

I. The justification of Punishment

a. Why Punish

What is the purpose of Criminal Law?- to communicate basic community values and notions of individual responsibilities

6 theories to criminal law:

Retribution- and eye for an eye

Deterrence- as an example to everyone else

- General (*Regina v Dudley and Stephens*)
- specific

Rehabilitation - lets treat and correct this person

Incapacitation – common denominator, take dangerous persons of the street

Public Education – to set exactly what the acceptable lines of behavior are

Regina v Dudley and Stephens

Facts: 3 men in rescue boat with 17yr old boy. No food for 18 days. Boy weakest and most likely about to die. In all likelihood men think they will soon die as well and not be rescued. Men kill boy and feed on his corpse. Rescued 4 days later.

Issue: Is killing out of necessity still murder? Is killing an innocent ever justifiable.

Holding: No. It is never justifiable to take the life of an innocent person . Even in self-defense you are not allowed to kill your attacker if doing so would take the life of an innocent 3rd party.

Regina v Dudley and Stevens is to serve as a **general deterrence**- an example to others that the established practice of cannibalism on the high seas is no longer acceptable

b. What to Punish

If you fail to act you are not criminally liable unless there is a legal duty to act

Bowers v Hardwick

Georgia statute criminalizing sodomy. Δ violates statute by committing sodomy with another adult man in privacy of his home. Statute states that a person can commit sodomy- applies to both homosexuals and heterosexuals

Majority: Statute is constitutional- Sodomy is not a fundamental liberty and therefore the 9th and 14th amendments don't apply

Concurrence: Holding sodomy as a fundamental right would go against a millennia of moral teaching

Dissent: Denies individuals the right to decide for themselves

Where does justification for public morality come from?

- public health/welfare
- danger/harm to public

When something is made criminal, almost always the first question is: How is society injured

We have a sliding scale with how we deal with criminal activity from ignoring it and not creates laws, having laws on the books but ignoring them (adultery), on the books but enforced only by slap on wrist, intermediate sanction, severe sanction...

- Where and how do we draw these lines?

- II. The Elements of a Just Punishment
 - a. Culpability: Actus Reus and Mens Rea

3 requirements to commit a criminal act:

Actus reus- criminal act

Mens Rea - intent or guilty mind

Concurrence- act and intent must be present at same time

Actus Reus:

Martin v State

π arrested at home and taken onto highway by police. Statute prohibits public drunkenness. According to statute, π must 1) appear in public place and 2) manifest a drunken condition. On the facts, π satisfies both of these conditions.

Holding: But as a matter of fundamental fairness, the act must be voluntary, otherwise there is no crime. Since his presence was not voluntary he cannot be held culpable

Actus reus must be a voluntary muscular contraction- without actus reus there is no crime
 - if there is involuntariness there is no crime

People v Newton

(this is late 1960's and Newton was leader of black panthers- Newton had be stopped 3 times before this stop) Δ charged with 1 degree murder (intentional killing with premeditation and deliberation) of arresting officer and convicted of voluntary manslaughter.

How can he be charged with one thing and convicted of another?

- principle in criminal law called: LESSER INCLUDED OFFENSES

Newton wants jury to consider testimony of doctor that testified that given the type of wound it was not unlikely that ensuing shock would render him unconscious and that any ensuing act would be **REFLEX (no actus reas) there is no voluntary muscular contraction and therefore no crime**

Holding: Prejudicial error- court failed to instruct jury that if Δ was found to be unconscious at time of act (as he claimed a result of being shot by Frey's partner) there is no Actus Reus and \therefore no crime

Jones v US

Infant entrusted to family friend who failed to care for child.

For crime of OMISSION (failure to act): if there is no legal duty there is no Actus Reus and ∴ no liability

According to court there are 4 situations where there is a legal duty:

- 1) statute imposes duty of care (docs at accident)
- 2) special relationship
- 3) contractual duty
- 4) voluntarily assumed care.

2 basic questions on Actus Reus:

- Was the act voluntary?
 - o If it wasn't, you couldn't deter it
 - Exception: if the reason the person's act was not voluntary was metal disease, may want to treat it as excuse
- If the person failed to act, (omission) was there a legal obligation to act?
 - o Spouse to spouse, parent to child
 - o Statute
 - o Contract relationship
 - o Voluntary assumption of care

Mens Rea

Without actus reus there is no crime however, even without mens rea there can still be crime.

mens rea is **culpability or degree of guilt** - mens rea does not merely mean guilty mind nor state of mind (because it includes negligence)

mens rea allows us to create a gradient- a sliding scale of culpability

TYPES OF MENS REA

Purposeful - hoped she die so he would inherit

Knowing - didn't hope she'd die but knew with substantial certainty that she would

Recklessness- did not know for sure, but considered chance and acted anyway

Negligence- did not think about possibility but if he had used ordinary common sense he would have realized there was substantial risk.

Strict liability - did not realize and probably shouldn't have realized

- o if while a person is engaged in committing a felony accidentally does some collateral act he is guilty of the later felony as well. this is a strict liability argument

Regina v Cunningham

π steals gas meter from mother-in-law's apartment to get money from inside the meter. Theft of meter causes gas to leak into mom's apartment, mom becomes partially asphyxiated.

Issue: He is guilty of theft but issue is whether he is guilty of violating criminal code forbidding the unlawful and malicious administration or cause to be administered noxious things so as to endanger the life of others

Actus reus element: admin to/cause to be admin to.

Mens rea: unlawfully and maliciously

The issue is: were Cunningham's actions malicious? How do we define malicious?

Holding: Trial court uses negligence test- he should have known that taking meter would cause danger. Maliciousness means wickedness means negligence

Higher court uses recklessness test- did he or should he have foreseen?

Regina v Faulkner

Rum kept in keep of ship. Sailor goes to steal rum, lights a match, burns down ship.

Issue: did Δ act maliciously?

Holding:

Act must be intentional and willful

- lighting match was intentional and willful
- includes Δ knowing damage would be a probable result and acted anyway
 - o maliciously means recklessly

c. Mens Rea and Mistake

Mens Rea term can slide down the statute -(i.e. Thou shall not willfully damage a vine in the district of Columbia valued over \$50.- Does willful apply to vine(what if you thought it was a snake), in district (you though you where in MD) valued over \$50 (you thought it was \$49.99))

US v Jewel

Jewel drives his car from Mexico to US with 110lbs of marijuana in his car. Drugs were concealed in secret compartment. Charged with knowingly transporting illegal marijuana across the border

Issue: what does it mean to know, or not know something

Court upholds conviction: burden of proof is such that he must prove beyond a reasonable doubt that he did not know of drugs-

- court argues that the test is whether there is a **high probability that Jewel could have foreseen that he was transporting.**
- Issue of inference- **is it fair to infer the existence of knowledge** when the Δ has something less than perfect knowledge

Court treats deliberate ignorance as actual knowledge

See chart on page II-1 of supplement- this case falls on line between knowingly and recklessly. His behavior most closely resembles recklessness, but under statute court could not convict under recklessness so instead it treats Jewel's conduct as knowingly

Mens Rea Hypos:

1) Δ charged with receiving stolen property. She knew they were stolen but believed them to be TV's when in fact they were radios.

Result: Guilty. Mens rea is knowingly accepting of stolen property. Statute does not distinguish what the property must be.

If statute stated that mens rea element was knowledge, Would it be a good defense if Δ argued she didn't know that good was stolen? What if gov't argues that a reasonable person would have known

2) Δ finds rusted handgun containing one bullet. He tries to fire but can't, tries to poke bullet out but can't. 6 months later as joke he points gun at friend and gun goes off. What result? Involuntary manslaughter

What if he said he didn't know gun was loaded? Is this a good defense?

First we need to know what level of mens rea is required by statute. We'll say recklessness- the conscious disregard for chance that harm might result

∴ his stated defense of not knowing is not a good defense

3) statute says who ever solicits sex with minor over internet is guilty of felony. Δ does solicit sex from person chatting with he believes is 25 years old. What result? Guilty. **If a statute does not use a mens rea term (as here) it may be strict liability.** If a mens rea term is used it is not a strict liability. Statute makes no mention of knowledge

Regina v Prince

Facts: Δ convicted of taking unmarried minor from parents w/o permission. Girls said she was 18, Δ reasonably believed she was.

Issue: what does unlawfully modify? Take? Age? Unmarried? How far down sentence does unlawfully travel?

Holding: unlawfully does not modify under 16. taking a girl under 16 is strict liability.

If a crime is treated as strict liability, no mens rea defense is going to work

General Intent v Specific Intent Crimes

- general intent only requires intent to commit a forbidden act
 - o trespass
 - o breaking and entering
- specific intent requires intent to commit a specific wrong beyond forbidden act to bring about a specific result (mens rea not only to commit forbidden act but additional mens rea as well)
 - o larceny- intent to take property of another with the intent to deprive owner of possession
 - o burglary- intent to break and enter with further intent to commit another crime once inside

Is a specific intent crime if a statute charges
Purposefully
Knowingly

Is a general intent crime of statute charges
Recklessly
Negligently

The Mens Rea of Rape

Commonwealth v Sherry

Rape of nurse by three doctors following party

Two sets of facts, victim and Δ- disagree as to the strength with which victim resisted and made her lack of consent known. Δ claims defense of mistake- while perhaps in fact she did not consent, we honestly believed that she did.

