to engage in sodomy?
 - b. *Rule*: Constitution does not grant a fundamental right to engage in homosexual sodomy.
 - c. *Reasoning*:
 - 1) Court looked to history of sodomy law
 - liberties rooted in nation's traditions (based on Judeo-Christian ethics)
 - the way things have been done in the past & all the states have followed
 - 2) the fact that conduct occurred in privacy of home does not shield it from regulations.
 - analogy btwn sodomy w/in home & other acts w/in home (ie, incest, adultery, possession of drugs) □ these acts are criminalized, but these acts cause harm to others)
 - d. *Dissent*: (Blackmun) □ criticizes majority for upholding law just b/c has been done throughout history.
 - 1) right to be let alone
 - 2) selective enforcement □ statute was not enforced against heterosexual people (ie, John & Mary Doe). If the act was so terrible, why was the case dismissed?
 - 3) finds problems with basing decision on religious doctrine to support legislation b/c not all follow Judeo-Christian religion as morally wrong (freedom of religion) & religion was used to support slavery, which was later found to be unconstitutional.
- 5. *State v. Powell* - GA state Supreme Court decided that the sodomy statute was unconstitutional under its State Constitution.
 - State court may give more privileges or rights than given by the Constitution under its state Constitution.
- 6. B/c criminalization of acts depends on whether the legislature says the act is a crime, creates inconsistency in criminalization of acts

II. Just Punishment: Purposes and Limits of Punishment

A. 4 Purposes of Punishment:

1. Deterrence

-Deter the criminal and others (specific and general deterrence)

→Effectiveness:

1. Deterrence does not work against criminals.

a. Most street crimes are impulsive (criminals do not do a cost-benefit analysis)

and b. Criminals do not think they will get caught or decide that it's worth the risk b/c it is uncertain that they will be punished.

2. Deters does deter others.

a. People have something to risk.

b. Does committing crimes depend upon socioeconomic background.

2. Rehabilitation

-Basic notion of trying to fix criminal so they will not commit the crimes again.
(Utilitarian view)

3. Incapacitation

-Remove criminal's ability to commit more crimes by taking criminals out of society

-*Note*: not necessarily incapacitated even when they are incarcerated b/c may commit crimes in prison (ie, drugs, sodomy); just avoid having crimes made against us.

→Incapacitation will work, provided that: [Wilson p. 59]

a. must be repeat offenders

b. incarceration of one criminal will not be replaced by a new recruit.

and

c. prison does not significantly increase post-release criminal activity.

4. Retribution

-Moral Punishment- society's need for revenge;"eye for an eye, tooth for a tooth"

→Some types of rehabilitation does work, depending on the crime committed and the program, particularly if it is long term and intensive (ie, drug rehabilitation (RAND study); long term treatment of juveniles)

→Movement between retribution and rehabilitation as course of punishment.

B. Theories on effectiveness of Deterrence

1. *James Q. Wilson* - (p.42) - Proposes that people commit crimes, because the consequences are not severe (uncertainty of punishment) & the risk is worth taking. There are not enough alternatives to crime, such as jobs, or are not as attractive as crime.

2. *Nigel Walker: Sentencing a Rational Society* (p.44) - adopt a harsher punishment. Found that attempts to stimulate both fear of penalties & civic conscience worked to deter.

3. *Elliot Currie: Confronting the Crime* (p.45) - should not adopt harsher punishment, b/c w/ severity of penalties reduced certainty of conviction. Therefore, people have nothing to lose by going to trial and risk chance of being found not guilty.

C. Relationship among Crime, Poverty & Race

1. *Alfred Blumstein & Jacqueline Cohen: Characterizing Criminal Careers* (p. 63)

Chances for being arrested vary upon race.

Crime rates are the same regardless of race.

2. *Douglas Massey, Getting Away with Murder: Segregation and Violent Crime in Urban America*

a. Poverty breeds crime.

b. Segregation breeds poverty

=creating concentrated pockets of poverty with higher rate of crime and particularly violent crimes.

-Therefore, the more segregated & the more poverty → greater the crime rate.

Homogeneity of society may affect the way that we are punished.

D. Case of Tree Frog and Johnson and Alex Cabarga: [Pedophilia/Child Abuse case] (p. 81)

Facts: 2 yr-old & 11-yr old were sexually abused by an older man & Cabarga. Cabarga had lived with this man since he was 9 yrs-old.

Issues: What is the extent we hold individuals responsible for acts they actually committed? or Do we consider other considerations (why commit the act, commit act by own free will, whether he actually understood what he had committed?)

Issues of Punishment:

1. Should Alex have been charged as an adult?

-Children may be charged as adult for certain types of serious offenses.

- Competency in court - Does he know right from wrong, considering the behavior he exhibited from the age of 9?
- 2. Rehabilitation?
 - Statistics have shown that some types of crimes are difficult to rehabilitate or is Alex a victim, not a criminal?
- 3. Responsibility
 - A person is not guilty, if they do not have the mental capacity to form that guilty state of mind to be held criminally responsible.
 - To what extent should we hold Alex criminally responsible, considering the way he was brought up and his mental state of mind?
 - right and wrong is taught vs. inherent
 - free will determinism -

F. Federal Sentencing Guidelines

1. The failure of the U.S. Sentencing Commission's Guidelines
 - a. Purpose - to promote determinate sentencing, eliminate judicial discretion, ensure proportionality and uniformity in sentencing
 - b. Effect - Prosecutors have tremendous discretion by specifying the charge of a certain offence & therefore determining the sentencing.
2. 4 features that make Federal Sentencing Guidelines more restrictive:
 - 1) grounds for departure are exceedingly limited
 - 2) departures available are expressly forbidden
 - [judges are forbidden from taking into consideration personal circumstances in lowering sentence.]
 - 3) application of guidelines is based on "actual offense behavior"
 - [even if jury finds not guilty of charges, judges can still increase sentence based on unproven allegations.]
 - 4) guidelines intended to increase the severity of federal sentencing
 - [problem b/c sentencing guidelines fair to deal with discretion & discrimination by lower levels (ie, prosecutor and law enforcement - police arrest more people based on race) & in effect the guidelines are racially discriminatory.]
3. Race Issue

- [Handout] a. Marc Mauer & Malcolm C. Young, Truths, Half-Truths, and Lies: Myths and Realities About Crime and Punishment (Oct. 1996) [see notes]
- [Handout] b. Marc Mauer and Tracy Huling, Young Black Americans and the Criminal Justice System: Five Years Later (Oct. 1995)
- 1) Increase in the number of African American women in prison for drug offenses due to the lack of discretion within the sentencing policy. These women are carrying the drugs for their boyfriends and they will end up going to prison while their boyfriends do not = sense of unfairness.
 - 2) Disparity in sentencing, even for the same offense under mandatory sentencing guidelines, is related to discretion by prosecution and law enforcement level.
 - 3) Solution: are there alternative sentencings that are rehabilitative & punitive?

III. Criminal Offense

- A. *What constitutes a criminal offense?:*
1. *An Act (Actus Reus)*
 - and 2. *Guilty State of Mind (Mens Rea)*

B. Actus Reus -

in brief: 1) Requirement that there be an act or a failure to perform a legal duty.

2) Voluntary act

1. Requirements of an act: 1) past; 2) voluntary; 3) bad; 4) conduct; 5) specified; 6) in advance 7) by statute

1. The Need for Actus Reus

a. *Rule: Criminal Conviction requires an overt illegal act.*

Proctor v. State (p. 124)

Fact: D convicted of keeping building w/intent of selling/distributing alcohol. Oklahoma statute - unlawful for person to keep a place, with the intent of distributing alcohol.

Issue: Is the act of keeping a building criminal?

Holding: No. Keeping a building is not criminal.

Analysis: State was attempting to create a preemptive strike against those who would even think about selling liquor & therefore would be criminalizing intent. Criminal intent alone is not sufficient to convict. Some sort of illegal act must be performed in furtherance of intent.

vs. b. *Rule: Possession is prima facie evidence of intent to commit a crime.*

People v. Valot (p. 130-31)

Facts: Police found drugs in D's hotel room. D claimed he didn't know about drugs. Statute criminalizes person to "possess" or to have under his or her control a narcotic drug."

Issue: Is possession an act & what constitutes possession?

Holding: Court held that trial judge could have reasonably found that D "had control" of hotel room, had control of drugs, regardless of who brought them into the room. D had a duty to act, b/c he had control over everything in the room.

c. *Model Penal Code* §2.01(4) - Possession is an act if possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period of time to have been able to terminate his possession.

2. Omissions

Rule: If D has a legal duty to act and omission of that duty results in the death of another, omission of that duty constitutes gross negligence and D may be convicted of involuntary manslaughter.

-Failure to act depends upon a legal duty to act, not a moral duty to act.

a. Jones v. United States (p. 131) -

Facts: Family friend, entrusted with caring for a child, was charged and convicted with involuntary manslaughter for killing that child. Medical evidence showed that the child died due to malnutrition.

Issue: Whether the trial court erred when the judge failed to instruct the jury that Ms. Jones had a legal obligation to provide food & necessity to child to find her guilty of involuntary manslaughter?

Holding: Yes. Failure to instruct that there was a legal duty was a plain error.

b. 4 situations in which failure to act may constitute breach of a legal duty:

- 1) *statute imposes legal duty* - if there is a specific law that requires someone to assume the care of another (ie, Good Samaritan Law)
 - 2) *status relationship between parties* - certain relationship between two parties that require a certain care (ie, parent-child, patient-doctor)
 - 3) *assumed contractual duty* - if signed agreement to take care of a person & failed to care = breach of contract.
 - 4) *voluntary assumption of care & seclusion* - volunteer to take care of another and secludes/hides them as to prevent others from rendering aid.
- c. No legal obligation to act, except if there is a Good Samaritan statute, which requires a person to help when another is in danger, provided that you yourself are not endangered.
- ie, Wisconsin Statute - Duty to Aid Victim or Report Crime: (p. 134)
- d. Arguments for not holding people legally responsible for saving others:
- 1) right to be left alone
 - 2) might be injured while trying to save others.
 - 3) the failure to act is not criminal - not so morally reprehensible that that person should not be punished.

3. Requirements of Voluntariness

Rule: Act must be voluntary.

a. *Model Penal Code* §2.01 Requirement of Voluntary Act

(1) *A person is not guilty of an offense unless his liability is based on conduct that includes a voluntary act*

(2) *The following are not voluntary acts:*

a) *a reflex or convulsion*

b) *a bodily movement during unconsciousness or sleep*

c) *conduct during hypnosis/ resulting from hypnotic suggestion*

d) *a bodily movement that is otherwise not a product of the effort or determination of the actor, either conscious or habitual*

(4) *Possession is an act, within the meaning of this Section, if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.*

b. *Rule: The criminal act of which D is accused must have been voluntary for conviction to be legitimate.*

People v. Newton (p. 135)

Facts: Statute prohibits the possession of a weapon in state of NY & required to be done voluntarily. D voluntarily got onto plane while carrying firearm & was arrested when plane made unscheduled landing.

Holding: D did not intend to possess firearm in NY. D did not voluntarily bring the gun into NY & did not subject himself to criminal liability voluntarily in NY; plane landing in NY was interruption of flight & not attributable to voluntary act by D. [reversed D's conviction]

c. *Rule: Criminal liability must be based on conduct which includes a voluntary act or omission to act which was physically possible to have performed.*

Martin v. State - (p. 137)

public drunkenness

Facts: Statute criminalizes the appearance of drunkenness done in public & drunken behavior. D, after being arrested at home, was taken by officers onto highway, where he manifested drunken condition.

Holding: D was involuntarily taken to a public place. Being involuntarily and forcibly brought into public is not voluntary breach of law.

-*potential counter-argument* - D might not have been taken on highway voluntarily, he was voluntarily disruptive b/c by drinking voluntarily it was reasonably foreseeable that he would be boisterous & otherwise engaged in indecent conduct;

d. *Rule:* Person is not criminally responsible for his acts if he has no **conscious control** over them.

People v. Grant (p. 139)

Facts: D (epileptic) prone to violent episodes, attempted to assault officer making arrest. D was convicted of aggravated battery and obstructing police officer.

