

## I. General Principles of Criminal Law

### Purposes of Punishment

- Retribution – equal harm to offender in society’s name
- Incapacitation – get them out of society!
- Rehabilitation – treat offenders, help them re-enter society
- Deterrence
  - General Deterrence – Everyone must see consequences of crime
  - Specific Deterrence – Criminal must see consequences of crime
- Public Education – Let society know what our shared values are

**CRIME = ACTUS REUS + MENS REA (concurring in time)**

Neither MR or AR alone is sufficient to constitute a crime generally

### Actus Reus (“guilty act”)

- Either an affirmative act or the failure to act when there is a legal duty to do so
- Must be a voluntary act – “voluntary muscular contraction”
  - Ex. Martin
    - D arrested at home, taken onto highway, then charged with being drunk in public
    - Criminal liability must be based on voluntary acts – D was under police control, so his conduct was not voluntary
  - Ex. Newton
    - D gets into shooting match with police, claims he shot officer while in shock
    - Unconsciousness is a defense, as long as it is not self-induced – D can act physically but not consciously.
  - A pushes B into C. A has an AR against B and C, B has no AR
  - Acts while sleepwalking, epilepsy, etc. do not count as AR
    - EXCEPTION: If individual knows of condition or history of it, and places themselves in a position to cause injury, there IS AR for negligence/recklessness
- AR by failing to act – only if there is a legal obligation to do so
  - Statutory or case law-based
  - 1. Relationship of parties
    - Parent-Child
    - Spousal
  - 2. Statutory duties
    - Person in an auto accident must stop and render aid
  - 3. Contractual duties
    - Lifeguards, doctors, nurses (railroad switchmen?)
  - 4. Voluntary assumption of duty/Seclusion
    - If one undertakes a rescue, rescuer must see the matter through
    - If you voluntarily seclude a person, you are responsible for their care
      - Ex. Jones

- D found guilty of IVM for allowing baby in her care to starve
- Contract and Seclusion were both bases for finding guilt by omission
- 5. Negligent or Intentional creation of a dangerous situation
  - Affirmative responsibility to make sure no one is imperiled
- Person must have knowledge of facts giving rise to the duty
  - Ex. If parent doesn't know child is in danger, no AR
  - EXCEPTION: Duty to remain vigilant (e.g. babysitter)
- Cannot be an impossible or foolhardy act
  - failure to perform impossible act means no AR

#### Mens Rea (NOT "guilty mind")

- State of mind or absence of one
  - MR is assessed at time of AR
- Knowledge/Intent vs.
- vs. Strict Liability
  - Ex. Cunningham
    - D removed gas meter, leak sickens neighbor
    - "Malice" requires intention or recklessness, not just ill will
  - Ex. Faulkner
    - D broke into ships hold to steal rum, lit a match, blew up the ship
    - Malicious conduct must be willful – Conviction reversed
- Recklessness/Negligence
  - Ex. Hazelwood
    - Exxon Valdez case – guilty of negligence
    - Criminal negligence – when the risk is of such a nature and degree that failure to perceive it is a gross deviation from reasonable person in situation standard (hybrid) – not a tort standard
  - Ex. Santillanes
    - D cuts nephew's neck with knife during a struggle – guilty of negligence
    - Criminal Negligence != Tort Negligence

#### Intent and Mental State

- General Intent vs. Specific Intent (used in half of all J's)
  - Defense of Mistake
  - Defense of Intoxication
- General Intent – intentionally engaging in specific conduct/causing a specific result
  - Burglary, Larceny, Intent – intent to do forbidden act
  - Can have negligence as GI MR standard
- Specific Intent – Intent in addition to intent to commit AR
  - Larceny – GI + intent to deprive owner of property
  - Burglary – GI + intent to commit crime while inside
- Distinguishing GI/SI?
  - Look for intent over and above (2 intents?)
  - MPC Test: if MR is intentional/knowing, SI. If MR is reckless or negligent, GI.