Commonwealth v Fisher

First encounter was rough, during which victim did not protest. Δ thinks that similar conduct would be acceptable during second encounter. She says no, he says no means yes. She says she is forced to knee him in groin to escape. He says once she said she really did not want it he stops and she leaves. Δ raises mistake of fact defense- mistake as to whether or not she consented.

Holding: while Δ's claim may be persuasive, and is a true statement that most states accept mistake defense if mistake is honest and reasonable, 6th amendment rights of poor counsel not satisfied.

All Anglo-American JD's say that the Δ's belief (mistake) is relevant if and only if it is reasonable

- therefore a reasonable belief that Δ consented **is a good defense to rape**

she says yes, she means yes, they have sex- good defense

she says yes, she means no, they have sex- probably good defense

she says no, she means no, they have sex- no defense

a specific intent crime would allow as a good defense even an unreasonable belief that consent was given

a general intent crime would allow as a defense only a reasonable belief. Rape ∴ a general intent crime

mistake of Fact:

Note case: *Regina v Smith*(pg 261)

Facts: when moving out of apt, Δ tears up walls and floor to remove wires from sound system he installed. Δ asserts he did not know it wasn't his property to destroy since he fixed the walls the way they were

Defense of mistake- thought it was my property

Holding: no crime is committed if Δ honestly and reasonably believes he has right to do so.

Mistake of Law v. Mistake of Fact

Is this a mistake of fact, law, or something else (mistake of legal status (mix fact and law))

A fact is something you can tell with your five senses

If you need a judicial ruling to answer your question then you can't have a purely factual question

- i.e. even if watch has Brian's name on it, we don't know its his watch and ∴ is a mistake of legal status.
- Consent- you can't tell consent with five senses

A mistake of law would be saying "I didn't know there was a law on the books against taking others property"

Lambert v CA

Facts: City ordinance requires persons convicted of felony to register with police if staying in L.A. for more than 5 days. Δ moves to L.A. but is unaware of ordinance

Defense: Δ didn't know she was suppose to register. Mistake of Law.

Holding: Δ was given no opportunity to comply with law. No proper notice was given

Ignorance of law is only a defense when:

- 1) **Crime of omission**, not commission (distinguishes murder, larceny, etc)
- 2) **No proof of high probability of knowledge**

Wrapping up Mistake:

in those JD's that use general and specific consent, whether mistake is a valid defense depends on :

	Specific	General	Strict liability
Honestly held unreasonable	Good defense	Not Good defense	Not good defense
Honestly held, reasonable	Good defense	good defense	Not good defense

D. Legality and proportionality

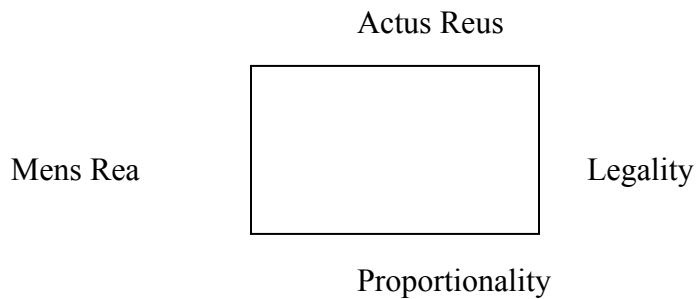
What are elements of a just punishment:

- Actus Reus
- Mens Rea

What are the federal constitutional limitations on substantive criminal law? (what is a just or fair punishment)

- Proportionality
- Legality

Basically when assessing punishment, as long as you have an actus reus, mens rea (except in strict liability), legality, and proportionality → anything goes.



As long as you stay inside the box, the punishment is constitutional.

We do not allow ex post facto laws-they violate the principle of legality

- Article 1 sections 9 and 10
 - o No person may be punished under a law that was not in existence at the time he acted. **Laws can't be retroactive**
 - o No person may receive a greater punishment than the maximum penalty authorized at the time he acted. **Punishment can't be retroactive either**

- Now if individual punished in 1990 and in 1995 congress reduces punishment, that individual is not entitled to have punishment reduced – he was punished at the level at the time he committed the crime

Due Process- 5th and 14th Amendments- laws may not be over broad or unduly vague

- over breadth
- void for vagueness

Notice and police discretion: we want to clearly inform people of ordinary intelligence of the precise conduct that is being prescribed in order to give them fair notice of the law. Also want to give police some discretion for the sake of efficiency but don't want arbitrary law enforcement

Overbreadth and Void for vagueness

Overbreadth- drafted so broadly that will include protected behavior as well as unprotected behavior. Standing exception allowed b/c existence of overbroad regulation is likely to have “chilling effect” on expression of rights of 3rd parties not before the court

Vagueness-

Morales v Chicago

City ordinance prohibiting loitering – to remain in any one place w/o apparent purpose

- held unconstitutional by SC

Cowen v CA

Cowen wants to observe court proceedings wearing jacket w American flag, upside down with words “Fuck the Draft” Arrested for disorderly conduct

Holding: SC finds for Cowen – “one man’s vulgarity is another lyric” You can’t give police authority to arrest for certain words because words mean different things to different people

- Violated due process due to over broadness and vagueness

Cruel and Unusual Punishment- 8th Amendment: Cruel and Unusual punishment will not be imposed.- applies to both fed and state gov’t

2 subcategories:

- status crimes: we do not punish people for who they are, we punish them for what they do
- proportionality- eye for an eye punishment- you cause this amount of harm you receive this amount of punishment
 - o *Coker v GA*- it is cruel and unusual to impose death penalty for rape where no one is killed
 - o Applies not just to disparate sentencing – also applies as you look to maximum range of one punishment when compared to another punishment in same penal code
 - o Multiple offender statutes- i.e. 3 strikes – multiplier added with each crime an individual commits
 - o *Rummel v Estelle*

- Δ committed 3 felonies, 1) using stolen credit card (he did not steal), 2) forged rent check for \$29, 3) took \$120 for repair work he did not intend to do.
- In TX, after 3rd offense trial judge loses all discretion and Rummel is sentenced to life
 - Supreme court upholds sentence saying NOT grossly disproportionate
- Locker v Andrade - Δ committed 3 property offenses – pending now
- Could be used to reaffirm over overturn in Rummel
- Complicated by 1996 AEDPA – repealed and rewrote portions of habeas corpus
- State courts given deference so that federal courts can't step in if state courts did not render reasonable application of law

Summary- Discretion: Courts are given discretion to interpret statutes/define punishments fairly w/in federal and constitutional boundaries
 - almost no limits

III. Homicide

Homicide- the killing of another human being
 - many subcategories of homicide

Homicide Summary (see handout)

Premeditation/deliberation

1°- Intent to kill + P and D

Without intent to kill → no p/d → 2° murder

If you have a intentional killing, can be diminished by factors of voluntary manslaughter (i.e. heat of passion provocation)

- heat of passion provocation
 - Legally sufficient provocation JD (Girard)
 - 1) **legally sufficient provocation**, if so, remaining questions go to jury, if not only murder goes to jury
 - 2) would reasonable person be provoked
 - 3) was this Δ provoked to kill (otherwise he should not be entitled to defense)
 - 4) would reasonable person have cooled of in time period
 - 5) Did this defendant actually cool off (even if reasonable person did not cool off)
 - Non-Legally sufficient provocation JD (Maher)- anything goes to jury
 - 1) would reasonable person be provoked
 - 2) was this Δ provoked to kill (otherwise he should not be entitled to defense)

- 3) would reasonable person have cooled of in time period
- 4) Did this defendant actually cool off (even if reasonable person did not cool off)

What is **malice aforethought**? Every murder has it, no manslaughter has it. Malice aforethought is a term of art – **the dividing line between murder and manslaughter**- it is a mental state that makes a homicide specifically heinous

- intent to kill
- intent to injure
- recklessness plus
- felony murder

1° v. 2° murder:

Commonwealth v. Carroll

The defendant was an army officer with a very good reputation in his community. His wife was mentally disturbed and she had abused his children and said insulting words to the defendant. That night, the defendant grabbed a gun, which he claims he put on the side of the bed upon his wife's request, and shot the wife twice in the back of her head, possibly while sleeping.

Issue: Was the defendant guilty of first degree murder?

Holding: Yes

Key Facts: First degree murder in Pennsylvania includes "killings by poison, lying in wait or **any other kind of willful deliberate and premeditated killing.**" The defendant in this case has made the argument that he was mentally incapable of pre-planning the murder and that was temporarily in the state of blindness when he shot his wife.

Legal Reasoning: The court used *Commonwealth v. Drum* to rule that the defendant did not need time to pre plan the murder in order to consider his actions pre-meditated. **The court held that any small amount of time is good enough to plan a murder.** The court held that the defendant **deliberately grabbed the gun and deliberately shot** two fatal shots to the head of his wife and these are the actions which require first degree sentence.

Do we have a 1° or 2° murder?