Holding: Remand for new trial re: jury instructions concerning voluntariness of act. D could still be convicted if jury finds that he was not insane when he attacked officer and that he either consciously committed the offense or recklessly brought about his alleged epileptic seizure and its accompanying state of automatism.

-distinction between *insanity vs. automatism*:

1) ***insanity*** - may not comprehend criminal nature of his behavior; **lacks mental capacity to control act.**

vs. 2) ***automatism*** - does comprehend nature of his behavior, but **lacks conscious control over behavior**

-possible counter-argument - [*foreseeability*]- if D knew that drinking alcohol would induce seizures, and if seizures are involuntary, D may be responsible for the acts b/c he drank voluntarily.

4. Prohibition of "Status" Crimes

Status cannot be criminalized

Addiction

a. *Rule:* States may not outlaw the **condition** of narcotics addiction.

Drug addiction is a status for which a person cannot be criminalized.

Robinson v. California (p. 147)

Facts: Police observed track marks on D, D was convicted of being a drug addict. At time of arrest, D did not possess any drugs. CA Statute makes it criminal offense for a person to be addicted to narcotics use.

Holding: Statute is unconstitutional

-Narcotics addiction is a disease/illness and status that be be contracted involuntarily. Therefore, statute, punishes status of addiction, rather than actual use.

-Concurrence: should not punish for mere desire to commit criminal act.

-Dissent: Majority is essentially decriminalizing drug use. But, if an addict, possessed drugs at one point.

vs. Powell v. Texas (p. 151)

Facts: D was charged w/ being found in state of intoxication in public place.

Holding: Court upheld conviction - distinct from Robinson b/c this statute does not criminalize alcoholics, but criminalizes the act of being drunk in a public

place, which may create substantial health & safety hazards. D performed a voluntary act in being drunk in a public place.

Homelessness

b. Supreme Court has not determined whether homelessness is a status & therefore should be protected.

Pottinger v. City of Miami (S.D. Florida) (p. 152)

Facts: Class action filed by homeless, arguing that people do not choose to be homeless, homelessness is involuntary.

Holding: Punishing persons for status of homelessness and arresting homeless for harmless, involuntary, for performing basic life-sustaining activities in public is cruel and unusual punishment.

- *Involuntary status of homelessness cannot be punished, under 8th Amendment ban against cruel and unpunishment.*

vs. Joyce v. San Francisco - (N.D. Cal. 1994) (p. 155)

Facts: Homeless sought injunctive relief against SF from enforcing "Matrix" program, which penalized individuals for performing life-sustaining activities in public.

Holding: Homelessness is not a status, but a condition. Status is an inherent characteristic. But homelessness is a condition that can be changed and therefore not an inherent characteristic/status.

-While drug addiction has been determined to be a status by the Supreme Court, the Supreme Court has not determined whether homelessness is a status & therefore should not be a protected status.

c. *Rule: Mothers may not be convicted of delivering narcotics to newborns through umbilical cord during birth process.*

Johnson v. State (p. 157)

Facts: D used cocaine w/in 24 hours of birth, convicted of delivery of a controlled substance to baby after she transmitted cocaine to baby during childbirth.

Holding: Reverses her conviction b/c legislative intent was not to permit prosecution of drug addicted mother.

-Court found that the statute was enacted to deal with child abuse and neglect, not about the birthing process. Bill was amended to provide that no parent of drug-dependent newborn would be subject to criminal investigation solely on basis of baby's drug dependency.

-In order for mother to voluntarily & intentionally deliver drugs, she would have had to time exactly when she ingested the drugs and when the baby would be delivered drugs via umbilical cord.

Policy Reasons: 1. did not want to prevent mothers from getting prenatal care

2. prosecuting women is least effective in keeping families intact.

3. draconian laws will scare women away from getting prenatal care, out of fear of being prosecuted for being addicted to drugs.

B. The Guilty Mind - Mens Rea

1. 2 criteria for blameworthiness: State must prove...

1) guilty state of mind

different requisite state of minds for different crimes:

(*Model Penal Code:* purpose, knowledge, recklessness, negligence)

2) responsibility - Even if the state proves that D had a guilty state of mind, D would not be held legally responsible if D is incapable of conforming to requisite state of mind (defense - justification or excuse) (e.g., self-defense, insanity, duress)

2. Exceptions □ where can be guilty w/o mens rea

a. Strict Liability-some states hold D responsible even when D acts w/o mens rea
→*Model Penal Code* does not recognize strict liability- requires mens rea.

b. *Rule: Court upholds strict liability (no mens rea requirement) where harm is done to the public welfare.*

1) *Rule: In the prohibition or punishment of particular acts, the State may in the maintenance of a public policy provide that person who does prohibited act does so at his peril and will not be allowed to plead good faith or ignorance as defense.*

United States v. Balint (p. 199)

Facts: D charged with unlawfully selling opium. D appealed on grounds that he did not know that opium was prohibited under the Narcotics Act - didn't have mens rea/intent of selling drugs.

Issue: Whether the statute requires proof of a mental element?

Holding: Supreme Court upheld conviction even tho there was not mens rea requirement for the crime b/c there are certain acts so inherently wrong that do not need statutory authorization to punish. Great deference to police power.

2) *Rule: One in position of responsibility may be liable for strict liability offense w/o conscious knowledge of wrongdoing.*

United States v. Dotterweich (p. 203)

Facts: D president of company, convicted of shipping adulterated and misbranded drugs.

Holding: In the interest of the larger good, the burden is placed on those who have the opportunity of informing themselves of conditions to protect consumers, not on innocent consumers/public who have no way of preventing harm from occurring.

-?punishment?

- Incarceration - Deterrence - incentive to set up an internal system of preventive steps & take other additional levels of care.

-Fines

3) *Legislature can impose strict liability for public safety or regulatory offenses.*

People v. Dillard (p. 211) - D charged with misdemeanor of carrying loaded firearm in public; D argued he didn't know rifle was loaded.

Holding: "Public safety" or "regulatory" offense for which legislature could impose strict liability b/c not knowing firearm was loaded posed greater danger to public.

-[precautions? - additional duty of care on people who have guns to check to see whether it is loaded]

3. Levels of Culpability

D is punished depending on different levels of culpability or level of mens rea at time he/she acted.

a. **Model Penal Code** □ **2.02** - General Requirements of Culpability (p.226)

1) Minimum Requirement of Culpability - Person is not guilty of offense unless he acted purposely, knowingly, recklessly or negligently, with respect to each material element of the offense.

2) Kinds of Culpability Defined:

highest level

a) **Purposeful behavior** - intends to cause harm and hopes/believes that the result will occur.

b) **Knowing** - aware of harm and *practically certain* that act will cause a particular result

c) **Recklessly** - conscious disregard of a substantial or unjustifiable risk that a harm will occur.

-risk must be that its disregard involves gross deviation from standard of conduct that a *law-abiding person* would observe in the same situation.

lowest level

d) **Negligently** - commit act where unaware of resulting harm, but should have known that harm would have occurred

-*Reasonable person standard* - gross deviation from the standard of care that a reasonable man would have observed in the same situation.

Note: Elements of a crime: (p. 226, fn15)

1. elements of an offense

vs. 2. material element of an offense - essential to essence of crime (ie, act, mens rea, justification for act/mens rea.)

→each material elements of a crime must be proven *beyond a reasonable doubt*

b. **Common law: General vs. Specific Intent**

-General Intent - (interpretations)

1) blameworthiness or responsibility

or 2) knowingly or purposefully committed some act that would naturally or probably cause a socially harmful result.

or 3) either does not require a secondary crime or does not require an intention to commit a secondary crime

-Specific Intent - (interpretations)

1) mens rea requirement of any crime

2) requires a further purpose to achieve the socially harmful result (or perhaps knowledge that it would ensue). (ie, bigamy - knowingly marrying while also knowing one is already married.)

3) requires a secondary crime - if a crime involved committing one offense with the intent of committing another as part of the same conduct.

Regina v. Faulkner (p.221)

Facts: D, trying to steal rum from ship, accidentally started fire, destroyed ship. D convicted of theft and arson.

Rule: One is criminally liable for a crime collateral to intended crime, only when it is a natural and probable consequence of intended crime.

D could not foresee; was not natural & probable cause of original felony.

-[D may be convicted if he acted recklessly, under Model Penal Code.]

3. Mens Rea and Mistake

MPC § 2.04(2)

Mistake of Fact: *Mistake of Fact can negate mens rea & D is not guilty*

Rules:

1. *Mistake of fact does not serve as a complete defense, where would be found guilty of another act had the situation been as he supposed.*
2. *Mistake of fact shall reduce grade & degree of offense to what had been as he had supposed.*

Rape case examples: →D may not be guilty of statutory rape, but guilty of fornication or contribution to the delinquency of a minor

- ex. Regina v. Prince (p. 238) - D convicted of statutory rape, took 14 yr old away, thought she was 18. Statute prosecutes for unlawfully taking girls younger than 16 yrs. P argues that he did not have the culpable state of mind to be charged with the crime.
Holding: While D might not be held guilty for statutory rape for mistake of fact about girl's age, D is guilty of fornication. [Where the statute does not make mens rea an element of the crime, knowledge of pertinent facts is irrelevant.]
- a. Statute was enacted to protect women, & whoever relies on consent of young girl, if she is below statutory age, does so at his own peril.
 - b. (J. Brett) - Punish D for what he intended to do -- might not be guilty of statutory rape, but guilty of fornication -- If D believed he committed a lesser crime than what he actually committed, he would be held guilty of that lesser offense. (ie, she said she was 18; he thought she was 16; she is really 14 - if statute is more severe for taking girl if she is 14, than if she is 16, charge him with 16.)
- ex. State v. Guest (p. 245) - D charged with statutory rape (having sex with someone underage, regardless of whether they consent or force/violence). D wants jury to be instructed w/defense of D having honestly and reasonably believed mistake of fact in girl's age.
Holding: An honest and reasonable mistake of fact as to victim's age is a defense to a charge of statutory rape. [Alaska's exception to traditional rule]
D was not convicted b/c statutory rape is not a strict liability crime (public policy concern). Therefore, requires criminal intent.
→D may still be criminally liable for contribution to the *delinquency of a minor*. Mistake of fact serves to reduce the offense to that which the offender would have been guilty of had he not been mistaken (cites to Model Penal Code).

Regina v. Morgan (p. 253) - D invited 3 guys to have sex with wife. D told guys that wife might struggle and act like she's not consenting.

Rule: Standard of reasonableness- D may not be convicted if he unreasonably but honestly believed she consented.

-Court confirmed conviction b/c even if the belief is totally unreasonable, no reasonable jury believed she consented. [reasonableness is left to jury]

People v. Ryan (p. 257) - Statute: felony to "knowingly" and unlawfully possess 625mg of a hallucinogen. D convicted of felony drug possession, even tho he did not know the amount of drugs he had.

Issue: Whether culpability/intent/mens rea applies to the weight of drugs?

Holding: Laws against drug possession incl. mens rea element for drug weight.

→Mistake of fact may negate mens rea requirement.

-if a single mens rea is set forth, it presumptively applies to all elements of offense, unless legislative intent is contrary.

-statutory language contained "knowingly" - applied to weight element, as well as possession element; legislative intent - no strict liability, to avoid overpenalizing.

But, a reasonable jury may not believe the defendant & still be guilty.

4. "Mistake of Law"

Rule: "Ignorance of the Law is No Excuse"

Issue: Does D have the requisite mens rea?

a. **Model Penal Code § 2.02(9)** (p. 265)

[Knowledge, recklessness, negligence as to whether conduct constitutes an offense is not an element of such offense, unless the statute so provides.]

[If the state is silent about whether D knew that his conduct was a crime, then assume that ignorance of the law is no excuse.]

ex. United States v. Baker (p. 263) - D convicted of trafficking counterfeit goods. D claimed he did not know that selling counterfeits was punishable as a crime.

Holding: Ignorance of the law is no excuse.