- If no MR, either no crime or strict liability
  - Can have a crime without MR (SL), but no crime without AR
  - Even conspiracy requires an AR
- Strict Liability – civil crimes, regulatory offenses
  - Ex. Morrisette
    - D took spent casing from military target range, chg: conversion
    - This is not an SL crime, but larceny. There is an MR here – reversed
  - No AR is still a defense to SL
    - Ex. Baker
      - Speeding – D claimed cruise control malfunction
      - Absence of voluntary act is still a defense to SL
  - SL statutes generally have no MR terms, but not all no-MR crimes are SL
    - Courts will read in MR standard for fairness
  - Mistake (of fact or legal status) not a valid defense to SL crime
    - Mistake negates MR... and there's no MR in SL!
  - When is an SL crime really SL?
    - 1. Look at statute – MR term = no SL
    - 2. Legislative History – Morrisette
    - 3. Penalty – low penalty likely = SL (jail sentence up to 3 years?)
    - 4. Morrisette – Jackson's language, Prof. Sayre's Categories
      - (1) illegal sales of intoxicating liquor
      - (2) sales of impure or adulterated food or drugs
      - (3) sales of misbranded articles
      - (4) violations of anti-narcotic Acts
      - (5) criminal nuisances
      - (6) violations of traffic regulations
      - (7) violations of motor vehicle laws
      - (8) violations of general police/safety regulations

#### Concurrence of MR and AR

- Crime is committed only when MR and AR concur in time
  - Ex. No burglary if person breaks in to shelter from a storm and only then steals

#### Mistakes of Fact, Law, and Legal Status

- Fact/Legal Status – not the same (fact is what you can sense, LS is what you need a ruling on)
  - Ignorance/Mistake is a defense where it negates MR essential to the charge
    - If facts were as D thought them to be, there would be no crime
    - D must be mistaken about a material element of the crime
    - Ex. Jewell
      - D knew car had secret compartment, arrested at border when cops found marijuana in compartment
      - When a D is aware of facts indicating illegality but does not investigate out of desire to stay ignorant, mistake is not a defense

- Ex. Taking property because you believe it's yours, no larceny (MR of intent lacking)
  - This depends on whether you're in a GI/SI Jur.
    - SI, and mistake precludes D from having AR = Not Guilty
      - Mistake can be a defense to SI even if mistake is unreasonable
      - SI crimes:
        - larceny, robbery, burglary, arson, tax evasion, etc.
        - Attempt, Solicitation, and Conspiracy ALL SI
    - GI – Mistake must be reasonable to be a valid defense
      - GI Crimes: battery, rape, kidnapping, false imprisonment
      - Ex. Sherry (nurse assault) and Fischer (college students)
        - D believed V had consented to sex – guilty of rape
        - Subjective belief in consent is not a defense
  - Neither Mistake of Fact or Legal Status is a valid defense to SL crime
    - Ex. Prince
      - D took 14 y/o girl from father, girl said she was 18
      - Guilty of SL crime – stat. rape – Act was wrong in itself
- Law – no knowledge that act is criminal
  - Mistake of Law is generally not a valid defense
    - EXCEPTION: Lambert-type situation
      - Two Conditions
        - 1. Crime must be a crime of omission, not commission  
AND
        - 2. Reasonable person would not be on notice regarding existence of crime
      - Ex. Lambert
        - D (felon) convicted for not registering as felon
        - Law struck down - Omission is not punishable unless D is on notice regarding requirement of law

Mistake and Type of Crime: Valid Defense?

Mistake?	Specific Intent	General Intent	Strict Liability
Unreasonable	Yes	No	No
Reasonable	Yes	Yes	No

## II. Homicide

Homicide = “the death of a human being caused by the act of another”

- Shooting a dead person – not a homicide. (Could be an attempt if D thinks the dead person was alive)
- Suicide != Homicide
- Not all homicides are criminal – innocent homicides, justified homicides (soldiers, police officers, self-defense, defense of others)
- Criminal Homicides – Murder and Manslaughter (minority add Criminally Negligent Homicide)