1° - intentional killing with premeditation and deliberation

2°- intentional killing without premeditation and deliberation

Since legislature has included both terms, must have both premeditation and deliberation

1) Premeditation – some pre-thought

- Court says no time is too short for a wicked man to form the scheme of murder (ie no time too short to have premeditation)
- Carroll argues he is not a wicked man ∴ time must be longer, court responds that Carroll showed his wickedness by killing wife

2) Deliberation- Choice

- Carroll chose to put the gun there, he chose to take it, he chose to pull the trigger
 - o By his own admission

Carroll's strongest argument is raised by expert witness arguing that Carroll's reaction was an **impulsive, automatic reflex**, thus eliminating mens rea.

- but court does not respect psychiatrist's opinion- society would be unprotected from criminals if blind impulses were allowed as defenses to murder

State v Guthrie

Δ works with π as dish boy. Victim teasing Δ and snapping Δ with towel. Δ stabs victim multiple times in the neck and then not stopping even as victim was falling.

Issue: 1° or 2° degree murder? Jury instruction confusing b/c it equates intent with P+D but negates to point out that it is still possible to have intentional killing without P+D (2°).

Intent- amount of time before murder

Deliberation- weighing of consequences culminating in decision to kill anyway

We distinguish between 1° and 2° to show a gradation of culpability. As society we feel some murders are more heinous than others.

People v Anderson (Note case)

Facts: Upon returning home, wife and daughter find boyfriend of mother covered in blood. He claims to have cut himself and that mother's 10 year old daughter had cut herself. They find blood in every room of house and body in basement under boxes. Body stabbed 60 times many wounds caused post-mortem.

Holding: court finds evidence insufficient to support 1° murder conviction based on theory of P+D- no evidence that the Δ planned the killing- nothing in prior relationship suggests motive and multiple random knife wounds suggest an explosion of violence rather than preconceived design to kill.

3 Part Test: For P and D - which we look at separately and in combination:

- 1) Planning Activity – can convict on strong planning activity
- 2) Motive - need a combination to convict
- 3) Manner- need a combination to convict

According to court, you cannot convict on manner alone, nor on motive alone. The only one that can stand alone is planning activity, if and only if it is strong.

Δ is guilty of 2° but not 1° murder because no evidence of motive and no evidence of planning activity.

Murder v. Manslaughter (A Distinction of Mens Rea):

What is malice aforethought? Every murder has it, no manslaughter has it.

Malice aforethought is a term of art – the dividing line between murder and manslaughter- it is a mental state that makes a homicide specifically heinous

- intent to kill
- intent to injure
- recklessness plus
- felony murder

Girouard v. State

Facts: During Angry argument, wife verbally taunts husband, threatens divorce, announces affair with husbands commanding officer, alleged abuse. Husband stabs wife 19 times

Issue: Should provocation be limited by categories or decided on a case by case basis?

π argues 1^o murder - P+M as evidenced by the fact that he had hidden the knife beforehand.

Δ argues that he did not know what he was doing and therefore no P+D.

Δ argues for heat of passion voluntary manslaughter. Wants to expand traditional basis of provocation

Holding: Court refuses to expand category- **words alone are not enough**

Reasoning: from a policy standpoint, if insults alone could serve as justification, the problem of murder would be expanded

3 categories of voluntary manslaughter:

- 1) Heat of passion
- 2) Mistaken justification (imperfect self-defense)
- 3) Diminished capacity

Heat of Passion:

traditional basis of provocation:

- assault and battery
- mutual combat
- illegal arrest
- injury/abuse of loved ones
- sudden discovery of adultery

Maher v People

Facts: Δ observed π and wife go into woods. He then hears from friend that π is sleeping with wife. Δ does not actually see wife sleep with π . Δ shoots π in and through left ear

Holding: sufficient evidence to go to jury

Reasoning: Anything which would **naturally produce such a state of mind counts as provocation**. The law cannot possibly categorize all possibilities that would be reasonable

JD's have two different approaches, some define what exactly constitutes legally sufficient provocation, others allow all questions of provocation to go to jury:

Defines legally sufficient provocation JD (Girard)

- 6) legally sufficient provocation, if so, remaining questions go to jury, if not only murder goes to jury
- 7) would reasonable person be provoked
- 8) was this Δ provoked to kill (otherwise he should not be entitled to defense)
- 9) would reasonable person have cooled of in time period
- 10) Did this defendant actually cool off (even if reasonable person did not cool off)

Does not define legally sufficient provocation JD (Maher)- anything goes to jury

- 5) would reasonable person be provoked
- 6) was this Δ provoked to kill (otherwise he should not be entitled to defense)
- 7) would reasonable person have cooled of in time period
- 8) Did this defendant actually cool off (even if reasonable person did not cool off)

Voluntary manslaughter does not say that the law condones murder, it says that law understands why the person acted and that this person is less culpable than the 1^o murderer. **The thing that allows us to distinguish between categories of murder and manslaughter is mens rea**

Difference between voluntary and involuntary manslaughter is INTENT

1^o murder(with P+D), 2^o murder (with no P+D).

- should first degree murder be mitigated to voluntary manslaughter
- should second degree murder be mitigated to involuntary manslaughter
- Is there a mitigating force which society would recognize?

Reasonableness – should we use objective, subjective, or hybrid?

- generally, we use an objective test
- but sometimes, as in the case of age, mental capacity, etc, **we make exceptions and allow for some subjective characteristics of the Δ to factor in to the reasonable standard**

Voluntary manslaughter is an intermediate crime, it is not as serious as murder but not as unserious as no crime at all. It is a catch all for all voluntary manslaughter

- not a defense in the sense that it leads to acquittal
 - o virtually never justifying

- but is a recognition that we understand why otherwise reasonable people sometimes lose control.

Hypo: Building engineer leaves a steam boiler unattended despite prior warning. Explodes killing several people → what kind of crime?

Issue: since he has previous warning, does he have the recklessness necessary to support voluntary manslaughter?

- did not intend to kill-
 - o by definition we do not have 1° or 2° murder
- we don't have heat of passion
- probably voluntary manslaughter, but why he left (to save a life) may mitigate it to no crime at all

INVOLUNTARY MANSLAUGHTER- UNINTENDED KILLINGS

the mens rea necessary is recklessness- conscious disregard of a substantial and unjustifiable risk that a death will occur

Commonwealth v Welansky

Fire broke out in nightclub owned by defendant and many patrons and staff were killed or injured because there were inadequate, blocked, or locked exits. Defendant was indicted for manslaughter.

OUTCOME: Court affirmed defendant's conviction of manslaughter, holding prosecution was not required to prove he caused fire by some wanton or reckless conduct but that it was enough to prove that death resulted from his wanton or reckless disregard of safety of patrons in event of fire from any cause.

Issue: What is the mens rea of involuntary manslaughter

Involuntary manslaughter v negligence

- IM- risk creation, but not just negligent risk creation- also **conscious risk creation**
- IM requires greater than ordinary negligence
 - o If death results from ordinary negligence the best you have is tort suit

Rule: mens rea of involuntary manslaughter is something more than ordinary negligence

- **the mens rea necessary is recklessness- conscious disregard of a substantial and unjustifiable risk that a death will occur**

State v. Williams

OVERVIEW: The trial court convicted defendants of manslaughter after finding that they were negligent by failing to provide their minor child with reasonably necessary medical attention even though defendants were ignorant as to the seriousness of the child's illness.

OUTCOME: Held that defendants were put on sufficient notice of their minor child's illness and accordingly their failure to seek medical attention for their child and such negligence was enough to sustain defendants' statutory manslaughter convictions.

Should we use an actual awareness test (subjective test) or an should have been aware (objective test) as court used?

Danger of subjective test:

Do we allow individuals to get away with crimes because of who they are?

Danger of objective test:

We hold people responsible for crimes they could not have foreseen or prevent

Commonwealth v Malone

OVERVIEW: The 13-year-old decedent was killed during a game of Russian roulette. The court found that defendant's actions could not be characterized as accidental. The fact that there was no motive for this homicide did not exculpate the accused, since the killing was murder with malice in the sense of a **wicked disposition with reckless disregard for the consequences**. In a trial for murder the court determined that proof of motive was relevant but not necessary.

OUTCOME: The court affirmed the jury's verdict and sentence for manslaughter which was charged by the Commonwealth because defendant's actions could not be characterized as accidental.

The Felony Murder Rule- (strict liability) Any act done with the intent to commit a felony which results in death is felony murder.

- RULE IS LIMITED IN APPLICATION - rule must be applied as narrowly as possible consistent with its purpose- **to prevent those engaging in felonies from killing negligently or accidentally.**
- Applies only to **inherently dangerous** felonies
- Not limited by lack of intent or lack of foreseeability
- Felony murder is disfavored therefore it **does not apply to felonies that are integral parts of and included in fact with the homicide**

Overview:

At common law, any death resulting from any felony was punishable by death.