-D had required mental state b/c he had of knowledge that he was dealing in counterfeiting goods. D cannot avoid prosecution by claiming that he was unaware such conduct was proscribed by law.

b. **Defense** - *ignorance of the law is an excuse, if relied on an official statement of the law that is later found invalid.*

Model Penal Code § 2.04(3)(b) - Defense

defense if he acts in *reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous*, contained in (i) a statute or other enactment; (ii) a judicial decision, opinion or judgment; (iii) an administrative protective order or grant of permission; or (iv) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense.

vs. Hopkins v. State (p. 266) - D convicted of illegally putting up signs intended to aid in soliciting or performing marriages. D claimed that State's attorney told him that he could put up signs.

Holding: Mistake of law is no excuse for violating the law & cannot rely on advice of state's attorney as a defense. [Responsible for knowing the law.]

c. **Mistake of Non-Governing Law May Negate the Mental Element**

→ *Mistake of Law vs. Mistake of Fact?*

People v. Bray (p.268) - D was previously convicted of being accessory to crime, not certain whether conviction was a felony. D later charged with possession of a concealable firearm. D argued that he did not know whether he was convicted of a felony or a misdemeanor.

Holding: Lack of knowledge of facts necessary for criminal intent is a valid defense.

-Element of the offense is that he was a felon. D did not know he was a felon.

-Mistake of law or mistake of fact:

1. mistake of law - if he did not know he was convicted of felony/ misdemeanor.
2. Mistake of fact: D lacks the mental element required for the crime.

Regina v. Smith (p.272) - D put up wiring and roofing material, law says "fixtures" belonged to LL, D damaged property, claiming that honestly believed it was his own.

Holding: Court dismissed charges

Did his state of mind make him guilty of some crime? Did he know he was doing something illegal?

d. Mistake of Governing Law May Be an Excuse from Responsibility

Commonwealth v. Twitchell (p. 283)

Facts: Christian Scientist parents relied on publication of misleading opinion on Attorney General & did not seek treatment for child. Parents charged with involuntary manslaughter.

Holding: Relied on Official statement: *Mistake of law can be a defense when a government official charged with enforcing the law has issued mistaken or misleading ruling about law upon which D relied. [MPC 2.04(3)(b)]*

-AG opinion was unclear as to whether CS would be charged with manslaughter (clear that would not be charged with neglect).

-Should we take into account their religious beliefs in deciding whether these parents are guilty? Their mens rea was that God was going to save their child. (low level of mens rea for manslaughter)

d. Could Mistake of Governing Law Negate the Mental Element After All?

Cheek v. United States (p. 288) - D convicted of tax evasion. D claimed he was not guilty of willful tax evasion, b/c he belief income tax was unconstitutional and that he did not fall within IRS code.

Holding: A subjective misunderstanding about the law is a defense to willful evasion of taxes.

- ? -Ct erred in instructing jury that D had to have an objectively good faith belief that his wages were not income. Ct. should not have characterized D's beliefs as unreasonable; a judgement left to jury.

5. Capacity for Mens Rea

-ability in mind to form mens rea

Rule: State must always prove intent

mental illness

People v. Wetmore (p. 303) - After release from psych hospital, D went into another's apt., believing it was his own. D was convicted of burglary. D argues that due to his mental illness, he lacked requisite mens rea.

Holding: D had the right to present evidence that the state did not prove intent, b/c D did not have the capacity to formulate the requisite mens rea.

-State has burden of proving every element of burglary - 1 element is specific intent to commit a crime.

-Therefore, D cannot be denied opportunity to show evidence of insanity, b/c it negates specific intent (mens rea) that he entered home with the specific intent of committing a felony.

-no distinction between "did not" vs. "could not" form intent to commit a felony is strong evidence that there was no intent.

Intoxication

Model Penal Code 2.08 - Intoxication

1) [Voluntary] intoxication of the actor is not a defense unless it negatives an element of the offense.

2) When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

→reckless behavior is known consequence of voluntary intoxication, therefore not a defense.

State v. Cameron (p.307) D convicted of 2nd degree assault, want to invoke voluntary intoxication as a defense to charge of assault.

*Rule: Voluntary intoxication is admissible to disprove that D had the requisite mens rea, but the level of intoxication must be so high that D is rendered incapable of forming the requisite intent for the element of the offense (ie, purposeful & knowing conduct).

People v. Guillet (p. 313) - D charged with assault with intent to rape. D presented intoxication defense - could not form mens rea for specific intent to rape b/c he was intoxicated.

Holding: court held that voluntary drunkenness is generally not a defense to a crime, but evidence of intoxication may negate required intent and should be a question of fact for the jury to decide.

Montana v. Egelhoff (US 1996) - D charged with 2 counts of 1st degree murder. D argued that he was so intoxicated at time, that he was physically incapable of murder & could not remember events (affected physical & mental ability to commit murder).

Holding: Due Process Clause does not require presentation of all evidence re: intoxication. D should be held responsible for consequences.

C. Causation of Harm

1. Strategies for limiting causation:

- a. *But for*
- b. *Foreseeability*
- c. *Intervening events*
- d. *Duties*

2. "**But-For**" Causation

Regina v. Martin Dyos (p. 320) - during gang fight D caused 1 of 2 injuries to deceased. No evidence as to which injury caused death.

Issue: Would the deceased have been alive, but for his injury caused by D?

Rule: D cannot be held to cause of death of another if death would, or could have occurred without it.

Holding: State failed to prove causation b/c failed to exclude possibility that death was not caused by another injury.

3. **Foreseeability (Proximate Cause)*** - connection between mental state & result

Proximate Cause - a cause that produces a result by a natural and continuous sequence.

Commonwealth v. Rhoades (p. 333) - D set fire to building, where firefighter died. D was convicted of homicide.

Holding: D is criminally liable for death only if his actions was the proximate cause of death, if his act was the act that set into motion the factor that caused the death.

-In this case, cause of death was cold weather, stress & smoke inhalation

-On remand, jury may find that D is guilty, b/c it is reasonably foreseeable that a firefighter will show up to fight the fire.

Connection between mental state & result

Model Penal Code 2.03 - Causal Relationship Between Conduct and Result (p. 336)

a. when "*purposely or knowingly*" is an element of the crime, causation is not established, unless the actual result is the same injury or harm or if a different person is injured = transferred intent.

b. when "*recklessly or negligently*" is an element of the crime (if D is aware or should have been aware), causation is not established, unless the actual result differs from the probable result only in a different person/property or if actual result involves the same kind of injury or harm.

5. *Intervening Causes*

Commonwealth v. Root (p. 341) - while D and victim V were drag-racing, V drove into oncoming traffic while trying to pass D. D charged with involuntary manslaughter.

Ruling: D's unlawful and reckless conduct must be a sufficiently direct cause of death to be charged with homicide.

Holding: D's unlawful and reckless conduct was not a sufficiently direct cause of death to be charged with homicide.

-An element of involuntary manslaughter is that unlawful or reckless conduct charged to D was direct cause of death.

-Due to sentencing of criminal law, tort law standard is too harsh to be just and should not be applied in criminal law.

Dissent: - D helped create the event & victim's response was normal & reasonably foreseeable under circumstances.

United States v. Hamilton (p. 531) - D severely beat up V, V in hospital had convulsion & pulled out life support tubes, died of asphyxiation. D charged w/ 2d degree murder.

Rule: (common law) If the harm by D was the act or motion that led to the chain of causation that led to the death, D is guilty of homicide

-Reasonably foreseeable that the patient may have died in the hospital; depends on what the original act was (stomping on someone's head vs. minor injury)

-the fact that V attributed to his own death is immaterial - no evidence V would have lived anyway.

Victim Aggravation cases - Argument that V contributed to death, by refusing treatment, where otherwise V would have lived. Should we take the victim as we find him? (as in torts law)

→No b/c there are levels of crime and we charge them accordingly depending on mens rea.

Rule: If D inflicts a serious injury on victim, and V refuses medical treatment however unreasonably and dies from injury, D will still be held responsible.

b/c stems from original act; certainty of punishment; should hold perpetrator responsible, not victim's act.

Stephenson v. State (p. 361) - D abducted, assaulted, and attempted to rape V. V later poisoned herself & died. D convicted of 2nd degree murder. D argues that V's taking poison was intervening act that broke causal connection and her act was the proximate act that led to her death. (break in chain of causation)

Rule: D is responsible for all natural consequences resulting from single criminal act.

Holding: The act of rape rendered the victim irresponsible, b/c put victim in such a mental & physical state that the original act caused the ultimate harm on the victim. -She was under D's control at all time & could not escape.

People v. Kevorkian (p. 367) - D charged w/murder for assisting suicide.

Rule: Providing means for another's suicide is not murder.

Rule: If person recklessly or negligently provides means for suicide, he can be guilty of involuntary manslaughter.

Holding: Proper charge is assisted suicide. Recent distinction is between active participation in suicide and passive involvement (providing the means) in events leading up to suicide.

Dissent: policy concerns - the victims are not in the mental or physical condition to make these decisions. A person who participates in death of another may be charged with murder, regardless of consent of deceased.

6. Causation by Omission: Duties

People v. Beardsley (p. 372) - D had an affair w/V, V overdosed on morphine. D convicted of manslaughter.

Holding: Person who fails to act to save life of someone to whom he does not stand in legal relation of protector is not liable for manslaughter.

Rule: Omission, where there was a legal duty to act (duty must be imposed by statute, contract, special statute relationship, or undertaking care of person) must be immediate and direct cause of death.:

"Year and a Day Rule": D cannot be convicted if V did not die until a year and a day following D's act.

IV. Rape

A. Common Law Definition - 4 Elements:

1. sexual intercourse
2. by force or threat/fear of force
3. without consent
4. against the will*

*evidence of force may be used to prove 3 & 4 (redundant b/c 3 & 4 both concern behavior of the victim & victim's state of mind)

1. *Rule: Absence of resistance does not necessarily indicate consent.*

People v. Barnes (p. 1110) - Marsha went to D's house for marijuana. Marsha complied to sex for fear of safety. D argued that she consented. Ct App. rev'd conviction of rape.

Holding: CA upheld conviction, b/c amended statute does not require evidence of resistance. Eliminate resistance requirement b/c people react differently in different situations & far more women are injured when attempt to resist. →Require nonconsent & force.

-Evidence of threat of force - her testimony of facts or factors that caused her to fear the threat of bodily harm.

-resistance is clear evidence of force, but absence is not evidence of consent.
→Rape defined as sexual intercourse by means of force or fear of immediate and unlawful bodily injury to oneself and without consent of the victim.

2. Rule: Consent can be withdrawn at any time prior to penetration.

State v. Alston (p. 1114) - V & D had prior consensual sexual relationship. He used to strike her & she left him. D later raped V.

Holding: State failed to establish D's used of threat of force, b/c V's fear was based on a prior experience and not a specific threat at that moment by D's current conduct.

-general fear vs. specific fear: general fear - constant fear that she would be harmed for any reason.

3. Rule: Submission out of fear is not consent

Standard

Rule: In order to support conviction for rape in instances where V does not resist, prosecution must show that V held reasonable fear of apprehension that she would be subjected to harm if she did not submit & fear must be reasonably grounded. [reasonable person standard - objective standard - question of fact for the jury]

State v. Rusk (p. 115) - State appealed from decision reversing D's rape conviction on grounds of insufficient evidence.

Holding: Court held that looking at these facts, a reasonable jury could decide that her fear, under these circumstances was reasonable.

1. lack of consent - submission is not consent
2. force - 1) V resisted and resistance was overcome by force
or 2) V was prevented from resisting by threats to her safety.

Dissent: When essential element of crime (force) is absent, cannot convict.

-no physical force & no weapon & no verbal threats to do her bodily harm.

-D's conduct is consistent with "ordinary seduction of a female acquaintance.

→Current rape law: 1) force or resistance and 2) consent. Subject to a fact-specific inquiry. Past presumption that raped women had no credibility; every raped woman lied.

B. Model Penal Code § 213.1 - Rape (p. 1204)

force

- (1) Rape. A male who has sexual intercourse w/female not his wife is guilty of rape if:
 - (a) he compels her to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or
 - (b) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or
 - (c) the female is unconscious; or
 - (d) the female is less than 10 years old.