Murder

- MR – (don’t use “malice aforethought!” Instead, use)
  - Intent to kill, intent to injure, recklessness +, and perpetration of felony – distinguishes murder from manslaughter
- Intent to kill – if desire of D is to bring about death of another, it’s murder (at least 2<sup>nd</sup>, perhaps 1<sup>st</sup> degree)
  - Ex. Carroll
    - D shoots wife in head after argument
    - Intent to kill can be inferred from D’s words and conduct, esp. the use of a deadly weapon
  - Ex. Smallwood
    - D, HIV positive, rapes a woman w/o a condom
    - No intent to kill – death of V would not have been a natural/probable result of the victim’s conduct
- Intent to injure – if D intends to injure another, and that person dies, it’s 2<sup>nd</sup> degree murder
  - Must be intent to cause grievous/serious/enormous bodily harm
  - Cutting off a finger is grievous. Ripping off a hangnail is not.
- Recklessness + – reckless disregard of an unreasonable risk to life that results in the death of another (NOT “depraved heart” or “callous disregard”) – 2<sup>nd</sup> degree
  - Recklessness – conscious disregard of a substantial and unjustifiable risk that a death will occur
  - + – under circumstances that manifest an extreme indifference to value of human life
- Perpetration of a Felony (1<sup>st</sup> or 2<sup>nd</sup> degree)
  - When a death occurs during commission or attempt at felony = felony murder
    - Ex. Serne
      - D burns down house, son dies in fire
      - Act known to be dangerous to life committed in the course of a felony is murder
      - In FM, intent transfers from the felony to the murder
  - The felonious circumstances must be the “proximate cause” of the murder
  - Felony need not be consummated to have FM

- Limitations on FM
  - 1. Type of Felony Required – must be serious – two different standards
    - For 1<sup>st</sup> Degree, felony must be inherently dangerous to human life in the abstract. (Some states spell out which felonies suffice)
      - Ex. Phillips
        - Chiropractor convinced parents not to let child be treated for cancer, child died
        - Only felonies inherently dangerous to human life can be used to invoke FM
    - OR BREAKRSS Felonies
      - Burglary
      - Robbery
      - Escape
      - Arson
      - Kidnapping
      - Rape
      - Sodomy
      - Sex Crimes
    - Perpetration of dangerous felony not in the abstract (i.e. not a BREAKRSS felony) – 2<sup>nd</sup> Degree Murder
  - 2. Felony must be independent of the death – **“independent felonious purpose” or “merger” doctrine**
    - E.g. Aggravated assault cannot go into 2d FM on intent to kill or injure if victim dies – purpose must be something other than hurting/killing a person
    - Ex. Burton
      - Armed robber kills V, charged with FM
      - Court finds Armed Robbery contains an independent felonious purpose enough to invoke FM
  - 3. Causation – killing must be proximately caused by the D creating dangerous circumstances
    - EXCEPTION: **Redline exception** – cannot bootstrap a justifiable homicide (police, self-defense by victim) into a felony murder, even with causation – exception to proximate cause
      - E.g. Police shoots and kills a felon, co-felon cannot be charged with FM
    - EXCEPTION: **Agency limitation** (used in most Jur’s.)– killing must have been committed by one of the felons involved. Can have other types of homicide, but not FM. (Canola)
      - Keeps FM from becoming SL
      - WARNING: Pinkerton liability in © can defeat Agency Limitation
    - EXCEPTION: **Co-Felon** limitation – can’t use FM in death of Co-Felon caused by outside party
      - Ex. Canola

- Armed robber, co-felon killed by V, robber charged with FM
      - FM does not apply in cases where co-felon killed by V resisting crime
    - EXCEPTION: **“In the commission of” limitation** (MPC, NY/PA)
    - EXCEPTION: **Affirmative Defense** (MPC, NY): If co-felon did not commit killing, and had no reason to believe that someone might be killed, and was not carrying a weapon, and had no reason to believe other co-felons were armed, no FM. (4 part test, all must be satisfied)
  - MPC Abolishes Felony Murder – instead, rebuttable presumption of recklessness + 2dM
- Degrees of Murder
  - 2DM – Intent to kill, intent to injure, recklessness +, felony murder
  - 1DM – Intent to kill, BREAKERS
  - Proving Intent to Kill
    - Premeditation and Deliberation – 1<sup>st</sup> Degree
      - Deliberation – implies “cool mind capable of reflection,” not inflamed or excited
      - Premeditation – person did reflect, even for a second, before deciding to kill
    - Ex. Guthrie
      - D stabs V who made fun of him
      - D did not consider or weigh decision to kill, so no premeditation
    - Requires Circumstantial Evidence
      - PA approach – looks for any indication of choice to kill
        - Ex. Carroll
      - CA approach – looks for combination of planning, motive, and manner
        - To show Premeditation
          - Strong planning alone
          - Weaker planning and/or motive/manner
          - Weak motive + manner
          - Manner alone if it was pre-killing (not post!)
        - Ex. Anderson
          - D killed girl, evidence that he chased her around while drunk
          - No evidence of premeditation/deliberation