Limitation one: you need a felony that is sufficiently dangerous (breakers s)

Limitation two: you must have an independent felonious purpose

Limitation three: agency theory- murder must have been caused by felon

Limitation four: proximate cause theory- death must be foreseeable

Limitation five: justifiable homicide

Limitation six (in NY): no felony murder if the deceased is on of the felons

Limitation seven (in CA): time period surrounding felony- must occur in perpetration or attempted perpetration of crime

Limitation eight (in ¼ of JDs) four part affirmative defense

- 1) did not commit the act
- 2) was not armed
- 3) no reasonable ground to believe others were armed
- 4) no reasonable ground to believe conduct of others likely to cause death

Felony murder has been significantly limited but is not on its way out.

Aka the unlawful act doctrine

- felony murder rule
- misdemeanor manslaughter

Regina v. Serne` (basic rule of felony murder- a 1° murder)

Δ sets fire to house and shop. Son dies in fire. Δ was in a state of financial embarrassment. Boy's life and furniture inside shop were insured for large amount of money just 17 days before fire. Flammable tissue throughout house. Fire started in several parts of building at same time, all on ground floors allowing Δ and other family members to escape onto roof of neighboring building.

Rule of malice forethought should be narrowed:

Holding: **Any act done with the intent to commit a felony which results in death is felony murder.**

Reasoning: because the act was so dangerous, it matters little whether Δ hoped the kids would escape.

People v Stamp

OVERVIEW: Defendants robbed the building, and fled. The owner had chest pains from shock, then collapsed on the floor and was pronounced dead. The coroner's report listed the cause of death as heart attack. Defendants argue the felony-murder doctrine should have been applied in this case due to the unforeseeability of the owner's death.

OUTCOME: Held that because the homicide was a direct casual result of the robbery, the felony-murder rule applied whether or not the death was a natural or probable cause of the robbery.

The felony murder rule is not limited to foreseeable deaths only. A felon is liable for all killings committed by him or his accomplices in the course of a felony

- felon takes his victim as he finds him- does not matter if victim would have died soon afterward anyway
- this means under felony murder rule a felon can be held liable without mens rea with respect to the death
 - o as long as felon's actions are but for and proximate causes of death

Likewise, many states have **misdemeanor manslaughter** rules which can provide a basis for **involuntary manslaughter** convictions without proof of recklessness or negligence.

- also limited to proximate causes
- some states limit to only certain misdemeanors (regulatory, extra dangerous, etc)

Both felony murder and misdemeanor manslaughter have elements of strict liability- if you commit the felony or manslaughter and someone dies (assuming proximate cause and limitations) you are liable for that death without chance for rebuttal.

The inherently dangerous felony limitation- original felony must be so dangerous in and of itself that it creates a danger to human life

People v Philips

OVERVIEW: Defendant was a doctor of chiropractic medicine who, for a short period of time, treated a child for a rare fast-growing form of cancer. The parents of the child had consulted various experts and were awaiting surgical procedures for removal of the child's eye when they were advised of defendant's chiropractic practice. After a brief telephone consultation and payment of an advance fee to defendant, the child's parents discharged her from the treating medical facility and placed her in defendant's care, where she worsened substantially. Defendant argued successfully that defendant's previous prosecution for grand theft (for fraud of parents) was not an inherently dangerous felony that warranted invocation of the instruction on felony-murder.

OUTCOME: Finding that the trial court erred in giving a felony-murder instruction to the jury based on defendant's previous prosecution for grand theft.

Holding: Only felonies that are inherently dangerous to human life can support application of felony murder rule. **Must be so dangerous that in and of itself it creates a danger to human life**

- in this case the felony in question was grand larceny of the parents (for fees) which is not an inherently dangerous felony.

RULE IS LIMITED IN ITS APPLICATION- rule must be applied as narrowly as possible consistent with its purpose- to prevent those engaging in felonies from killing negligently or accidentally

People v Satchell

OVERVIEW: Defendant was indicted on murder and aggravated assault on a peace officer charges after allegedly shooting and killing, Felony charged was

possession of a concealed weapon by a convicted felon.

OUTCOME: Held that carrying a concealed weapon by a convicted felon, did not amount to the required felony inherently dangerous to human life.

- mere possession of a concealable weapon by an ex-felon is not a felony inherently dangerous to human life (use of a shotgun is dangerous, not possession)
 - o **rule must be applied as narrowly as possible consistent with its purpose- to prevent those engaging in felonies from killing negligently or accidentally**

JDs are split on limitations on felony murder doctrine

CA

Inherently dangerous to human life in the abstract

KS

Inherently dangerous to human life

PA/NY

BREAKERS FELONIES- Statute lists the predicate felonies **or attempted felonies** for felony murder (breakers s, - burglary, robbery, escape, arson, kidnapping, rape, sodomy, sex crimes)

In virtually every case involving 1° felony murder you can show 2° recklessness plus so why would prosecutors want 1° felony murder?- 1) easier to prove elements of case when there is a degree of strict liability (no need to prove motive, etc) 2) this is higher sentence and you can always fall back to 2° recklessness plus.

The Merger Doctrine

People v. Smith

OVERVIEW: Defendant was convicted of felony child abuse and of second-degree murder The murder conviction was based on a felony-murder theory in which the underlying felony was the felony child abuse. The court held that because the homicide was the result of assaultive child abuse, the underlying felony in the felony-murder theory was unquestionably an integral part of the homicide.

OUTCOME: Defendant's commission of felony child abuse merged into the homicide for which defendant was convicted, and thus, could not be the underlying felony in a felony-murder theory.

Felony murder is disfavored therefore it **does not apply to felonies that are integral parts of and included in fact with the homicide**

- in other words, no application when the purpose of the conduct was the very assault which resulted in death
- Must be independent felonious purpose apart from causing injury
- Issue is whether the homicide resulted from conduct for an independent felonious purpose

- I.e. homicide not the purpose of armed robbery, the purpose is to kill
- Purpose of kidnapping is to get reward
- ALL THE BREAKERS CRIMES HAVE INDEPENDENT FELONIOUS PURPOSES

If you have a forcible or dangerous felony that does not rise to breakers or inherently dangerous you have - 2° felony murder.

Killings not in furtherance of the felony

State v Canola

OVERVIEW: Defendant and three accomplices were robbing a store when the store owner fatally shot an accomplice, and an accomplice fatally shot the store owner. Defendant was convicted of two felony murders.

OUTCOME: Strikes the conviction for the killing of defendant's accomplice by the store owner and victim of the robbery. The court concluded that there was no justification for extending felony murder liability for the death of a co-felon by one resisting the felony.

In this case, we are not concerned with the death of the store owner, we are concerned if the other co-defendants are liable for the death of their deceased accomplice.

Holding: NO. The court concluded that extension of the felony murder rule beyond its classic common-law limitation of acts by the felon and his accomplices, to lethal acts of third persons not in furtherance of the felonious scheme was regressive.

Proximate cause theory- if it is foreseeable that by the felons actions someone would die and someone actually does die the felon is liable.

- Exception to proximate cause theory:
 - Redline case, police officer responding to robbery shoots one of two felons. Is other felon liable? This is not an agency JD, but nevertheless the court says **if the killing was a justifiable homicide, you can't turn it into a felony murder.**

Agency theory- can hold a felony liable if and only if the felon or one of his confederates commits the killing

Virtually every JD requires proximate cause but some jurisdictions requires agency as well.

IV. ATTEMPT

Inchoate crimes /relational crimes/anticipatory crimes-- not yet complete

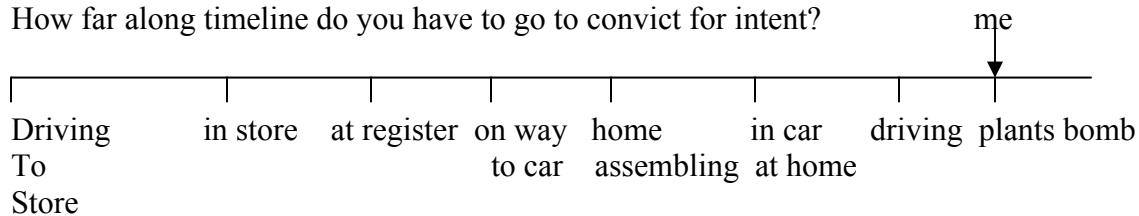
In attempt still need:

- 1) mens rea

- 2) actus reus
- 3) concurrence in time

Attempt is mostly a crime of actus reus. You need to have a mens rea but actus reus is the question upon which most cases hinge

How far along timeline do you have to go to convict for intent?



Actus Reus Tests:

- 1) what has been done and what remains to be done
- 2) extent of manifestation of intent
- 3) seriousness of crime- more serious the further you can look back
- 4) equivocality of act (thing speaks for itself)
- 5) opportunity to desist (locus penitentiary test (LP test))
- 6) proximity in time and space
- 7) likelihood of crime being committed
- 8) Model Penal code- substantial step in course of conduct
 - Code gives example of “substantial” steps – i.e. lying in wait
- 9) NY dangerous closeness test

Substantial Step Test has been accepted by a plurality but not majority of JD’s.

Different tests will allow you to convict at different points on timeline

Which of the six theories of Criminal Justice support having the crime of intent?

- Incapacitation- lets get dangerous persons off the streets
- Deterrence- if you are going to allow for conviction before actual bombing, you tell public that if you engage in activities that can be construed as leading to commission of a crime you can be convicted.

Which would not?

- Retribution – no harm has been done so how can there be retribution?