Rape is a felony in the 1st degree if D inflicts serious bodily injury upon anyone or the victim was not a voluntary companion and had not previously submitted to sexual liberties [not a date rape]; otherwise, rape is a felony in the 2nd degree.

(2) Gross Sexual Imposition - 3rd degree.....

Interpretation:

1. Grade offense of rape to different levels, depending on additional violence/perjury that require more or less punishment

ie, stranger rape is more serious than acquaintance rape

2. Distinctions:

section (1): a. gender distinction

- b. discount marital relations
 - c. public policy - ie, (d) no one under 10 yrs. can consent to sex.
 - d. "force" - can involve more than an imminent touching.
- section (2):
- a. "upon anyone"
 - b. Rape that does not involve serious bodily injury or date rape should not be punished as severely as rape by a stranger = different levels of seriousness of punishment for rape.
- ?Should there be different levels of punishment for stranger rape or acquaintance?*
- No b/c shifting the focus on the women's actions rather than D's action/ conduct/mens rea; crime of power & violence, not of sex.
- all horrible, but one involves more *harm that is caused* and *the act* that is done (result & act) - so inexplicable when it is a stranger; more traumatic when raped by a stranger.
 - rather than classify as stranger vs. acquaintance rape, grade by intent or degree of force used.

C. Defendant's Mens Rea:

Reasonable person standard: Whether D knew or should have known that V had not consented?

1. Rule: D may not be convicted of rape if he unreasonably but honestly believed she consented.

People v. Marberry (p. 1128) - D argued that woman had consented to intercourse and that it was an honest mistake of fact. Attorney General argued that mistake of fact should not be considered a defense on grounds of *public policy*, b/c would encourage victims to feel that they have to fight back.

Holding: Honest Mistake of Fact. Trial court erred in not giving instructions to jury that under these circumstances it was reasonable for D to believe that the victim consented.

-If instructed on retrial, jury could have found that was nonconsensual sex.

1. Professor Dripp - Proposed replacing crime of rape with variety of new offenses that describes rape as a theft crime & crime of violence.

-would eliminate consent requirement & replace with notion of theft of victim's bodily integrity.

2 categories:

1) *sexually motivated assault* - purposely or knowingly putting the victim in fear of violence for the purpose of causing sexual submission.

2) *sexual appropriation* - defendant completes a sexual act over the verbal protests of the victim without purposely or knowingly putting her in fear of physical injury.

Discussion:

-grades sexual assault more strictly based on degree of violence.

-altho there might not be outright violence, does not differentiate if there is internal harm.

-unfair characterizations of women - ignores previous friendship, economic support, etc. - women is consenting but should take into consideration that woman is getting something in exchange

D. Focus on the Victim: Controversy and Reform

E. Marital Rape, Statutory Rape, and the Contested Purposes of Rape Law

Marital Rape Rule: A man may be convicted of raping his wife.

People v. Liberta (p. 1143) - D raped estranged wife in front of 2yr-old son. D contended he could not be prosecuted for raping someone to whom he is legally married. Marital exemption - if a married husband is separated from his wife, he is not considered married under this exception.

Holding: Marital exemption and gender exemption is unconstitutional under Equal Protection clause.

1. strike Marital exemption (married men cannot be convicted of rape) - b/c married women have the same rights to protect their bodies as unmarried.

-Marital exemption is intended to promote reconciliation, but once rape has occurred, cannot promote reconciliation.

2. Strike gender exception (only men can be convicted of rape)

-gender exception should be upheld for public policy reasons:

purpose the statute is to protect women from unwanted, forcible, violent sexual intrusion. But, if strike statute, no rape statute to protect anyone.

F. *Rape Shield Laws* - Laws that prohibit the defense from bringing out V's prior sexual history.

-*exception* - unless relevant to bring out prior sexual history (ie, prove identity of rapist, when D believes that misidentified - matching semen)

-In the past, victims were presumed to be lying & allowed for defense attorneys to investigate prior sexual history to show that this woman is inclined to consent.

G. *Rape Crisis Center Hand-Out:*

1. Even when a rape is reported, the prosecutor may legitimately take into account the likelihood of conviction in pursuing a criminal rape case.

2. Many women choose not to put themselves through this process b/c they will be questioned.

3. Resistance to attack increases injuries, but decreases the possibility of rape.

4. Marital exemption still exists in many states.

V. **Homicide Offenses**

- A. 2 categories of homicide:
 - 1. **manslaughter** - killing without malice
 - 2. **murder** - killing with malice

B. **Malice** - intention to cause, or willingness to undertake a serious risk of causing death of another, when that intent or willingness is based on immoral or unworthy aim.

C. Most states grade homicide according to the seriousness of the crime according to legislature:

- 1. Involuntary Manslaughter (unintentional killing) w/o malice
- 2. Voluntary Manslaughter (intentional/unintentional killing) w/o malice
- 3. 2nd Degree Murder (intentional killing) w/ malice
- 4. 1st Degree Murder
 - premeditated (intentional killing w/ malice)
 - or felony murder (unintentional killing w/malice)
- 5. Capital Murder (intentional killing) w/ malice

D. *Levels of mens rea required:*

- 1. involuntary manslaughter negligent or reckless; wanton
- 2. voluntary manslaughter
- 3. 2nd degree murder intentional - purposeful & knowing
- 4. 1st degree murder premeditated - purposeful & knowing

- felony murder - reckless disregard for the value of human life
purposeful & knowing
5. Capital Murder

E. Involuntary Manslaughter

1. Definition - unintentional killing committed without malice in a grossly reckless or negligent manner.

2. **Reasonable person standard - *Whether the Defendant exercised the level of due care that a man of reasonable prudence would exercise under similar circumstances?***

classic *Rule: Wanton or reckless conduct is intentional conduct, by way of either affirmative act or omission of legal duty to act, where the conduct involves a high degree of likelihood that substantial harm will result to another.*

Commonwealth v. Welansky (p. 463) - Nightclub caught on fire, emergency exits were blocked intentionally for aesthetic reasons. D (owner) convicted of manslaughter.

Holding: To be held guilty of manslaughter, State had to prove D had caused death by wanton or reckless disregard for safety of patrons. Court held that D had a *legal duty* of care to patrons, invited to premises which D controls, to maintain a safe premise and D omitted this duty.

-Although D did not intend to harm his patrons, D intentionally failed to maintain a safe environment (intentional omission) & therefore was a wanton and reckless disregard for the health and safety of his patrons.

contemporary ex. State v. Williams (Washington) (p. 472) - Baby had toothache, gangrene, malnutrition, pneumonia, D (parents) failed to obtain treatment, baby died. D convicted of involuntary manslaughter. Ds argued that standard should consider their own reasonableness where they thought that if they took their child to doctor, they thought that social services would take the child from them.

Rule: Where failure of person to act while under duty to do so is direct and proximate cause of death of another, that person may be convicted of involuntary manslaughter, even though his conduct was no more than ordinary negligence.

Holding: Court affirmed conviction under state statute that required only ordinary negligence. Parents had a duty to obtain medical care for the baby.

-Applied objective standard:

ordinary negligence - failure to exercise ordinary caution/due care.

ordinary caution - kind of caution that man of reasonable prudence would exercise under similar circumstances.

-Objective standard does not consider D's subjective knowledge (cultural and educational background) - D was illiterate, ignorant of principles of health care, large % of Native American parents lose children to authorities, etc.

→State is *modern departure* from common-law rule of requiring gross negligence.

3. Manslaughter?

a. Hazing - act done to V, or omission of some duty to V

-possible argument - reasonable person would not expect V to die in less than an hour's exercise. Others corp members do similar activities.

-some states have laws against hazing b/c recognize influence of peer pressure, but consent is not a legal defense.

b. Vehicular Homicide - not manslaughter

-policy reasons for establishing less severe & separate category to increase likelihood that will be punished & deter broad class.

-But, drunk drivers have been convicted of murder at appellate level.

c. Seat-Belt Laws -

People v. Hansen - D failed to make sure V wore a seat belt.

Court upheld conviction of gross vehicular manslaughter - killing was proximate result of commission of unlawful act with gross negligence.

vs. Sylvia - father did not make sure that son wore seat belt, son was killed. D charged with manslaughter, b/c prosecution wanted to make an example for deterrence b/c parents are responsible for the safety of their children. Charges were eventually dropped b/c argue that losing child is enough deterrence.

F. Voluntary Manslaughter

1. Definition - intentional killing without malice:

killing in the heat of passion after adequate provocation.

a. adequate provocation -

req.: 1) whether the provocation would have been sufficient to cause a reasonable person to lose his self-control?

2) D must have acted out of provocation.

b. heat of passion = no cooling off period

most common 2. *Imperfect self-defense* - killing in unreasonable & mistaken belief that the killing is necessary in self-defense. [D will not be found guilty of voluntary manslaughter, where D uses excessive force in reasonable but mistaken belief that he is in imminent fear of death or threat of harm. [fear must be reasonable under the circumstances]

Rule: When D kills in the heat of passion after adequate provocation, he is guilty of voluntary manslaughter.

People v. Walker (p. 416) - D cut V's throat, after V started fight. D convicted of murder.

Holding: D found guilty of voluntary manslaughter, not murder.

1. provocation - The court found that there was adequate provocation, where V clearly provoked D, and D killed in the heat of passion - *no cooling off period*.

-lack of deliberation between provocation and killing.

-if D had period of time to cool down, then killing would have been intentional & w/ forethought = murder.

2. Fact-driven determination for the jury as to whether he was really afraid or was really acting maliciously.

3. *Defining "Adequate Provocation" for the Reasonable Man*

Historical perspective Rowland v. State (p. 423) - D killed wife immediately after catching her in act of adultery. D convicted of murder.

Holding: If a man catches wife in adultery, *adultery can be considered adequate provocation for a reasonable man* and D will be held guilty of voluntary manslaughter.

-Historically (before 1960s) - adultery was totally justifiable homicide, b/c wife was seen as a property of the husband. Manslaughter began as a reaction to male violence - thereby promoting male aggression.

-*Note:* statistically, different reasons for killing spouses:

men kill wives for infidelity

women kill in self-defense b/c result of being in battered relationship.

Modern Context People v. Berry (p. 433) - love triangle between D, Rachel & Yako. She would tease him, tell him she was going to have sex with him & then decline. D convicted of murder. D appealed on grounds that crime of passion.

Holding: D found guilty of voluntary provocation b/c evidence shows that D killed V in heat of passion induced by prolonged period of taunting & provocation.

-Objective standard - question of fact for jury to determine whether facts support that V's conduct would have aroused passions of ordinary, reasonable man.

Model Penal Code commentary re: common law on provocation (p. 419)

→2 requirements: 1) objective in character, and 2) subjective in nature.

-*objective* - provocation must be adequate as measure by a reasonable person.

-words are not adequately sufficient unless informational (ie, describing a scenario that would provide adequate provocation)

-*subjective* - defendant must have acted out of provocation

-even if a reasonable person would have been provoked, defendant must have acted out of provocation.

4. Cultural Relativism and Reasonable Person Standard

Rule: Evidence D's cultural background is relevant on issue of mental state required for murder.

People v. Wu (p. 450) - D killed son & convicted of 2nd degree murder.

Holding: Court reversed murder conviction b/c jury should have been given instructions on evidence of 1) effect her cultural background might have had on her state of mind when she killed her son & 2) defense of unconsciousness.

1. mental states at issue are 1) premeditation & deliberation; 2) malice aforethought; and 3) specific intent to kill.

2. All relevant evidence is admissible

3. Evidence of cultural background is relevant to issue of premeditation & deliberation and malice. D's background would have evidenced that mental state or heat of passion at time of murder. D's background would have shown that cultural act was action of a loving murder, & eliminated mental state of malice.

4. acting while in unconscious state negates mental state required for crimes.

Should culture be factored in reasonable person standard?

1. Yes, not necessarily a change in analysis/standard b/c merely allowing evidence to be considered to the discretion of the jury. Cultural background is evidence as to her mens rea, whether she killed her son out of malice.