### Manslaughter

- Two Types: Voluntary and Involuntary
- Voluntary Manslaughter – Intentional Homicide under circumstances that mitigate, but do not justify the killing. (Must still have intent to kill)
  - Intentional Killing while in heat of passion caused by adequate provocation without sufficient cooling-off period

- Normal person would lose self-control
- 3 requirements
  - 1. Adequate Provocation
  - 2. Killing committed in sudden heat of passion
  - 3. Causal connection b/w provocation, passion, and fatal act
- 5 part Jurs. Vs. **4 part Jurs.** – list both, pick one to analyze case under, then explain and give one or two policy reasons why you chose it.
  - \*\*\* Was the provocation legally sufficient? (1/2 of Jurs.)
    - Judge, as matter of law, decides
      - Ex. Girouard
        - D killed wife after argument
        - Words alone not adequate provocation
    - Girouard list – what is LSP?
      - Assault or Battery
      - Mutual Combat
      - Illegal arrest
      - Injury/Abuse of close relative
      - Discovery of Adultery
  - 1. Would a reasonable person be provoked to heat of passion?
  - 2. Was THIS D provoked to HOP?
  - 3. Would a reasonable person have cooled off in given time period?
  - 4. Did THIS D cool off in the given time period?
    - Ex. Maher
      - D catches wife IFD with V
      - VM = intentional killing committed in HOP produced by reasonable provocation before a cooling off period – temporary excitement rather than depravity
- Reasonableness tests for 1 and 3– objective, subjective, or hybrid? Jurs. Split between objective test (the reasonable person) or hybrid (reasonable person in this situation)
- Two other forms of VM
  - Diminished Capacity
  - Imperfect Self-Defense/Defense of Others (Mistaken Justification)
    - If D cannot satisfy all elements of self-defense or Defense of Others, but if D thought that actions were reasonable and jury does not agree, VM.
- Involuntary Manslaughter – reserved for all criminal homicides not in any other category. Two ways in:
  - With MR –
    - Requires something more than ordinary negligence - Recklessness.
      - Conscious disregard of a substantial and unjustifiable risk that a death will occur (without extreme indifference, otherwise it's 2dM)
        - Ex. Welansky

- Coconut Grove Fire – Owner charged with IVM for failure to alleviate fire hazards
    - Manslaughter can be based on omissions as well as affirmative actions
  - EXCEPTION: Where there is a duty to act, ordinary negligence is enough
    - Ex. Williams
      - D failed to get medical aid for child with abscessed tooth, child died
      - Duty to Act + Ordinary Negligence = IVM
  - Outrageous negligence – IVM Outrageous Recklessness – 2dM
    - Ex. Malone
      - D kills V during game of Russian Roulette
      - If D’s act is grossly negligent and must reasonably anticipate that a death will occur, that is malice, and 2dM
    - OR ordinary negligence committed with an inherently dangerous instrumentality (e.g. a car = vehicular manslaughter)
  - Without MR – “unlawful act”
    - “Misdemeanor Manslaughter” – little brother of Felony Murder, same general rules and exceptions apply
      - If in the course of commission of a misdemeanor, someone is accidentally killed.
  - Three standards
    - Subjective – the D
    - Objective – a “reasonable person”
    - Hybrid – the reasonable person in D’s situation

### Summary

- Was there a homicide? Was it caused by another person?
- Was killing intentional? If yes, murder (unless reduced to VM, or justified, or there is some other defense or excuse – mistake, justification, insanity). If no, it will be murder if intention to do grievous bodily harm, or willful conduct containing a high risk of death, or death in the course of a felony. Otherwise, IVM if there is recklessness or misdemeanor manslaughter.
- Otherwise, innocent.