People v Rizzo

OVERVIEW: Defendant intended to rob a payroll man, however, the police intervened and arrested defendant and his accomplices before they had located the man they wanted to rob.

OUTCOME: The court reversed defendant’s conviction and ordered a new trial because defendant’s actions were too remote with respect to the commission of the crime to constitute attempted robbery because he had not found or seen

the man he intended to rob.

Dangerously close test- did the Δ come dangerously close to committing the act intended?
In model penal code JD, Rizzo would be convicted

Defenses to Attempt

- abandonment and impossibility are an affirmative defenses
 - o Affirmative defenses- even if gov't can prove elements of crime, if Δ can prove elements of affirmative defense no crime has been committed (i.e. self-defense, attempt, etc)
- if Δ can show all of the elements of abandonment or impossibility, then no crime has been committed regardless of state's ability to prove mens rea and actus reus
- once target act has been committed but target harm has not yet occurred then Δ can still abandon
 - o however, the test is **voluntary and complete renunciation**. In this case, Gilbert abandoned because the steel girders made commission more difficult \therefore not voluntary or complete.
- What are valid renunciations?: Change of heart- for the right reasons the Δ decides not to continue on this path
- In addition to being voluntary, abandonment must also be complete
 - o There is a split in JD's on what complete means.
 - Some feel harm must not occur for abandonment to be complete.
 - Other JDs only require that Δ use best efforts to prevent for abandonment to be complete.

Impossibility:

Impossibility is the flipside of mistake. With mistake we ask if a crime had been committed, with impossibility we ask if a crime has not been committed. With mistake we focus on mens rea, with impossibility we focus on the actus reus.

Legal Impossibility- IS A GOOD DEFENSE

- if the act is not criminal, there is no crime even if Δ believes he is committing one

Factual Impossibility- IS NOT A GOOD DEFENSE

- fact or circumstances make commission of the crime impossible. (i.e. bad aim or insufficient weapon)
- example- person pulls out gun, attempts to fire, gun is not loaded
- example- I try to pick pocket but pocket was empty

Difference is whether Δ set out to do something for which there is a law on the books that proscribe that activity. If not, you cannot punish. If there is a law that prohibits what the Δ attempted to do, then that is not a good defense.

Subcategories: de minimus issue- the issue is minor and the person is not dangerous- the person is so sad in the manner they chose to commit crime

State v Davis

OVERVIEW: Defendant appealed his conviction for attempted murder. Defendant entered into an agreement with an undercover police officer for the murder of victim, he selected the undercover officer to kill victim, he delivered a drawing and two photographs of victim to the officer, and he paid the officer a portion of the agreed consideration.

OUTCOME: The conviction was reversed and defendant was discharged because defendant's actions were mere acts of preparation failing to lead directly or proximately to the consummation of the intended crime, so defendant did not perform an overt act necessary to properly support a conviction for attempted murder

People v Jaffe

OVERVIEW: Defendant was charged with receipt of stolen property for acceptance of several yards of cloth belonging to a business partnership.

OUTCOME: holding that the goods which defendant attempted to purchase lost their character as stolen good when they were offered to defendant by the partnership for an agreed upon price. Accordingly, even though defendant may have had the requisite mental state for committing a crime of larceny, his actions in purchasing the cloth did not violate statutes.

Δ believed the goods he was purchasing was stolen. Since property wasn't stolen, there was no actus reus so can't get him for receiving stolen property.

Court in Jaffe is wrong. This is not a case of legal impossibility. This is a case of legal/factual impossibility. There is a law on the books that prohibits receipt of stolen goods.

JD's are split on whether Mixed fact/legal impossibility is a good defense.

2 questions on handout that distinguish between legal, factual and mixed impossibility.

US v Berrigan

OVERVIEW: Appellants challenged their convictions for sending letters into and out of a penitentiary without the warden's knowledge and consent.

OUTCOME: Convictions were reversed in part because the warden's knowledge of appellants' exchange of letters precluded appellee from establishing a necessary element of the offense--an exchange of letters without the warden's knowledge.

US v Oviedo

OVERVIEW: Defendant was contacted by an undercover agent and arranged to sell the agent one pound of heroin. A chemical analysis revealed the substances were not in fact heroin, but procaine hydrochloride, an uncontrolled substance. Defendant was charged with an attempt to distribute heroin. At trial, defendant stated that he knew the substance was not heroin, and that he was merely

attempting to rip off the agent. Defendant was convicted and challenged the conviction.

OUTCOME: The court reversed and held that defendant's objective acts were consistent with a noncriminal enterprise, and that the jury erred in determining that defendant's intent was sufficient to form the sole basis of a criminal offense.

V. GROUP LIABILITY

Accomplice Liability

- You can not understand conspiracy until you understand accomplice liability.
- **Principal 1st degree** (at common law) Is the person at the scene of the crime that commits the crime.
 - Example- person actually at the bank teller window.
- **Principal 2nd degree** (common law) at the scene of the crime that is assisting with the crime but does not actually committed it.
 - Example- Driver of get away car
- **Accessory before the fact-** not at the scene of the crime but knows about it in advance.
- **Accessory after the fact-** not at the scene of the crime, finds out about it afterwards and basically aids and abets
- In most jurisdictions now have been merged into principals.
- It was divided up at common law in order to gradate punishment.
- Aiding and Abeting- Assisting someone else in committing a crime. The mens rea here is the same as for inchoate crimes. There must be a specific intent that the crime be carried out.

Conspiracy:

Mens rea of conspiracy: intent to agree

- You can't have a conspiracy without an agreement

Actus reus of conspiracy: In MOST JD's, in addition to an agreement, you also need an

OVERT ACT- showing the conspiracy is at work.- any physical manifestation of agreement

- the overt act need not be criminal in and of itself- overt act can be speech itself (ie. Renting car for get away)
- if you have agreement but no overt act there is no conspiracy

Scope of Conspiracy:

- If you have 1 agreement to commit multiple crimes you have one conspiracy.
- If you have multiple agreements each to commit individual crimes you have multiple conspiracies. Ironically, ∴ the greater the number of crimes you agree to at one time the few number of crimes you can be convicted for.

TEST FOR CONSPIRACY

- Each spoke must know that others exist
- And must realize they have a community of interests- success of venture

Withdrawal from conspiracy:

- voluntariness and completeness requirements
- (in most JD's) must inform all other members of conspiracy
 - how you do this if you don't know the identity of the other parties?

Bilateral definition of conspiracy

- plurality requirement (in federal courts but not in most state courts)
 - need more than one person to commit conspiracy
 - **wharton's rule**: if a substantive crime has been defined to necessarily require two or more people (i.e. adultery, incest, bigamy, receiving stolen property, bribery, dueling, etc) then gov't must prosecute on the substantive crime and not on conspiracy
 - **except**: we have more than the minimum number of people required to commit crime, then we can charge conspiracy as well (i.e. when a third person helps a couple commit adultery)
 - we can get A and B for adultery and C for conspiracy but now we can add in **pinkerton** liability so we can get C for adultery as well

Summary of Conspiracy

- partnership in crime
- main points explaining why we have it/why prosecutors love it
 - special weapon against group criminality
 - Very controversial aspect of substantive criminal law b/c confers such broad powers on the government
 - 4 aspects of it which make it a very potent weapon in the prosecutor's arsenal – makes it easier to prove the case and allows you to get in more people for a longer period of time
 - 1) permits punishment prior to actual commission of a crime (inchoate)
 - 2) permits increased and sometimes double punishment relating to the same criminal activity – does not merge in commission of target crime
 - as opposed to attempt, where you can't be convicted of attempt to commit a certain crime and the actual crime – they merge – not so w/ conspiracy
 - exception: a few states (ie NJ, WI) say conspiracy does merge w/ target crime, but federal law and most states say don't merge
 - if can convict of both, can give consecutive sentences (as opposed to concurrent) – this is how punishment is doubled
 - often a felony even though the target crime is misdemeanor
 - 3) encourages imposition of far-reaching vicarious liability (**pinkerton liability**)

- once establish existence of conspiracy, every member of conspiracy is liable for conspiracy, any substantive crime by himself, and any substantive crime committed by any other member of the conspiracy as long as they are w/in scope of conspiracy or foreseeable from agreement
- 4) confers on prosecutors wonderful procedural advantages
 - get hearsay testimony (b/c conspiracy is an exception to the rule that hearsay is prohibited in criminal trial)
 - get joinder – more Δs in courtroom → more likely to get conviction
 - venue
 - usually exists in the jurisdiction in which the crime was committed
 - but in conspiracy, venue is in any place where agreement was made, target crime was committed, or an overt act was committed by one of the alleged conspirators in furtherance of agreement
 - more people → greater points of venue
 - prosecutors choose venue based on –
 - what is least convenient for Δs and Δs' attorneys
 - where they can get best jury, where can get longest sentence, where long sentence is likely to be affirmed on appeal
 - ie 9/11 really want to go w/ VA
 - increases number of crimes – between substantive crimes, attempt, conspiracy, etc, there are over 40,000 crimes – prosecutors love this

Pinkerton v. United States

Alleged conspirators for moon shining. Daniel was in jail at the time Walter was out manufacturing the liquor. The two of them were charged with conspiracy. Statute says that both could be held responsible. They got fined and thirty months in jail.