2. No, Danger of cultural defenses is that they perpetuate cultural stereotypes.
(Leti Volpp)

G. Second Degree Murder

1. Definition - an intentional killing w/ malice (malice aforethought)
or an unintentional killing w/ extreme recklessness

2. Intentional Murder (2nd) *Intend to do serious bodily injury, but not intent to kill.*

Rule: Cannot presume an element of the crime (ie, intent to kill).

Francis v. Franklin (p. 399) - Intent to Kill - D escapes from prison, claims to accidentally shoot V through door, D convicted of murder. D appeals on grounds that jury instructions are unconstitutional b/c jury instructions presumes that D intended to kill.

Holding: Jury instructions, which directed jury to presume an element of the defense, was unconstitutional.

-Instructions violated due process clause, b/c shifted the burden of proof onto the defendant to disprove intent to kill. Government has burden to prove intent.

-If D was retried w/ change in jury instructions, jury may still legally infer intent from D's actions: running around w/ a gun, threatening people; pointing gun at door, 2 shots.

Model Penal Code 210.2 - Murder (p. 1198)

(1) Criminal homicide constitutes murder when:

(a) it is committed purposely or knowingly; or

(b) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life. Such recklessness and indifference are presumed if actor is engaged or is an accomplice in commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape, or deviate sexual intercourse by force or threat of force, arson, burglary, kidnapping, or felonious escape [felony murder]

(2) Murder is a felony of the first degree [punishable by imprisonment or capital punishment]

*MPC has only one degree of murder

MPC Commentary on Purposeful or Knowing Homicide (p. 404-405)

a. *purposeful & knowing* refers to subjective state of mind that can be inferred from the facts of the case. Therefore, cannot presume that a person intends the natural & probable consequences of his acts b/c depends upon chance.

3. Reckless Murder - *D did not intend to kill but acted in reckless indifference to the value of human life.*

a. *Rule: An act done w/ abandoned and malignant heart causing death may be murder, even if there was no intent to kill.*

Rule: Question to jury to determine whether the facts indicate extreme recklessness.

Mayes v. The People (p. 484) - drunk D threw beer at wife, ignited oil lamp & burden wife. D found guilty of murder. D appealed jury instructions, which included "unless all circumstances show that the killing was done by an abandoned and malignant heart."

Holding: Instructions were appropriate b/c distinguishes murder from manslaughter. Killing involved extreme recklessness.

-Murder requires malice, but malice does not require intent to kill if there is extreme recklessness.

b. **Model Penal Code 210.2** on *reckless homicide*

Criminal homicide constitutes murder when:

(b) *it is committed recklessly under circumstances manifesting extreme indifference to the value of human life....*

-Model Penal code on reckless homicide is consistent with common law. (p.488)

1. distinguishes ordinary vs. extreme recklessness

2. Degree of recklessness is a question of fact for the jury to decide.

→*Whether the recklessness rises to the level of extreme indifference and conscious disregard to the value of human life?*

-extreme recklessness reflects conduct evidencing a "depraved heart regardless of human life"

* Commonwealth v. Malone - (p. 489) Russian Roulette case - 3rd shot killed friend. D claimed that he did not intend to kill friend.

Holding: Court upholds 2nd degree murder conviction b/c intentional act done in reckless and wanton disregard of the consequences. *Such reckless disregard for human life was the equivalent of a specific intent to kill & proves state of mind for malice.*

People v. Protopappas - dentist killed 3 patients w/overdose of anesthesia.

Court convicted of 2nd degree murder b/c gross deviation of medical practice.

Berry v. Superior Court - D's pet pit bull mauled neighbor's young son. D kept pit bull tethered & inside fence. D convicted of 2nd degree murder. Later found D planted marijuana.

-D's keeping illegal dog to guard marijuana shows extreme indifference to human life and awareness of risk of conduct and conduct as contrary to law.

-additional illegal activity seemed to influence this court.

*People v. Watson - (p. 496) Vehicular Murder - drunk driver caused fatal accident.

Rule: *Driving in an extremely reckless way is evidence of "implied malice."*

Holding: CA supreme court held that a drunk driver who causes a fatal car accident can be charged with 2nd degree murder.

-one who kills on impulse may be more dangerous than one who premeditates.

-extreme recklessness b/c extremely good chance that he was going to hurt

someone when he decided to drive when he was drunk. Prior to accident, D got into near accident.

Dissent - not a murder case.

1. must show unity of act and intent

-Court presumed intent, that by drinking he intended to hurt someone.

But death or injury is not the probable result of driving while intoxicated.

Therefore, no a conscious disregard for life

2. Question as to when *intent* should be measured.

-intent at the time he is in the bar, before he takes a drink.

-intent when he decides to drive his car.

Note: Prior to 1981, there was little knowledge of dangers of drunk driving.

Changes were due to the efforts by groups such as Mothers Against Drunk Driving.

H. First Degree Murder

1. *Premeditated Murder* - *intentionally killing with malice aforethought & premeditation*
Premeditation - turning it over in the mind, deliberating, forming purpose/intent to kill.

Premeditated - plan (suggests long-term scheme) or contemplate/deliberate/turning over idea in the mind (even if happens over a few moments/seconds)

United States v. Watson (p. 405) - D convicted of murder, even tho no one witnessed the moments prior to D firing gun at police officer.

Rule: *Premeditation may occur even though occurs over a short period of time.*

Holding: Court affirmed conviction b/c D had time to "turn in over" in his mind (premeditate) when he stood over the officer w/gun.

-Question left to the jury - evidence of premeditation b/c disarmed police officer & officer no longer posed a threat.

-stood over police officer & shot V while 36 inches away.

-officer said twice "it wasn't not worth it."

-*heat of passion vs. premeditated*: was there a period of deliberation?

[Similar to case re: cutting man's throat in heat of passion (People v. Walker)]

2. Felony Murder

- a. *Definition* - death caused in the course of committing an enumerated felony by a person, and the person who did the killing may not be the defendant charged.
- b. Commonly listed enumerated felonies - arson, rape, robbery, burglary, deviant sexual intercourse, and kidnapping. [includes accidental killing]
- c. *Most* states consider felony murder as 1st degree murder
- d. Purpose: Deterrence -
 - 1) deter felons from killing negligently or accidentally by holding them strictly responsible for killing [risk murder charge].
 - 2) deters D from undertaking inherently dangerous felonies in which killing is risk reasonably to be foreseen.→encouraging felons to commit their felonies safely without weapons, etc. for the *welfare of society*.
- e. Mens rea:
 - 1) mens rea for committing the felony is applied to homicide.
 - 2) strict liability

strict liability

e. *Rule: Felon is held strictly liable for all killings committed by him and accomplices in the course of a felony*

People v. Stamp (p.498) - V had heart attack during the course of a robbery. D convicted of robbery and murder on felony-murder theory. D argues that felony murder should not be applied, because death was not foreseeable & wanted instructions re: proximate cause of death.

Holding: D found guilty. where criminal causation is established by creation of fright, fear, or terror in homicide victim, the felon "takes his victim as he finds him" (thin-skull rule) Appellate court found that error was harmless - the result would have been the same even with the instructions.

f. *The Reach of the Felony-Murder Rule*

1) *Immediate Flight*

People v. Gladman (p. 515) - D robbed deli, shot officer 15 minutes later. D convicted of 1st degree murder.

Rule: Immediate flight - D may be found guilty of felony murder, if killing occurs during immediate flight from scene of the crime, depending on a number of factors (questions of fact for the jury):

1. location (distance of D from scene of felony)
2. time passed
3. whether D was in possession of the fruits of the crime
4. whether police or others were still in pursuit of felon
5. whether they had reached a place of safety.

→No one factor is determinative

2) Innocent party being killed by another innocent party →D is liable
People v. Hickman (p. 520) - police officer shot another officer while chasing burglars (D).

Rule: Anyone who contributes to the death of an innocent person is guilty of felony murder, even if the killing is not committed by the felon.

causal relationship

Holding: D can still be charged with felony murder if the killing was a natural and probable consequence of the felony. D set in motion the course of events by committing the felony and therefore assumes the risk or possibility in resisting arrest someone will be harmed.

-D and co-conspirator acted in concert in setting the course of events into motion & will be held responsible for killing an innocent 3rd party during commission of a felony, even though D and co-conspirator did not kill the officer.

-criticized b/c burglar was unarmed and was running away

→*Not a universal rule:* NY legislature attempts to resolve Hickman by passing statute of affirmative defenses to felony-murder if,:

1. D did not commit the homicidal act or solicit, request, command, importune, cause or aid the commission thereof.
2. was no armed with deadly weapon
3. no reasonable ground to believe that any other participant was armed.
4. no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or injury.

3) Accomplice killed by an innocent victim →D is not liable

People v. Washington (p 524) - gas station owner kills an armed robber. D is convicted of robbery and 1st degree murder for accomplice's death. *Holding:* (minority rule) D is not guilty of felony-murder, b/c killing must be committed by D or his accomplice acting in furtherance of their common design.

-Felony murder ascribes malice aforethought to felon; when killing is committed by V, malice aforethought is not attributable to D b/c killing is not committed in perpetuation of or attempt to perpetuate robbery.

-Not sufficient that killing was reasonably foreseeable in the course of committing a robbery.

I. Capital Murder/Death Penalty

1. History

a. automatic death penalty

- jury had no choice in sentence, juries often nullified or acquit, even with evidence of crime.

b. unguided discretion of judge or jury - states narrowed cases in which death penalty may be imposed, but still left decision of death penalty to unguided discretion of juries, where juries would use inappropriate factors (ie, race)

2. *Current Status: Guided Discretion*

Two Phase trial:

1) *Guilt Phase* - (like any criminal trial) - regular trial with witnesses and attempt to prove every element of defense beyond a reasonable doubt, cross-examination, 5th amendment right to remain silent, rules of evidence apply, etc.

→Jury to determine whether D is guilty of felony

2) *Penalty Phase* - If jury finds D guilty of felony, jury determines whether defendant will receive death penalty or life imprisonment.

→Jury presented with evidence from both sides

-prosecutor must prove at least one aggravating circumstance

[unlike guilt phase, present every bad piece of info on D]

-defendant must present at least one mitigating circumstances.

[delineated from state statute; not restricted to just statutory mitigating circumstances]

1) if at least one aggravating circumstance, may impose death penalty.

2) if find at least one mitigating factor, jury must weigh aggravating circumstances against mitigating circumstances.

→Jury is then instructed to weigh *aggravating factor(s)* against *mitigating factors* [jury's discretion to determine measurement of evidence]

1) if the jury finds that aggravating circumstances outweigh mitigating circumstances, may impose death penalty.

2) if the jury finds that mitigating circumstances outweigh aggravating circumstances, may reduce penalty

[does not necessarily depend on *amount* of evidence but on *value* of evidence]

3. Gregg v. Georgia - Supreme Court held that death penalty was not per se cruel and unusual punishment & approved Model Penal Code Scheme b/c

1. there was a 2 phase trial
2. expressed guidance
3. jury considers mitigating factors
4. automatic appeal

4. **Model Penal Code and Commentaries** ¶210.6 (p. 550)

a. Guided Discretion:

a. evidence may be presented as to any matter that the court deems relevant to sentence (including nature and circumstances of crime, the defendant's character, background, history, mental and physical condition and any of the aggravating and mitigating circumstances enumerated...)

b. if the jury is unable to make unanimous verdict, court shall impose life sentence.

c. Cannot impose death penalty unless find at least 1 aggravating circumstance.

d. if at least 1 mitigating circumstance, must weigh mitigating against aggravating circumstances.

b. Outlines Aggravating Circumstances (p. 551-52)

c. Outlines Mitigating Circumstances (p. 552)

5. **Aggravating Circumstances**

a. **MPC:** (p. 551-52)

1. person under sentence of imprisonment
2. prior conviction of another murder or violent felony
3. multiple murder - killing several people at one time
4. knowingly created a great risk of death to many persons
5. felony murder
6. murder for the purposes of avoiding/preventing a lawful arrest or during escape
7. killing for pecuniary gain - murder for hire
8. murder was especially heinous atrocious or cruel, manifesting exceptional depravity

b. Felony Murder as Aggravating Circumstance

Double-counting: Is double counting constitutional in death penalty context? (ie, where D faces death penalty determination after his conviction of 1st degree felony murder, where the sole aggravating circumstance is felony murder)

→Supreme Court has found that double-counting is not unconstitutional b/c statutory scheme was merely a way of narrowing the group of those eligible for the death penalty at the guilt phase, rather than at the sentencing phase.

c. Heinous, Atrocious, or Cruel

Godfrey v. Georgia (p. 557) - D shot at wife and mother-in-law in trailer.