Level of Homicide	Intentional	Unintentional	During Crime
First Degree Murder	Premeditation Deliberation <ul style="list-style-type: none"> <li>• Planning</li> <li>• Motive</li> <li>• Manner</li> </ul>	XXXXXXXXXX	<b>BREAKRSS</b> Felony (Inherently Dangerous) <b>Independent Felonious Purpose Rule!</b>
Second Degree Murder	Intent to Kill Intent to Injure <ul style="list-style-type: none"> <li>• Grievous Bodily Harm</li> </ul>	Recklessness + <ul style="list-style-type: none"> <li>• Conscious Disregard of Risk</li> <li>• Extreme Indifferent to Life</li> </ul>	All other Felonies (Not inherently Dangerous)
Manslaughter	Voluntary Manslaughter <ul style="list-style-type: none"> <li>• Provocation (5 pt. vs. 4 pt.)</li> <li>• Mistaken Justification</li> <li>• Diminished Capacity</li> </ul>	Involuntary Manslaughter <ul style="list-style-type: none"> <li>• Inherently dangerous instrument</li> <li>• Recklessness – conscious disregard of substantial and unjustifiable risk of death</li> </ul>	Misdemeanor Manslaughter  Nonforcible / nondangerous felony or misdemeanor
Criminally Negligent Homicide	XXXXXXXXXXXX	Simple Negligence (just above Tort)	XXXXXXXXXX

### III. Property Crimes

Three Big Ones – All three are SI crimes – mistake/intoxication defenses work

- Larceny – the taking and carrying away of the property of another with intent to deprive owner of property permanently or for an unreasonably long time.
- Robbery – larceny against a person by force, fear, threat, intimidation, or violence (need not be armed)
- Burglary – breaking and entering the structure of another with intent to commit a crime therein (crime does not have to be larceny) – “crime in the nature of attempt” – no attempted Burglary
  - Breaking = crossing the plane of the structure

## IV. Inchoate Crimes

Can never be Strict Liability!

### Attempt

- Step in direction of committing a crime, coupled with intention to commit that crime
- D can be convicted only if he is not guilty of crime itself
  - Attempt “merges” into consummated crime
  - BUT can be convicted of attempt of one crime but completing another (ex. Burglary + attempted murder)
- The nine (7+2) ways to find AR of attempt – (DESEO PL) vs. (SS And SC)
  - If there is an attempt issue, and you must find an AR, just say “nine different attempt AR,” state all you can remember. Then pick one to analyze case under and explain why you chose it
    - 1. What D has done toward crime and what remains to be done
    - 2. Extent to which criminal intent has been manifested
    - 3. Seriousness of the crime contemplated
    - 4. Equivocalness of D’s acts (Res Ipsa Loquitur)
    - 5. Opportunity remaining to desist (locus poenitentiae)
    - 6. Proximity in time/space to contemplated crime
    - 7. Likelihood of the crime being committed
    - **8 & 9. MPC Rule – “substantial step in a course of conduct” that is “strongly corroborative of the actor’s criminal intent”**
  - Ex. Rizzo
    - D’s drove around looking for payroll messenger to rob
    - No attempt – Not guilty under NY “dangerous closeness” test
  - Ex. Jackson
    - D’s planned to rob bank, changed plans to rob it next day
    - Attempt – Criminal Purpose + Substantial Step toward commission
  - Preparatory Crimes/Possession crimes are a narrower, earlier version of crime (e.g. possessing burglar’s tools)
  - Not all crimes allow intent – some crimes are the attempt of other crimes
- MR of attempt is easy – specific intent to commit the target crime
- MR of all inchoate crimes is SI
- Solicitation alone is not attempt!
  - Ex. Davis
    - D hires undercover officer to kill wife
    - Solicitation without an overt act towards the crime is not attempt
- Defenses to attempt
  - Impossibility – look at handout!
    - Factual Impossibility – not generally valid defense
      - Cases where intended act is criminal and where crime would be committed if D was successful, but D cannot accomplish goal because of physical facts unknown to D when they acted
        - Attempt to pick an empty pocket
        - Attempt to kill with unloaded gun