Holding: in addition to evidence that the offense was committed in furtherance of the conspiracy evidence of an OVERT ACT- direct participation in the commission of the substantive offense or other evidence from which participation might fairly be inferred was necessary.

A conspiracy is over when the statute of limitations has run and there is no overt act.

People v. Lauria

- undercover cop tried to get Δ to admit involvement w/ prostitutes. Δ arrested for conspiracy to commit prostitution. we know Δ knew some of his customers were prostitutes
- **Issue:** can Δ be convicted of conspiracy to commit prostitution?

- Knowledge alone is not enough to constitute mens rea for conspiracy – need **specific intent to agree that target crime be carried out**
- If this case had come out the other way, add in *Pinkerton* (vicarious liability) and what do you get?
 - You convict Lauria for as many counts of prostitution as the prostitutes committed

This case is about when you have something short of direct evidence of intent, when can you make the inference?

- **Rule – intent is established by:**
 - Direct evidence of intent to participate, or
 - Knowledge from which intent can be inferred
 - Supplier w/ knowledge is part of a conspiracy based on (sidenote: this will very likely be on the exam – was on 3 of 4 last exams –work on spotting the issue)
 - Aggravated nature of crime itself
 - Ie Δ supplies lockpicking devices knowing X will use it to commit burglary – it is aggravated?
 - Compared to prostitution, yes, but compared to bombing/terrorism, no – sliding scale/balancing test
 - **Stake in the venture**
 - Ie charging substantially inflated prices or no other legitimate use for products
 - Sliding scale/balancing test

United States v. Feola

- Δ indicted for conspiracy to assault a federal officer. Undercover agent found man gagged in closet when looking for a potential escape route → got suspicious → pulled gun → one Δ tries to assault the agent → leads to the charge
 - **Issue:** did the Δs have to know/believe that the buyers were federal officers in order to be guilty of conspiracy to assault a federal officer?
- Holding: §111 requires intent to assault but is strict liability as to status of victim
 - In conspiracy cases, if you have someone who is clearly up to no good, we are not going to give him/her the benefit of technical niceties in the law – must be liable for the consequences
 - here, Δs were up to no good – not gonna give them benefit of traffic light analogy
 - like felony murder – If someone is up to no good in committing felony, hold them strictly liable for other accidental harm that results
- Stewart/Dissent dissent –
 - To get Δs for conspiracy, they must have knowledge that they are dealing with a public official (federal or state)
 - Most states follow this dissent

- Majority is still good federal law, but is restricted to conspiring to assault federal officers – *Lauria* is a better example of law across country
 - If can infer intent from knowledge → can convict
 - Otherwise all you have is knowledge and no conspiracy

U.S. v. Alvarez

OVERVIEW: As part of a scheme to import marijuana, defendant and a Colombian farmer met at a remote airport with a co-conspirator and two undercover agents. The co-conspirator informed the agents that defendant would be at the off-loading site when the plane landed. The agents confirmed with the farmer that he owned the farm where the marijuana would be obtained and with defendant that he would be at the unloading site.

OUTCOME: The court affirmed the judgment convicting defendant of conspiring to import marijuana. The court held that the government was not required to prove that defendant had knowledge of all the details of the conspiracy provided it showed he had knowledge of the essential of the conspiracy.

Issue: Is Alvarez's nod and smile sufficient to create a reasonable inference of agreement to take part in the smuggling operation

The fact that we have him guilty of conspiracy means:

- Pinkerton vicarious liability- he is guilty of all substantive crimes of co-conspirators
- hearsay of others can be used against him
- venue
- statute of limitations runs from latest act

Conspiracy v. Accomplice Liability

What is the difference between conspiracy and accomplice liability?

- In order to convict for conspiracy, you need an agreement. It doesn't matter if target crime has been committed.

In order to convict for accomplice liability you don't need an agreement but you do need either an attempted or completed target crime

Williams v United States

Appellants were convicted of violations and conspiracy to commit violations of the Internal Revenue Code, in connection with illicit liquor sales upon which no tax was paid.

OUTCOME: Convictions affirmed, as it was not an abuse of discretion to try appellants jointly since there was sufficient evidence of a conspiracy based on a large number of tax code violations committed primarily by members of the same police department.

Police provided escorts, protection, assurances, etc for bootleggers.

Holding: Web of the spider: Police were in agreement with bootleggers because of the extent of the evidence. Evidence was voluminous and given by several witnesses... Each individual strand was insufficient but when considered in toto, there is a strong inference of agreement. All of these things couldn't happen without the existence of an agreement.

Scope of the Conspiracy- how many parties involved in an agreement

Kotteakos v United States (spokes on a wheel case)

Issue: is there one conspiracy or 7 similar conspiracies?

- why does it matter?
 - o Pinkerton liability. If one large conspiracy Kotteakos is liable for substantive crimes of the others
 - o Venue- by Joinder, if this is charged as one large conspiracy they will all be in one court room and somebody will be charged with something
 - o Hearsay- for co-conspirators (any conspirator) hearsay testimony will be admissible- so there will be more people can testify against Kotteakos
 - o Statute of limitations

Holding: Multiple conspiracies, not one large conspiracy. Likes spokes on a wheel with Simon brown in the middle. Like spokes on a wheel b/c parties had no way of knowing about actions of others. Therefore there is no rim connecting the others.

Blumenthal v United States (chain configuration)

OVERVIEW: Petitioners were convicted for conspiring to sell whiskey at prices above the ceiling. The court found that petitioners were joined together in one conspiracy by their knowledge of its essential features and broad scope, though not of its exact limits, and by their common single goal.

OUTCOME: Judgment was affirmed, the court holding that where the facts sufficiently revealed a single conspiracy, the essential nature of the plan, and petitioners' connection with it, there need not be evidence that petitioners knew all of the plan's details or the identity of every other participant.

3 groups in case- importer, middlemen, and retailers (blumenthal et al)

Issue is there one large conspiracy or one small between importer and middlemen one between middlemen and retailers

Holding: One large conspiracy- people at ends of the conspiracy must know that group is larger ie retailers knows there are importers and importers know there must be retailers.

TEST FOR CONSPIRACY

- o **Each spoke must know that others exist**
- o **And must realize they have a community of interests- success of venture**

Its just easier to make these connections with chain configuration than with the wheel configuration

Anderson v Superior Court

Doctor performing illegal abortions having multiple women refer patients to him.

Issue is whether as to Anderson (one woman) is there a conspiracy only with the doctor or with everyone else

Holding: one large conspiracy. She knew the doctor performed abortions as a regular business and that others referred patients to the doctor to further his operations. She knew if she and others stopped making referrals the doc would go out of business and she would loose her kick backs. In other words, Whether she gets kick backs is dependent upon others giving referrals as well- otherwise doc would go out of business. Unlike Kotteokos where simon brown had an other job and was doing loan scam for pocket money.

Again since large we have venue, hearsay, AND Pinkerton issues.

- if only small conspiracy, she is liable for the conspiracy and for any abortion resulting from her referral.
- but since single large conspiracy, she is liable for the conspiracy and over 1000 counts of abortion (referred by everyone)

Combination Wheel and Chain Conspiracies

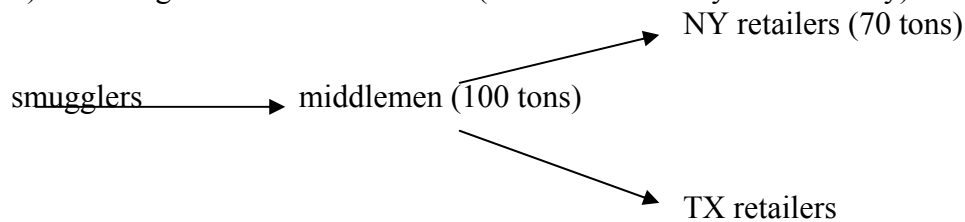
United States v Bruno

Smugglers distribute to middlemen who distribute to retailers in NY and in TX

Issue: Are TX retailers in the same conspiracy as NY conspiracy?

Test whether wheel or chain:

- 1)community of interests
- 2) knowledge of existence of others (but not necessarily their identity)



Holding: 1 conspiracy. Both TX and NY retailers knew of middlemen and smugglers and must have known drugs retailed elsewhere as well (b/c knew they were getting less than all middlemen had).

If NY retailers thought they were getting all middlemen had there would be 2 separate conspiracies because they would have no knowledge of existence of others

Gebardi v United States

man and woman (not married) charged w/ conspiracy to violate the man act (interstate transportation of a woman for immoral purposes to engage in sexual intercourse w/ a man)

- going from Chi to Miami for vacation- part of plan was to have sex in Miami
- Issue: can conspiracy be upheld?
- Holding: No cannot uphold conspiracy conviction of woman
 - Legislative history suggests purpose of act is to protect women from being sold into prostitution
 - Since purpose is to protect woman, she is a protected class and therefore we can't convict
 - If we can't get the woman we can't get gebardi b/c need bilateral agreement

In Federal court, can't have conspiracy of one. If conspiracy requires 2 people agreeing and one is protected class you can't get the other by himself.