Holding: US held that D was not guilty of capital murder b/c the statute was unconstitutionally vague.

1. GA statute construction & application focused on torture, where GA supreme court attempted to establish criteria for "heinous, atrocious or cruel" as requiring torture, depravity of mind or aggravated battery to victim before the killing

2. Required some element of torture (before person dies, has to be battered & in agony). In this case, no period of torture, b/c Vs died instantly & therefore did not fall under this categorization.

d. *Psychological Evaluations* - would kill again if released.

e. *Nonstatutory Aggravating Factors* - as long as at least one statutory aggravating circumstance, may present other circumstances not delineated within statute.

f. *Victim Impact Statements** -

Payne v. Tennessee (p. 561) - Constitutionally permits victim impact statements, describing victim's personal characteristics and emotion effect of murder on victim's family.

b/c indicates the harm caused by defendant & how much harm he has caused.

& b/c D can produce mitigating factors to balance.

policy issue

-overruled Booth v. Maryland - victim impact statements were unconstitutional b/c focus on victim & not on the acts committed by D.

b/c places value system on life, depending on who the person is.

-*Policy issue*: Are the acts worse when the victim is educated, family loves them & enjoys the privileges of society?

6. *Mitigating Circumstances*

Lockett v. Ohio (p. 563) - D was driver of getaway car in armed robbery, accomplice accidentally killed V, D convicted of felony-murder w/ death penalty.

Rule: 8th & 14th Amendment require that sentencer (judge/jury) may not preclude from considering any aspect of character or record or circumstances of offense as a mitigating factor that the defendant proffers as basis for sentence.

→After Lockett, D can submit anything as mitigating circumstance.

-decision suggests that the court should individualize sentences in capital cases, particularly b/c the choice is between life imprisonment & death.

-contrary to sentencing guidelines, which does not account for the individual.

a. Jurors don't have to agree on any one mitigating circumstance to allow it to be weighed to his/her vote. (p. 568, n.2)

b. Weighing the circumstances:

1. State's instructions on how to weigh mitigating circumstances: ie, NC statute (p. 570); PA statute (p. 571)

2. Left to the discretion of the jury as to how to weigh circumstances.

7. Categorical Limits on the Death Penalty

a. *The Mens Rea Limit*

Tison v. Arizona (p. 572) - Felony Murder Case- Father in prison. Famil aided in his escape. Father & cellmate killed Vs. Sons werwe convicted of felony-murder w/death penalty. On appeal, claimed that since he was not present at scene of crime, he had no intent to kill.

Rule: In felony-murder conviction, in order to be eligible for death penalty, requires: 1) reckless indifference to the value of human life and 2) major participation in the crime.

Holding: upheld conviction b/c found 1) major participation in murder and 2) reckless indifference to value of human life (Ds did not prevent murder) were sufficient to satisfy mens rea.

1. *major participation* - not just getaway driver, each D was actively involved in every element of kidnapping-robbery & was physically present during entire sequence of criminal activity.
2. *reckless disregard for human life* - highly culpable mental state where knowingly engaging in criminal activities known to carry a grave risk of death (reckless disregard for human life).

b. *Age Limitations*

Rule: Age limitations are determined by the standard of decency as determined by the # of state law & # of state legislatures that allow death penalty.

-Thompson v. Oklahoma (p. 580) - US overturned death sentence for D who committed murder when he was 15 b/c plurality found clear social consensus that execution of individuals under 16 violated evolving standards of decency.

-If the purpose of the death penalty is retribution, D is required to understand at the time of the effects of his execution & has to appreciate or undertand why he is being punished.

-Stanford v. Kentucky - can constitutionally sentence 16-17 to death pen.

Rule: 1. Nationwide standard "standard of decency" is determined by majority rule, determined by looking at state law & legislation.

2. court then interprets statistics and determines whether there is a social consensus that the death penalty is cruel in a given circumstance.

policy issue: Is the this is best method of determining consensus on death penalty cases?

? Perry v. Lenough - death penalty for retarded man was held to be constitutional, but remanded b/c jury instructions did not allow retardation as a mitigating circumstance.

c. *Victim/Race Discrimination and the Eighth Amendment*

Rule: provides no relief

McClesky v. Kemp (p. 581) - D claims that Georgia capital sentencing process (death penalty) is administered in a racially discriminatory manner in violation of the 8th & 14th Amendments, supported by the

Baldus study

Baldus study -multiple digression analysis- analyzed different variables (type of crime, seriousness, public outcry) to determine whether race of

the defendant and race of the murder victim had an effect as to whether the death penalty would be implemented. →concluded that race did make a difference - black murderer who killed white victim was more likely to receive the death penalty.

Rule: Statistical evidence of racial bias in imposition of capital punishment does not make capital punishment unconstitutional.

1. Required to show discriminatory intent (operates in arbitrary or capricious manner) in drafting capital punishment scheme to discriminate against black Ds.

2. Evidence that the effects discriminated against D, based on race, is insufficient to demonstrate discriminatory intent.

→While capital punishment is not perfect system, does not punish in an arbitrary and capricious manner b/c weigh factors.

J. Brennan dissent: majority has a fear of too much justice.

Scalia memo: Even if we can prove that criminal justice system & imposition of death penalty seems to be irrational and racially discriminatory, he knows this & doesn't need any statistics to prove it, but there is nothing that can be done about it & he doesn't care to change it.

→We (the court) cannot do anything, should be left to legislature.

Policy Issues

1. *Policy Issue: Raises question as to the role of the judiciary in effectuating change of the criminal justice system.*

2. *Legislature as the appropriate forum?* - ie, Racial Justice Act - introduced every year since McClesky - proposes that a defendant in a criminal case facing the death penalty would have the right to produce statistical evidence (opportunity be heard) to the judge that demonstrates that the death penalty has been imposed in an unfair/racial manner.

-Where do you go if the state legislature rejects?

3. *Implementation of the Death Penalty in the United States*

a) Whether the death penalty is implemented in a fair & just way?

[Is the death penalty imposed in an arbitrary, racially-discriminatory manner?]

b) Whether the death penalty should remain considering that issues still remain, such as the recognition of the existence of racial prejudice?

-the in-between cases (on facts) are the ones where racial discrimination exists

- ie, group of journalism students saved a man from death penalty after 17 yrs, where evidence proved that he was innocent.

or c) Moratorium on the death penalty until the system can be fixed in a more fair and just manner.

d. *Inadequate Legal Counsel* - whether or not receive death penalty depends adequacy of legal counsel.

-Counsel for the Poor by Steve Bright: whether or not receive death penalty, after prosecutorial discretion based on race, depends upon the quality of appointed counsel.

1. When outcome depends on whether D receives adequate attorney, suggests that capital punishment scheme is *arbitrary & capricious* sytm.

2. 2 Ds are charged with the same crime, 1 charged w/ death, 1 w/life = demonstrates that a good lawyer makes a difference.

3. There is no state-supported system for providing counsel to death penalty cases.

- theoretically, adversary system has equally trained counsel on both sides, but not true in capital cases where exists inadequacy of funding and training, particularly in south (low standards).
- fees - high costs to try a capital case (expert witnesses, wait); low limits put on by state to represent client (right to counsel) & primarily indigent clients cannot pay.

Note: D.C. has no public defender/legal service that handles death penalty cases.

4. Role of judges - appoint attorneys who are bad and dismiss attorney who are good/spend too much time & money.

→ Promise of Gideon (guarantee right to counsel) has not been met.

VI. Attempt

A. *Attempt* - criminal liability for failing to commit a crime; attempt is a crime.

- Elements:
 - 1) intent to commit a specific offense.
 - 2) performance of some act which constitutes a substantial step towards commission of that offense.

B. **Model Penal Code 5.01** (p. 797)

1. Requires a substantial step towards accomplishing a criminal result.
2. to be substantial, such act must strongly corroborate criminal purpose.
3. lists examples of substantial steps: (see p. 797)

→ *MPC punishes attempt same as completed crime;

vs. → most states punish attempts for less than completed crime

- mens rea may be same as completed crime, but harm completed is either less, or none at all.

C. Why hold D responsible for failing to cause harm?

1. *Utilitarian argument* - attempted action proves that D is a dangerous person, even though did not cause harm.
2. *Retributivist argument* - attempted act manifests bad character; D should not be let off the hook b/c of luck in not completing act.

D. Preparation vs. Attempt

→ *Rule: No criminal liability for preparation. Preparation alone is not enough.*

People v. Murray (p. 794) - D convicted of attempt to contract an incestuous marriage.

Rule: Attempt contemplated by statute must be manifested by overt acts which would end in consummation of particular offense, but for intervention of circumstances independent of D's will.

Holding: Court reversed conviction b/c more than intent is necessary to sustain charge. Until D stands before magistrate, ready to make the vows, D cannot legally be said to be committing the ultimate act.

-preparation - *if the party himself interrupted attempt*, merely preparation.

-attempt - direct movement toward commission after preparations are made.

MPC 5.01 2. *Rule: Attempt requires an act that constitutes as a substantial step.*

McQuirter v. State (p. 799) - D, black man, followed white woman on street, convicted of attempt to commit assault with intent to rape.

Holding: Court affirmed conviction even though there was no intent.

1. The purpose of attempt is to protect public alarm.
2. Therefore, in deciding whether intent to commit rape, court said that the jury may consider social conditions and customs founded upon racial differences, (ie, D was black man and V was white woman).

Note: But, case exemplifies that public alarm may be based on prejudice.

-difference of perceptions

-question of credibility

3. There was a substantial step - ie, lying in wait, searching for/following the contemplated victim of the crime.

3. *Rule: Attempt to commit crime requires act "tending" but failing, to effect its commission, which encompasses only those acts which are so near to consummating crime that in all reasonable possibility, crime itself would have been committed but for timely interference.*

People v. Rizzo (p. 802) - D planned to steal payroll but never found payroll man. D convicted of attempt to commit robbery.

Holding: Overturned conviction b/c attempt requires an overt act & an attempt must be proximate or near consummating the act.

-D looked for opportunity to commit crime, but opp. never presented itself.

D. Abandonment

Rule: Once an attempt has started, there can be no abandonment or turning back.

Abandonment is not a defense to criminal charge of attempting to commit a particular offense.

People v. Staples (p. 810) - D rented office above bank, drilled holes thru floor, had 2nd thought, convicted of attempted burglary.

Holding: Affirmed conviction b/c D's acts reached such a stage of advancement that could be classified as an attempt & LL turning over equipment LL's acts (not D's actions) constituted interception of the crime.

-[apply Model Penal Code 5.01 - substantial steps - possession of tools]

Model Penal Code 5.01(4) - Renunciation (p. 813)

Limited affirmative defense, if renunciation is voluntary & self-motivated, and not b/c of probability of detection.

E. Impossibility

Legal impossibility vs. Factual possibility

Booth v. State (p. 822) - D received stolen coat from client, convicted of attempt to receive stolen property.

Holding: Since original thief was caught with the coat & the coat was recovered, the coat was no longer "stolen." The coat was not legally stolen b/c recovered.

Legal impossibility - if completed act is not a crime;

-if the whole is not a crime, then part is not a crime

→no attempt

(ie, perjury on immaterial issue (perjury is lying about issue material to case); shooting a stuffed deer would not be guilty of an attempt to shoot a deer out of season.)

vs. *Factual impossibility* - when basic or substantive crime is impossible to complete, b/c of some physical or factual fact that is unknown to D.

→attempt & criminal liability

(ie, picking an empty pocket; attempt to steal from empty house; D shoots into an intended victim's bed, believing he is there, when in fact he is somewhere else.)