- Inherent Impossibility–EXCEPTION to factual impossibility
  - Where D intends to commit crime, but chooses means that are obviously incapable of accomplishing purposes
    - D uses Voodoo to put curse
    - D tries to kill wife on airplane with bow and arrow
    - D who tried to manufacture crack with molasses and NutraSweet
- Legal Impossibility – Valid Defense
  - Where D thinks they are committing a crime but the act they’re doing is not a crime
    - D buys alcohol in a place where they think it’s illegal to do so
- Impossibility of Legal Status – Could be a good one? **(Yes. Goes a long way towards both general and specific deterrence)**
  - While no crime is committed, D intends to perform act that would be a crime if the facts were as they believed them to be
  - Split – Is attempting to do something which is not a crime a crime?
    - Ex. Jaffe
      - D received goods that he believed stolen but were not (they were used as police bait)
      - Impossibility a valid defense!
    - OR ALTERNATIVE: MPC would come out the other way – Lady Eldon Rule (D intends to smuggle non-dutiable lace into country, believing it to be dutiable)

Cases/Status	Pure Fact Imp.	Mixed F/L Imp.	Pure Law Imp.
Jaffe	Bad Defense	Good Defense	Good Defense
Lady Eldon/MPC	Bad Defense	Bad Defense	Good Defense

- Abandonment – Even if D has progressed to perpetration, they can still abandon before completion, but not after
  - Two-part test
    - 1. Voluntary –
      - Doing it for the right reasons, realizing it’s wrong
      - NOT just because it’s harder than you thought or you’re just waiting for a later date.
      - Change of heart, not change of mind
    - 2. Complete – Two standards
      - Thwart commission of crime?
      - OR make best effort to thwart commission of crime (with enough time for police to act)

## Conspiracy

- Most states use unilateral definition (one person, with all the others cops or informants) of conspiracy, but feds use bilateral (must be more than one person involved)
- Conspiracy – combination for criminal purposes
  - Separate and distinct crime which, UNLIKE ATTEMPT does not merge in completed offense (in most, but not all Jurs.)
  - “Agreement between necessary parties to accomplish a criminal objective”
    - Ordinarily, two people needed
    - Does not need to be a contract or in writing – tacit understanding will suffice
    - Parties need not know the identity of the others
    - Any party can bring others into conspiracy, and original D’s will hold equal status with them
    - D need not know all of the details of the criminal plan
  - MR of conspiracy – SI
    - Twofold intent – “Intent to agree AND intent that target crime be carried out”
    - “Supplier with knowledge” – are they party? They can be
      - Ex. Lauria
        - D ran answering service, knew that some of his customers were prostitutes
        - In order for SWK to be a member of a conspiracy, if
          - SWK intends to agree that target crime be carried out – goes from SWK to SW Intent
          - Intent can be inferred circumstantially – (SLuVKs and PaSIAG)
            - Does S have a Stake in the outcome of the conspiracy?
            - No Legitimate use of product?
            - Volume/Quantity of sale?
            - Seller’s Knowledge of buyer?
        - Intent Proven by:
          - Participation in crime
          - Special interest in activity
          - Aggravated nature of crime itself
      - EXCEPTION: Knowing the status of the victim not always required for MR
        - Ex. Feola
          - D brushes against officer while escaping, all D’s charged with © to assault officer
          - Only need MR to do the act specified (assault) – status of officer not relevant
    - AR of Conspiracy – two things