Bilateral definition of conspiracy

- plurality requirement
 - need more than one person to commit conspiracy
 - **wharton's rule**: if a substantive crime has been defined to necessarily require two or more people (i.e. adultery, incest, bigamy, receiving stolen property, bribery, dueling, etc) then gov't must prosecute on the substantive crime and not on conspiracy
 - **except**: we have more than the minimum number of people required to commit crime, then we can charge conspiracy as well (i.e. when a third person helps a couple commit adultery)
 - we can get A and B for adultery and C for conspiracy but now we can add in **pinkerton** liability so we can get C for adultery as well

Garcia v State (unilateral concept of conspiracy)

OVERVIEW: Defendant had asked an acquaintance to find someone willing to kill her husband for pay, but the acquaintance reported the matter to police and cooperated with them by introducing her to a police informant who pretended to accept the commission. Defendant contended that because she was the only person with an actual intent to carry out the crime, no conspiracy could have been formed. Unilateral concept, under which liability was based upon the conduct of the defendant rather than the conduct of a group. The court held that [Ind. Code § 35-41-5-2](#) reflected the unilateral concept and that criminal culpability on the part of a co-conspirator was not a necessary element.

OUTCOME: The court affirmed the judgment of the trial court, which convicted defendant of conspiracy to commit murder.

Issue: Can Δ be convicted of conspiracy when only co-conspirator is undercover police would feigned acquiescence in scheme? In other words, can you have a conspiracy of one?

Holding: YES. In Indiana and majority of states the model penal code definition of unilateral conspiracy can hold

-but federal gov't has kept bilateral definition. (remember most conspiracy cases are brought in federal court)

- V. **EXCULPATION**- Defenses are drafted to allow people to take the law into their own hands rarely and only under the right circumstances.

Criminal Law Defenses

- Justification is a complete defense. The outcome would be no conviction.
- Excuse- conviction of a lesser crime. No complete defense.
- Protection of Competing interests.
 - Self defense
 - Defense of others
- Defenses where defendant must break the law in order to avoid committing a greater crime.
 - Necessity
 - Duress
- Defenses in which the defendant tries to negate mens rea or actus rea of the crime charged.
 - Affirmative Defenses
 - i. Impossibility
 - ii. Abandonment
 - iii. Withdrawal, Annunciation from crime charge
 - iv. Intoxication- sometimes affirmative defense, sometimes negates mens rea
 - v. Insanity Defense

Self Defense

- Five Rules for Self Defense
 - i. Imminent harm
 - ii. Proportional force- no more force than necessary
 - iii. No deadly force unless imminent threat of death or serious bodily harm
 - iv. The defendant must not have been the original aggressor
 - unless he was a non deadly aggressor confronted by the unexpected use of deadly force, or he withdrew after his initial aggression and the other party continued to attack
 - v. may not use deadly force if retreat is possible unless at home or in many jurisdictions at work.

Δ's belief re: other person's intentions need not be correct. The standard is the belief of a reasonable person in Δ's position.

People v. Goetz

Defendant was indicted with attempted murder and assault for killing four youths on a New York subway train. One of kids approached Goetz and asked for five dollars, Goetz shot original youth and then shot the other three.

Holding: Δ's belief re: other person's intentions need not be correct. The standard is the belief of a reasonable person in Δ's position.

Defense of others

- When Defense of others is successful there is also outright acquittal.
- Some jurisdictions use **Stands in the Shoes of the other person way**- person coming to the aid of another. If the other person would be able to satisfy five elements of self defense than second person would also get the benefit.
- Other jurisdictions use the reasonableness test- A person can get benefit of others when it is reasonable.

Imperfect self defense (mistaken justification).

- If a person believes that he or she is justified in self defense but jury disagrees it is not an acquittal but it is also not conviction for murder. (applies to both self defense and defense of others)

Battered Spouse

State v Norman

OVERVIEW: Criminal defendant killed her husband while he was sleeping. At trial, defendant testified that the killing was provoked after years of physical and psychological abuse.

OUTCOME: Judgment reversed, as trial court's judgment was without error; defendant was not entitled to self-defense jury instruction as defendant was not in imminent fear of death when homicide occurred.

Pre-Emptive Self defense- a battered wife who strikes while husband is asleep

Wife shoots husband while sleeping-

Gun jams first time the wife fires. She fixes gun, and shoots him once. He's still moving so she shoots him twice more

Holding: killing not defensible because threat of bodily harm was not **IMMINENT (IMMEDIATE)**

- he was asleep therefore danger was not immediate.

To the degree that we accept Battered Spouse Syndrome argument requires a watering down of the imminence requirement

- dissent disagrees: a battered spouse in such a situation is always in imminent danger.

Options:

- pardon (rare)

Courts try to get creative with excuses

- voluntary manslaughter- imperfect self defense
- recognizing insanity defense- confined to mental hospital till deranged regains sanity
- temporary insanity- no need for hospitalization

or total justification

- acquittal – perfect self defense.

What things might we do to take care of the problem before the killing?

- restraining orders? Just a piece of paper, don't have the resources to enforce court order- if its violated, a lot of times we don't know until its too late.
- Mandatory arrest- if police see evidence of battery they must take batterer into custody
 - o Leads to retaliatory beatings
- Social remedies? Mandatory counseling, intervention programs, victim protection programs, etc
 - o Where do we get the funding

Legal dilemma- we have an unanswerable question

- why doesn't law recognize battered spouse syndrome and learned helplessness?
 - o B/c even psychologists are split on what these syndromes are all about
 - o Where do we draw the line? Recognizing syndromes starts down a slippery slope – creates excuses for people who take the law into their own hands

RAPE

- consent is primary element- did the defendant BELIEVE that the victim did not consent?
- In some JDs defined as nonconsensual intercourse
- In some JDs, crimes are defined as general or specific intent crimes
 - o Specific- both a reasonable and unreasonable mistake of legal status are good defenses
 - o General- only a reasonable mistake of legal status will be a good defense
 - Crime of rape is a general intent- only a reasonable belief that victim consented is a good defense
- Elements of rape:
 - o **by force or threat of force**
 - many JD's have removed this first element
 - o **against the will and without consent**
 - Lack of consent is established by resistance or fear
 - Fear must be real (substantial) and reasonable
- **Controlling state of mind is the state of mind of the Δ, not of the victim**
 - o if controlling state of mind is that of victim, not actor, that makes Rape a strict liability crime. This is dangerous considering rape can carry a lifetime sentence

State v Rusk

Her Testimony:

Pat repeatedly tells Δ that ride home is only friendly and that she does not want to have intercourse. She can't run or leave, doesn't know neighborhood and its 1 am. Δ pulls pat onto bed and begins to undress her, she removes the rest of her clothes and his pants because he asks (this fact on the surface hurts Pat because it implies consent. On the other hand, because he asked she may have been placed in fear). He begins to lightly choke her ("light choking" is also ambiguous). She asks if she does what he wants would he let her go, and he says yes. Pat reports to police that same night

His Testimony:

Friends saw him and some woman they believed to be Pat arm in arm and all over each other She went upstairs willingly. Didn't make threats. Denys lightly choking. Pat didn't get uptight until after intercourse

Appellate Court says that force is key element and Pat made no showing that she resisted or was prevented from resisting by threats

Supreme Court overturns- sufficient evidence for jury to rationally find essential elements of 2° rape had been established

2° rape elements (in this JD)-

- **by force or threat of force**
 - o many JD's have removed this first element
- **against the will and without consent**
 - o Lack of consent is established by resistance or fear
 - o Fear must be real (substantial) and reasonable

People v Evans

Court calls victim unworldly and naïve. Δ takes victim to singles bar for "a psychological experiment" about how males react to her. Δ is not psychologist – he lied. Δ takes victim back to his apt, which he said was his office- a lie. he attempts to undress victim, she resists, he then changes approach and ridicules her for "failing the test." He says look at where you are, how do you know I'm a psychologist? I could kill you, I could rape you I could hurt you physically. He then lies again saying she reminded him of a lost love, she moves to comfort him he grabs her and says "your mine, your mine" and has sex with her 3 times. No ripped clothes, no bruises or scratches

Issue: Can you have actual consent when its achieved by fraud or trickery?

Holding: Yes. If Δ had no intent to threaten then Δ had no criminal intent.

Reasoning:

Seduction, not rape

No physical force was used

Controlling state of mind is the state of mind of the Δ, not of the victim

if controlling state of mind is that of victim, not actor, that makes Rape a strict liability crime.
This is dangerous considering rape can carry a lifetime sentence

Defense of Necessity

Five Elements of Necessity

- 1) harm sought to be avoided must be greater than harm committed
- 2) no alternative
- 3) imminence (not merely speculative future harm)
- 4) situation must not have been brought about by Δ recklessness or negligence
- 5) Δ must not take the life of an innocent person

NO SUCH THING AS A DEFENSE OF ECONOMIC NECESSITY- slippery slope.
Alternatives exist

Likewise, civil disobedience is not a necessity- cannot satisfy all elements for direct or indirect civil disobedience

- Direct v indirect civil disobedience- difference between violating law in order to protest that law vs. violating a law to protest a different law

US v Schoon

OVERVIEW: protesters arrested for disrupting activities of the IRS in protest of US aid policy to El Salvador. In reviewing appellant protesters' claim, the district court denied the necessity defense on the grounds that the requisite immediacy was lacking, the actions taken would not abate the alleged evil, and other legal alternatives existed. The court found the harm resulting from criminal action taken to secure policy's repeal outweighed any benefit because such indirect protest was unlikely to immediately change Congress' policy.