-[under MPC 5.01(a), D would have been convicted, where if "attended circumstances were as he believed them to be"

(p. 831)

Model Penal Code 5.01 - Definition of attempt - A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

(a) purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be

VII. Complicity - [Aiding & Abetting]

A. Definition - Complicity is not a crime, but a way of committing a crime (ie, aiding & abetting)

B. Accomplice - held liable for aiding, assisting, encouraging or inciting a criminal offense.

-Before, required *conviction* of person who actually committed crime, before the accomplice could be convicted.

-Modern law, required *proof* that an underlying offense was committed.

C. Presence may be actual or constructive, as long as they had the necessary mens rea.

D. Culpability and punishment is the same as that for actual perpetrator, except for *accessory after the fact*.

-*Accessories after the fact* are treated with less punishment - do not participate in the crime itself but finds out and assists after the crime has been committed (ie, hide convict)

E. Require: 1) act or acts

2) intent to aid or abet a criminal purpose [mens rea]

F. **Model Penal Code 2.06** - Complicity (p. 889)

(3)A person is an accomplice of another person in the commission of an offense if:

(a) with purpose of promoting or facilitating the commission of the offense he:

(i) solicits such other person to commit it; or

(ii) aids or agrees or attempts to aid such other person in planning or committing it

(iii) having a legal duty to prevent the commission of the offense, fails to make proper effect so to do

G. The Accessorial Act

a. Mere presence is not sufficient

Rule: Mere presence is not enough to make D guilty as an aider or abettor of his friends' crime.

Rule: Complicity requires evidence of knowledge of the crime and intent to assist it.

Gains v. State (p. 863) - D drove getaway car, and convicted of aiding and abetting a felony (robbery). D claimed that he was not active participant in armed robbery.

Holding: Overturned conviction b/c insufficient evidence that he had knowledge of the crime until it actually occurred, and therefore did not intend to assist in its commission.

-Mere presence at the scene of the crime or fleeing from scene with perpetrators (w/o evidence of assistance to robbers) is insufficient evidence to exclude reasonable hypothesis of innocence.

b. Complicity by omission

Rule: D can be held criminally liable for complicity by omission for failure to act where D has a affirmative legal duty to act.

State v. Walden (p. 865) - D was present when her boyfriend struck her son w/ belt; D convicted of assault with a deadly weapon.

Holding: Affirmed conviction. Failure of parent who is present to take all steps reasonably possible to protect child from attack by another person constitutes act of omission by parent showing parent's consent and contribution to crime being committed.
-Parent had legal duty by status relationship.

Street Terrorism Prevention Act - CA enacted act to combat gang violence, making it a misdemeanor for a parent to fail to exercise reasonable care, supervision, protection, and control over minor child.

-[negatively affects single moms in the city; disproportionate impact on poor]

H. The Mens Rea of Complicity

1. Mens Rea with Respect to the Principal's Criminal Intent Only

Rule: D must have knowledge of unlawful intent of perpetrator & must have acted with intent to aid, abet, or encourage commission of the crime.

Mowery v. State (p.880) - D & friends stole beer & cigs; friend 1st struck storeowner. D & others beat up store owner as he lay unconscious. Evidence shows that 1st blow killed storeowner. D convicted of murder w/o malice.

Holding: Reversed conviction b/c no evidence that D knew the unlawful intent of friend to inflict the fatal injury and knowing this unlawful intent he aided, abetted or encouraged his friend to kill the storeowner.

-Mere presence or knowledge that an offense was about to be committed or is being committed will not constitute him as the principal offender.

-D did not have the same level of mens rea as the perpetrator.

-For murder w/o malice (voluntary manslaughter), requires perpetrator's mens rea to be purposeful & knowing.

-Therefore, in order for the the accomplice to act with the knowledge of the principal's unlawful intent, the accomplice's mens rea with respect to the principal's criminal intent must be either purpose or knowledge.

-*Note:* ambiguity of standard precluding accomplice liability where the mens rea required for the principal's crime is less than purpose or knowledge (ie, *reckless*).

-If mens rea of principal's crime was recklessness, then the accomplice cannot have the same level of mens rea as the principal, where the principle himself did not purposely or knowingly commit the crime.

→[D is not liable for assisting crime of recklessness or negligence.

2. Mens Rea with Respect to the Principal's Criminal Intent and with Respect to the Facilitative Effect of Accomplice Conduct

Mens rea: Intent to Aid or Abet

Rule: Aider and Abetter must act with knowledge of criminal purpose of perpetrator and with intent to or purpose either of committing or encouraging or facilitating commission of the offense.

People v. Beeman (p. 883) - D gave info to facilitate robbery of relative, was not present at robbery, convicted of aiding and abetting robbery. D claims that he didn't participate in planning & it wasn't his intent to aid in robbery, even tho the info did help co-defendants carry out the crime.

Holding: reversed conviction b/c jury cannot presume intent, where instructions permitted that intent to be inferred by simple knowledge.

- Aider must share specific intent of the perpetrator, where he knows the *full extent* of the perpetrator's criminal purpose & aids or encourages w/ intent or purpose of facilitating perpetrator's commission of crime.
- Aider & abettor is liable for all natural and reasonable consequences of the acts he knowingly and intentionally aids and encourages.

3. *Mens Rea with Respect to the Principal's Criminal Intent and the Mens Rea Required for the Principal's Crime*

Rule: One cannot be accessory to crime unless he has intent that crime will process successfully.

Wilson v. People (p. 890) - D set up burglarly to get back at another for stealing his watch, D convicted of burglarly.

Holding: Reversed conviction b/c D must share criminal intent w/principal.

-Question for the jury to determine whether D had criminal intent.

4. *Mens Rea Required for the Principal's Crime and Mens Rea with Respect to the Facilitative Effect of Accomplice Conduct*

State v. Etzweiler (p. 895) - D lent car to drunk friend D knew was drunk. friend got into car accident & killed 2 people & found guilty of negligent homicide. D charged with negligent homicide as an accomplice. [assisting negligence]

Holding: D was not an accomplice to negligent homicide.

1. level of mens rea required for negligent homicide = *negligence*.
2. Therefore, actual perpetrator had to be negligent & had to be unaware of the risk of death.
3. D could not have intentionally aided/abetted actual perpetrator in crime, where actual perpetrator was unaware of risk of death in committing crime. Therefore, impossible to aid & abet in negligent homicide.

VIII. Defenses

A. Distinction between justification vs. excuse

-Justification - defenses where although D has caused some harm, he advances some social interest (ie, self-defense - did something to protect selves or from others)

-Excuse - D has caused some harm, but will not be blameworthy because of surrounding circumstances (ie, insanity defense - did not have requisite mens rea to understand wrongfulness of his actions b/c suffers from some disease/defect)

→MPC does not distinguish btwn justification & excuse b/c the result is the same = person is not guilty

→In practice, not important to distinguish between justification/excuse

Who is criminally liable & Who is going to be punished?

B. *Defensive Force*

1. *Burden of Proof*

a. State has the burden of proof

b. Due Process Clause allows states to shift burden of proving defense to D.

But, many states still require that the government prove the nonexistence of a defense.

2. *Elements and Rationales*

Elements i) *Rule: D may defend himself or others of imminent bodily harm or death by using a reasonable amount of physical force, even to the extent of using of deadly force when necessary.*

ii) *Reasonableness Rule*: The use of defensive force must be reasonable under the circumstances as they appear to the Defendant at the time, where the D must have reasonable grounds for believing, and does in fact actually believe that he or others will suffer imminent bodily harm or death.

iii) *Mistake Belief Rule*: The use of defensive force may be excused, even if D may have been under a mistaken belief as to extent of real or actual danger, as long as the mistake was reasonable under the circumstances.

iv) *Subjective vs. objective standard* -

a. *People v. La Voie* (p. 604) - D was rear-ended and forced off road by 4 drunk men. As guys advanced toward him, D shot V. D was acquitted of murder on self-defense.

Holding: D had the right to defend himself against threatened assault of those whose unlawfulness & utter disregard of his rights resulted in a justifiable killing.

Rule: When a person has reasonable grounds for believing, and does in fact actually believe, that danger of his being killed, or of receiving great bodily harm, is imminent, he may act on such appearances and defend himself, even to extent of taking human life when necessary, although it may turn out that appearance is false; or although he may have been mistaken as to extent of real or actual danger.....

-duty to retreat before act in self-defense?

b. *Perfect Self-Defense vs. Imperfect Self-Defense*

-*Perfect Self-Defense* - if D honestly and reasonably believed under the circumstances that he was in imminent threat of bodily harm.

→D entitled to full acquittal.

-*Imperfect Self-Defense* - if D honestly but unreasonably believed under the circumstances that he was in imminent threat of bodily harm.

→D will be entitled to mitigate from 2nd degree murder to voluntary manslaughter (no malice).

Model Penal Code 3.04 - Use of Force in Self-Protection (p. 608)

(2) Limitation on Justifying Necessity for Use of Force:

(a) the use of force is not justifiable....

(b) the use of deadly force is not justifiable unless D believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping or sexual intercourse compelled by force or threat. [when commit or about to commit serious felonies]

(ii) duty to retreat...

2. *Standard of Reasonableness*

→*Standard*: Reasonableness is viewed from the standpoint of the accused (D) to determine whether D's actions were reasonable under the circumstances and defendant's past experiences. [jurors are to put themselves in the shoes of D and consider D's circumstances.] [called both subjective & objective standard]

a. *State v. Leidholm* (p. 609) - D stabbed husband to death as he slept. D used battered woman's syndrome as defense.

Holding: Conviction rev'd & remanded. D ultimately accepted plea agreement to manslaughter.

1. Court applied subjective standard in self-defense:

subjective std.:

- a. What D herself in good faith honestly believed and had reasonable grounds to believe was necessary for him to do to protect himself from apprehension of death or great bodily harm? [defendant]
- b. court directs jury to assume the physical and psychological properties peculiar to the accused, and then determine whether or not the particular circumstances surrounding the accused at the time D used force were sufficiently to create in D's mind a sincere and reasonable belief that the use of force was necessary to protect himself from imminent and unlawful harm. [jury]

Note: Court rejects special instruction on Battered woman's syndrome b/c subjective standard accomplishes same result.

2. evidence of imminent fear of bodily harm
3. Ct. held that she had a duty to retreat from home; protected by exception: no duty to retreat, where she reasonably believed that she could not retreat safely.
→*Rule: Generally, in invoking self-defense, D can present evidence of history of violence by the victim. [b/c adds to reasonableness of fear of victim]*

b. People v. Goetz (p. 630) - subway shooting of 4 unarmed teens in NY. D argued that he reasonably believed that victims were attempting to commit robbery and therefore was justified in using deadly force. [under NY statute [MPC] permitted to use deadly force where reasonably believed person is about to commit, kidnapping, rape, sodomy, robbery. - permits an unproportional use of force]

Holding: Court reinstated indictments. [later acquitted]

objective std.:

1. Objective standard: [not necessarily different from subjective standard]
 - 1) what D reasonably believed under the circumstances (taking into consideration totality of circumstances; ie, prior experience, etc.).
 - then 2) jury determines whether D's actions were reasonable as the circumstances appeared to D.
2. Goetz's statement suggested that D had no fear of *imminent* bodily harm & shot kid while kid was sitting down trying not to appear as part of the group.
3. NY rejected imputing legislative intent to MPC's subjective standard to completely exonerate D from a serious crime just b/c D believed that his actions were reasonable and necessary to prevent some perceived harm.
-would allow citizen to set standard for permissive use of force - vigilante justice

4. *Constitutional Limitations to Defense Force*

- a. *Rule: Deadly force may not be used to apprehend an unarmed felon, unless 2) if necessary to prevent escape and 2) an officer has probable cause to believe that the suspect poses significant threat of death or serious physical injury to officer or others.*

Tennessee v. Garner - (p. 647) police shot an unarmed fleeing prowler

Holding: State statute allowing use of deadly force to prevent escape of all felons, whatever the circumstances, is unconstitutionally unreasonable.