- Agreement – French from Alvarez– “Sans agreement, there can be no conspiracy.”
- AND an overt act in furtherance of target crime – the overt act of any one conspirator binds all conspirators
  - Any physical manifestation of agreement that shows conspiracy in action
  - Does not have to be a criminal act (e.g. you can buy a getaway car)
  - Overt Act even satisfies © requirement for any conspirators who agree to join after the act
- DIFFERENT from attempt – don’t have to show closeness to crime, only that you’re on the path to the crime
- Bilateral © jurisdictions – must have at least two people agreement
  - If A & B agree, but B is joking, or a minor, or an undercover officer, or lacks mental capacity – NO CONSPIRACY
  - Wharton’s Rule – If only two parties to agreement are those necessary to underlying offense, no ©. Ex. Bigamy, incest, adultery, bribery, receiving stolen property, dueling. Must charge substantive offense, not ©.
    - If only two people, and one is a member of a “legislatively protected class”, no ©
      - Ex. Gebardi
        - D went across state lines with woman for sex – © to violate Mann Act
        - Woman could not be in violation of the Mann Act, which requires two parties, so no conspiracy
    - EXCEPTION: Remember Pinkerton: Guy who provides key for room for adulterous couple can be charged with © even if he does not participate
  - If all conspirators but one are acquitted, remaining one cannot be convicted. Cannot have a conspiracy of one.
  - Numbers Rule – Number of Conspiracies = Number of Agreements. (3 agreements + 3 TC’s = 3 conspiracies. 1 agreement + 3 TC’s = 1 conspiracy)
  - More than two people – how many conspiracies do we have?
    - ABC conspiracy vs. AB and BC conspiracy? It depends...
      - Wheel vs. Chain – UNHELPFUL
        - Alvarez – Chain (nod case)
        - Williams – Wheel (web-of-spider case)
    - Apply two-part AND test TO EACH D
      - 1. Knowledge of existence of others, not necessarily their identities AND
      - 2. Belief there is a community of interest of others beyond those with whom this D is dealing
    - Ex. Kotteakos (wheel)

- Loan officer made fraudulent FHA loans for D and others, D charged with all fraudulent loans
  - Where one person deals with two or more people who have no connection to each other, all three cannot necessarily be convicted of the same conspiracy
- Ex. Blumenthal (chain)
  - D's convicted of selling liquor above allowable price
  - One large conspiracy – by separate agreements they became part of a common plan
- Ex. Bruno (chain)
  - D's were all part of a drug smuggling/selling ring
  - Single conspiracy where each member knows that success of their own part depends on success of whole conspiracy
- Ex. Anderson v. Sup. Ct. (Hybrid) – “Rim of the Wheel”
  - D convicted of referring patients for abortions and for abortions
  - D joined with others, unknown to her, for a common criminal purpose
- Chain conspiracies to distribute commodity are the easy case of this – easy to prove knowledge of existence of others and community of interest. Wheel is harder
- Withdrawal from Conspiracy? Similar to attempt
  - 1. Withdrawing party must make Abandonment known TO ALL OTHERS IN CONSPIRACY, even if there are 99 other conspirators. Sometimes this is actually impossible. **(Disagreement with this! Roach motel analogy)**
  - 2. Must be voluntary – change of heart, not change of mind
  - 3. Complete – prevent commission of target crime or bring in law enforcement
- Pinkerton's Rule – Each member of © is liable for every act of every other conspirator, even if other conspirator is not present at time of act or declaration. This is the federal rule, and since most conspiracies are federal, it applies.
  - Ex. Pinkerton
    - Brothers convicted of bootlegging, but one was in prison at the time
    - No matter – as long as conspiracy continues, overt act of one partner is the act of all, even in the absence of a new agreement
  - Majority of states DO NOT FOLLOW Pinkerton, follow Rutledge's dissent.
    - Dangerous precedent – vicarious criminal liability
  - Ex. Bridges
    - Group assault with intent to kill, onlooker died

- Conspirator may be liable for criminal acts that are not within scope of original conspiracy if they are reasonably foreseeable or natural consequences of target crime
- Statements of co-conspirators are exception to hearsay rule
  - Ex. Krulewitch
    - D charged with Mann Act violation – was there a conspiracy that made hearsay admissible?
    - Court: No. A conspiracy stops when its object has been completed. Hearsay cannot be used as evidence of new conspiracy
    - Jackson: Conspiracy getting too broad?
- Termination of Conspiracy
  - When Statute of Limitations has run (5 years)
  - When target crime has been committed (MPC rule)
  - When a person successfully withdraws (but other conspirators continue to be liable)
    - Any acts or declarations made are no longer applicable to anyone no longer in conspiracy
- Unilateral Conspiracy? Depends on Jur. – “If a person agrees with another”
  - Person need only believe there is group support – deterrent?
  - ¾ of states have unilateral conspiracy statutes. Feds do not.
    - Ex. Garcia
      - D hires hit man (undercover cop) to kill wife
      - Under unilateral ©, conviction possible even if all other parties only feigned acquiescence in crime

Solicitation –when D, with the intent that another person commit a crime, entices, advises, incites, orders, or otherwise encourages other person to commit a crime