OUTCOME: Necessity could never be proven in a case of indirect civil disobedience.

Holding: necessity defense does not apply

On which of these elements does Δ in above case fail? Imminence (harm is speculative) and no alternative (elect other officials)

Cases where necessity arises:

- someone breaks traffic laws for greater purpose (i.e. transporting injured to hospital)
- pharmacist giving drugs without prescription to dying person
- medicinal marijuana

DURESS

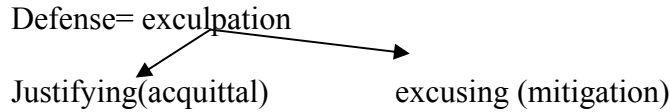
Elements of Duress

- 1) Threat
- 2) Reasonable fear

- 3) Imminent
 - a. Why do we require imminence: **we want to limit the opportunities for people to take the law into their own hands**
- 4) Death or serious bodily harm

Limits:

- Even if all elements are satisfied, most JD's do not treat duress as a perfect defense, only a mitigating defense



- Duress is NEVER an excuse when taking the life of an innocent
 - o just like necessity (lesser of two evils) and self-defense

State v Toscano

Chiropractor charged with filing false medical claims against insurance company. Toscano owes Leonardo's brother gambling money. Leo threatens Toscano over the telephone, saying remember you and your wife just moved into a home with a dark hallway. Doesn't want to contact police Toscano claims duress- fear for own and family's health.

The fact that he was in fear of family's health is equivalent to fear for own health.

Holding: Threat is imminent enough to go to jury. A jury should decide if a reasonable person would yield under the circumstances

INTOXICATION

General vs Specific crime classification created to address defense of intoxication

- General intent: no reference to intent to do further act (rape). **Acting recklessly or negligently**
- Specific intent: intent to do some further act (larceny- taking with the intent to deprive). **Acting purposefully or knowingly-** in other words, a double mens rea crime.

Generally, voluntary intoxication a defense to specific intent crimes but not general intent crimes.

	General Intent	Specific Intoxication	Strict liability
Voluntary intox	Not good defense b/c so many general intent crimes are	Good defense- can't form proper mens rea	Not good (mens rea is irrelevant for strict liability ∴ defense

	committed by people who get recklessly drunk		that eliminates mens rea is irrelevant) If you commit actus reus you commit crime
Involuntary intoxic	Good defense	Good defense can't form proper mens rea	Not good (mens rea is irrelevant for strict liability ∴ defense that eliminates mens rea is irrelevant) If you commit actus reus you commit crime

Limitation:

- Prior intent + intoxication is not a good defense
- When Intoxication is a valid defense, no additional mens rea so no specific intent crime. Still can get Δ for lesser included offense
- As a policy matter, person who is always drunk is not entitled to these defenses but instead is treated under insanity defense- mandatory treatment
- NJ EXCEPTION: as policy matter so many crimes are committed by voluntary drunks that NJ does not recognize intoxication defense for general OR specific intent crimes (*State v Stasio*)
 - o Exception to exception: intoxication a mitigating defense to murder b/c of death penalty

Roberts v People

Robert's charged with assault with intent to murder.

Holding: question of whether or not Δ could form intent is a question for the jury. if he did not entertain the intent, it doesn't matter why he didn't entertain it. No mens rea, no crime. Intoxication would be a defense. Still could get him for lesser included

People v Hood

Police try to subdue drunk Δ. Δ grabs police's gun during struggle and shoots officer in the leg. Charged with assault with a deadly weapon on a peace officer

Holding: no defense of intoxication b/c will treat assault as a general intent crime. Δ was capable of forming intent to assault.

INSANITY

Insanity is the line between punitive model of criminal law and rehabilitation treatment model on the other.

Insanity is not really a defense

- if someone is successful → even though found individual not guilty by reason of insanity, sending person to mental hospital for long period of time (possibly life)
 - o so incarceration even though not guilty

The points at which the insanity defense becomes relevant- at the time of

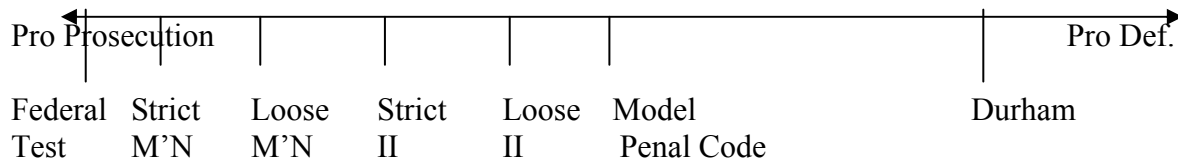
-
- actus reus
 - arraignment
 - trial
 - allocation
 - execution of sentence

Test

- 1) is Δ unable to understand these proceedings and/or
- 2) is Δ unable to participate in his defense

Actus Reus- 4 tests (5 counting federal test)

Issue: Was the individual insane at the time he committed the actus reus of the crime?



All JD's require a mental disease or defect but JD's have different additional requirements. Just because you have a defect does not give you an automatic insanity defense.

M'N	II	Durham	MPC
Mental disease or defect)	MD or D	MD or D	MD or D
Human reason/ cognition	(ability to control)	Act ↔ product	Lacks substantial capacity <ul style="list-style-type: none"> - to appreciate criminality (wrongfulness) or - conform one's conduct to the requirements of the law

Test One:

M'naghten's Test

Δ shoots and kills sec. To British PM believing he was PM and believing that the PM was going to kill him. Delusion

Rule: Must be shown that as a result of mental defect, at time of act Δ did not know the nature and quality of the act or that at the time of the act he did not know the act was wrong.

Mental Illness

- psychological term

Knowledge

2 interpretations

- 1) knowledge in intellectual/ cognitive terms
- 2) knowledge in the emotional appreciative sense

Nature and quality

Doesn't know consequence of act (pulling trigger can kill)

Right/wrong

- 1) against the law
- 2) immoral

Strict M'N: focuses only on whether Δ knew the act was legally wrong

Loose M' N: focuses on whether the Δ knew that act was either legally or morally wrong (i.e. if Δ believed that act was command of God, Δ probably believed act was morally OK even if legally wrong)

M'N focuses on the inability to reason- the inability to know.

Criticism: What about those who know but can't control?

Irresistible Impulse Test

Focuses on inability to control

Rule: Insanity of Δ was unable to control conduct as a result of mental defect

- need not be an impulse (if impulse there's no actus reus- reflexes are uncontrollable)
- Some JD's require total inability to control (would have committed even if a police officer was standing right next to him), others require partial inability to control
 - o **Strict impulse test vs. loose impulse test-** complete inability to control vs. substantial inability to control

THIS IS NOT A STAND ALONE TEST LIKE M'N. NO JD HAS THIS TEST AS SOLE TEST. In irresistible JD's, a person can be proved insane by either M'N or II test.

Durham Product Test (NH ONLY)

- **Rule: An accused is not criminally responsible if his conduct was the product of mental disease or defect**
 - o opens up process to allow more testimony from experts b/c judges and lawyers don't know anything about insanity
 - o allows experts to testify about Δ's personality and insanity

MPC TEST (GET NOTES)

MPC- requires and inability to appreciate conduct's criminality or an inability to conform one's conduct to the law

After Hinkley

17-22 JD's use MPC test

- JD's have been abandoning the MPC test after Hinkley found not guilty by insanity under the MPC test

Because of Hinkley's assassination attempt on Ronald Reagan, many JD's have changed not guilty by reason of insanity to guilty but mentally ill. After all, this person did commit actus reus.

8 JD's give sentence which must be fulfilled but suspend sentence until the person is sane. In other words Δ goes to hospital but then to jail for remaining sentence once sane.

4 states have abolished the insanity defense in their JD

- problem: Mens Rea is a major issue. If mental defect can't be raised as an affirmative defense of insanity, it can still be raised as to the mens rea and if it defeats the mens rea the person might get a pure acquittal and never get treatment.

New Federal Test after Hinkley- the most pro prosecution test

- affirmative defense that at time of commission of act the Δ as a result of severe mental disease or defect that Δ was unable to appreciate the nature and quality or wrongfulness of his acts. The Δ has burden of proving defense of insanity by clear and convincing evidence.
 - o This gets us back to MN test
 - Looks like loose MN- focuses appreciate rather than know and wrongfulness rather than criminality
 - But Burden of proof is extreme. ½ of state JD's put burden of proof on gov't and ½ puts burden on Δ by preponderance of evidence, but new federal test has **higher burden of proof- clear and convincing evidence** (almost always a party that must prove by clear and convincing will loose)
 - But federal cases are very small % of cases

Missing notes

1/20?, 2/17?, 3/3 (get better notes)