-Killing a fleeing suspect is a "seizure" under 4th Amendment & is therefore constitutional only if "reasonable"

-In order to use deadly force, police officer had to have probable cause to believe that a felony has been committed and poses a danger to the safety of himself or the public. In this case, police had no probable cause.

-Dissent: (J. O'Connor) - statute is reasonable under 4th amendment b/c public interest in prevention and detection of crime b/c burglary is a serious & danger-

ous felony due to harsh & high potential for violence inherent in forced entry robberies.

b. People v. Couch (p. 653) - D shot fleeing V, after V tried to break into car. *Holding*: 4th Amendment does not apply to private citizens, but if a private citizen is making a citizen's arrest, then he must abide by the same rules pertaining to the police (reasonableness).

c. *Rule: Deadly force may not be used in defense of property crime.*

People v. Ceballos - D set up a trap gun in garage, shot robbers, D convicted of assault w/ deadly weapon. D claims that he had a right to do indirectly, what he could do directly.

Holding: affirmed conviction. 1) D may have been justified to shoot robbers if D was present on property, but there is a possibility that D might have thought that deadly force was not necessary. [trap gun cannot make discretionary judgments] 2) deadly force may not be used solely for protection of property b/c human life is more important than property. & deadly force should not be applied to all felons b/c not all felonies are dangerous or violent crimes.

C. Necessity - choice between two evils

1. **Model Penal Code 3.02** - Choice of Evils (p. 669)

Conduct that the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that...the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged....

"greater than": quantitative harm?
 or qualitative harm?

2. The Moral Issue

a. *Rule: No necessity in preserving your own life in absence of self-defense.*

The Queen v. Dudley & Stephens (p. 661) - shipwrecked seamen ate a boy.

Holding: Court held that D's were not justified in killing and eating boy b/c did not kill in self-defense.

1. Choice of evils - eating a person or dying.

2. Justified in killing another person only if another person is trying to harm you. But there is no law that permits killing another person to save your life, where other person is not trying to kill or seriously harm you.

b. Cases where choice of evils in: defacing property or changing advertisements

a. Rev. charged with criminal damage to property for painting over billboards near his church that contained ads for alcohol & tobacco.

→Not convicted (probably jury nullification)

b. Man arrested for spray-painting corner billboard advertising cigarettes, writing messages "Do you want to seduce your kids?" "Smoking kills" →convicted

3. Escape from Intolerable Prison Conditions

People v. Unger (p. 677) - D escaped from prison to avoid homosexual attack.

Holding: reversed conviction b/c D should have been given necessity defense.

→Courts have traditionally been reluctant in permitting defense of necessity and duress in prison escapes, but recent decisions have recognized applicability of defense due to imminent threat of great bodily harm.

1. Choice of evils: being raped/killed vs. escape.
 2. distinction btwn necessity vs. duress (see notes)
- Courts recognized limited defense of necessity (Lovecamp) (p. 680)
- req.:
1. D faced specific threat of death/sexual attack/injury
 2. no time for complaint to authorities or history of future complaints
 3. opportunity to resort to courts
 4. no evidence of force or violence used in escape.
- and 5. D immediately reports to authorities when reached safety.
- Dissent:* Flexible standard for necessity defense encourages people to escape b/c can raise necessity defense.

D. Duress - forced or compelled to do something by another human being or an outside force, imminent threat of bodily harm.

Model Penal Code § 2.09 - Duress (p. 703)

(1) It is affirmative defense that actor engaged in conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or person of another, that a person of reasonable firmness in his situation would have been unable to resist.

(2) The defense is unavailable if the actor recklessly placed himself in a situation in which it was probable that he would be subject to duress....and unavailable if he was negligent.

-Nature and Gravity of the Threat:

Rule: Duress defense can be present where D was forced to do the crime for which he was charged.

United States v. Contento-Pachon (p. 704) Columbia drug smuggler swallowed 100+ balloons of cocaine, allegedly out of fear for safety of family.

Holding: Under the facts, D could present duress defense b/c credible evidence that D acted under an immediate & well-grounded threat of serious bodily injury w/ no opportunity to escape.

Battered woman's syndrome cases: Courts are split on whether battered woman's syndrome should be included in support of defense of duress.

E. Mental Illness

Issue: When should mental defect or illness at the time of the alleged offense excuse him from criminal liability?

1. Different rules are followed by different states

a. ***M'Naghten Rule*** - A person is not guilty by reason of insanity if he is incapable of knowing and the nature and quality of the act, or he did not know what he was doing was wrong. [only knowledge prong]
 + *irresistible impulse rule* - suggests that someone is doing something suddenly.

b. ***ALI test (MPC 4.01)*** - A person is not responsible for criminal conduct, if at time of such conduct, as result of mental disease or defect he lacks substantial capacity either to (a) appreciate the criminality of his conduct or (b) to conform his conduct to requirements of the law. [see Smith case]

√ knowing & understanding wrongfulness of action

√ ability to control one's actions (volition)

Smith v. State (p. 715) - Army private drove off base w/stolen car & killed an officer. D charged with intent to kill, wound or maim. D brought insanity defense. Experts conflicted on whether D had capacity to conform his conduct to requirements of law.
Holding: Court affirmed conviction.

1. Factfinder may adopt findings of one medical testimony over another and over findings supported by a greater number of medical experts who have reached opposite conclusion.
 - trial court can base analysis based on expert and lay testimony.
2. Insanity Law (Alaska) followed ALI Model. (rigid) (see notes)
3. Defense must come forward w/"some evidence" supporting insanity defense *before* burden of proof shifts to state (ie, mens rea)
 - require experts - but experts are not allowed to rule on ultimate issue as to whether the defendant is guilty or innocent (question of fact for jury)

2. Post-Hinckley Changes in the Insanity Defense

Hinckley was found not guilty by reason of insanity for shooting Reagan, on grounds that D lacked substantial capacity to conform conduct to requirements of the law (under ALI test).

- a. Effects:
 - insanity defense has become more difficult to succeed.
 - Eliminated volition rule and return to *M'Naghten Rule*.
 - Enact new *Guilty but Mentally Ill Crime*
- b. Legislative changes:
 1. *Insanity Defense Reform Act of 1984* - substantially amended federal insanity laws by eliminating volition requirement (2nd prong of ALI test)
 2. *Guilty But Mentally Ill* verdict (GBMI) - finding D criminally responsible, but acknowledging that D had a mental defect.
 - If found guilty under GBMI, D is given a criminal sentence, but statute provides that D gets treatment at a mental hospital or in a correctional facility. If D is cured, D will then be transferred to prison to serve remainder of sentence.
 - thereby limiting the use of insanity defense & ensuring that "guilty" defendants are not set free.

Rule: No constitutional right to psychiatric treatment.

Robinson v. Solem (South Dakota) (p. 750) D found guilty but mentally ill & D argues that he was not given psychiatric treatment.

→Court held that GBMI does not require treatment & is not a denial of Due Process b/c no constitutional right to psychiatric treatment. D is entitled to treatment only if the mental health provider finds that treatment is a medical necessity.

Jones v. U.S. (p. 728) - US upheld DC law under which D found not guilty by reason of insanity was automatically committed to 50 days. After 50 days, he may be released only if D could prove by preponderance of the evidence that he was no longer mentally insane or dangerous.

[A person may be committed for longer period of time than their sentence & can be committed to a mental institution for even longer]

Acceptable b/c D is still a danger to themselves and to others (civil commitment).

c. Procedural Issues

1) *Competency vs. Mental Illness*

Mental Illness - deals more with mental competency
vs. Competency - D is not competent, if he cannot understand legal process so that he is unable to assist counsel with legal defense. → D is not competent to stand trial

2) Statute of Limitations: [D will receive treatment until D is made competent].

- a. D is either committed civilly or released.
- b. State must institute civil commitment proceedings b/c if the state holds someone, D must be given due process.

Jackson v. Indiana - US held that if, after reasonable time, D is found incompetent to stand trial, state must proceed to trial, civilly commit, or release D.

3) *Burden of Proof* - For certain defenses, legislature requires that D hold burden of proof in proving insanity defense.

- a. D initially brings minimal level of evidence to show D is insane.
- then b. State has burden to show that D is sane.

→ Most states require D prove insanity by preponderance of the evidence; minority require proof by clear and convincing evidence.

3. Punishment: (varies by jurisdiction)

- a. If found guilty and insanity defense fails
→ sentenced as if never brought insanity defense
- b. If found not guilty by reason of insanity,
→ committed to a mental institution and held in custody until the disease is cured or D no longer poses a danger, unless otherwise discharged (depends on law in that jurisdiction)

Note: D.C. - D stays within mental institution until they no longer pose a threat.
-decision of release must be made by court & return case back to court.

- i. defense comes forward with evidence supporting insanity defense, then burden shifts to state to prove sanity beyond reasonable doubt.
- ii. both sides have psychiatrists examine D
- iii. jury decides whether D is guilty or not guilty by reason of insanity (NGBRI)
- iv. if found NGBRI, immediately committed to institution.

Policy issues:

Should juries be told of the consequences of finding D not guilty by reason of insanity?

-NO. b/c stigma, prejudice to defendant.

-General Rule: Juries will not be told what the sentence is, if D is found not guilty by reason of insanity.

-General Rule: Juries will not be told what the sentence is, if D is found guilty but mentally ill.

Note: MD - D has option to have the juries know the consequences of sentencing if found not guilty by reason of insanity.

A. Background on Criminal Process

1. Arrest by a police officer
 - subject to discretion □ police officer recommends to prosecutor that the criminal should be charged.
 - prevent crime
 - detention (investigative function □ rape, homicide)
2. Probable Cause
 - warrant/ no warrant based on substantial facts
3. Prosecution
 - subject to discretion -
 - factors:
 - evidence
 - prior convictions
 - seriousness of the crime
 - politics (elected prosecutors)
 - public opinion
 - plea bargaining □ cut a deal btwn defendant and prosecutor
 - totally w/in hands of prosecutor
4. Trial
 - a. Misdemeanor
 - 1) > 6 months - entitled to jury trial or trial by judge
 - 2) < 6 months - not entitled to jury trial
 - jury trial acts as a fact finder and apply facts to law
 - jury trial:
 1. pretrial motions
 2. opening statement
 - prosecutor* makes opening statement (what expects evidence will show & what they will prove)
 - defense atty* may make opening statement
 - or reserve opening statement after prosecutor presents evidence
 4. witnesses will testify/evidence (question & cross-examination)
 5. State rests
 6. Defense may present own witness
 - a. *5th Amendment* □ Defendant has a constitutional right to remain silent. (vs. civil case - ie, OJ had to talk)
 - b. *Affirmative Defense* □ ie, self-defense, insanity.
 - or
 - c. defense may rest
 7. State may present rebuttal witnesses
 - rebut only what Defense puts forth (ie, rebut alibi defense)
 8. Closing argument
 - summarize evidence
 - argue to jury that guilty/not guilty beyond a reasonable doubt
 9. Judge instructs jury on the law
 - apply law to the facts
 - statute lays out elements of the crime
 10. Jury deliberations
 - make a decision (guilty or not guilty)
 - or don't make a decision (hung jury)
 - prosecutor's discretion dependent on seriousness of crime; absolute right to bring case again
 - if convicted,

- a. sentencing □ punishment (vs. civil case- \$ damages)
judge or jury decides sentence
- b. *federal court* □ dictated by sentencing guidelines
-removes judges discretion
-therefore, prosecutor's power to determine time
- c. *state court* □ judge's discretion
-mandatory minimum sentences □ for certain
types of crimes not subject to probation & must
serve time.

5. Probation/Parol

-Probation

- a. Suspend imposition of sentence. But if violate conditions of proba-
tion, will be sentenced
- b. Execution of imposition of sentence
-sentenced.
-suspended & put on probation
-if violate conditions, will be sentenced.

-Parol

form of suspension within community thruout rest of sentencing period

6. Federal court system trial court = District Court

State court system trial court = divided along county lines

- State may seek federal relief re: U.S. constitutional rights
- State may not give less protection than given under the U.S. Constitution.
- if state believes that U.S. Sup. Ct. has not afforded enough civil liberty/ protec-
tion to citizens of its state, state can afford more right in its state constitution.