- MR – intent that target crime be carried out
- AR – encouraging other person to commit crime (no overt act needed)
  - Ex. If A entices B to kill C, A is guilty of solicitation even if B does not kill C
    - Only solicitation, not conspiracy. (Until you have an overt act)
    - Once Conspiracy is satisfied, you cannot convict for both solicitation and conspiracy. Solicitation merges into conspiracy.
    - Solicitation and conspiracy are the only inchoate crimes that merge – all others remain separate

Merger – Double Inchoate Crimes? Yes. Attempt to conspire, Attempt to solicit

- Cannot charge solicitation and attempted conspiracy together
- Solicitation merges into conspiracy when the elements of the latter are satisfied
- Attempt merges into the substantive crime once the elements of the latter are satisfied.
- Conspiracy generally does not merge into the substantive crime once the elements of the latter are satisfied.

## V. Accomplice Liability

### Four Common Law Categories

- Principal 1<sup>st</sup> Degree – perpetrator who actually committed crime (Ex. bank robber)
- Principal 2<sup>nd</sup> Degree – present at scene and assisted 1P in some way (Ex. lookout, getaway driver)
- Accessory Before the Fact – knows about crime in advance and intends for it to be committed, but not present at scene (Ex. armorer)
- Accessory After the Fact – does not know about crime in advance, and not present at scene, but learns about crime afterward and assists (Ex. hideout owner)
- **Most States Merge 1P, 2P and ABF into “Principal,” AAF is “Accessory”**

AR – Aiding/Abetting/Facilitating (must aid/abet target crime to be liable under AL!)

MR – Intent that crime be carried out

### Differences from Conspiracy

- Conspiracy requires an agreement. Accomplice liability does not.
- Conspiracy does not require crime to be consummated or attempted. Accomplice liability requires consummation or attempt.

## VI. Other Crimes

Assault and Battery – two separate misdemeanors (aggravated is felony)

- Battery – the unlawful application of force to the person of another (unauthorized touching). Force does not need to involve pain or injury.
  - Feola – slightest touching will suffice
  - Force need not be physical blow
  - Force can be D or something put in motion by D
  - Can be done bare-handed or with weapon (including poison, exposure of helpless person to inclement weather)
  - MR – Touching need not be intentional, can be reckless or negligent
- Assault – EITHER an attempt to commit a battery (SI) OR an intentional placing of another in apprehension of receiving an immediate battery (SI)
  - MR – Must be intentional
  - Attempted assault? Depends on definition. If assault is attempted battery, then no.
  - In many Jurs. Robbery is larceny + assault
- Rape –
  - (MPC) Male who has sexual intercourse with female not his wife compelled through use of force or threat of death, serious bodily harm, extreme pain, or kidnapping, or the female is unconscious (GI) (spousal exception)
  - (Common Law) Unlawful sexual intercourse with a woman without consent (incl. intoxication, unconsciousness, diminished capacity) by force against her will (GI)
  - Ex. Rusk
    - D rapes V, appeals court found no evidence of resistance

- Not required – lack of consent can be established by proof that V failed to resist out of genuine reasonable fear
- Ex. Evans
  - D uses false pretenses to get V to have sex with him, V misinterprets words as force
  - D not guilty of rape – misinterpreted seduction is not rape, even if V believes D is threatening her
    - Ex. Sherry (nurse assault) and Fischer (college students)
      - D believed V had consented to sex – guilty of rape
      - Subjective belief in consent is not a defense
- “A woman must be able to consent to sexual contact without creating a presumption that she has consented to intercourse, and she must retain the right to revoke that consent for any reason.”

## VII. Defenses

Self-Defense – if all five elements satisfied, outright acquittal, perfect justification – must be created by human action

- Five Elements (Re Ne ADe In NoR)
  - 1. Resisting present or imminent use of unlawful force
    - EXCEPTION: Battered-Spouse Defense relaxes imminence requirement
      - Ex. Norman
        - D kills abusive husband while he was sleeping – convicted of VM
        - Without imminent peril, BSD does not work in homicide
  - 2. D must use no more force than necessary to repel attack
  - 3. Can’t use deadly force unless force being repelled was also deadly
  - 4. D cannot be initial aggressor
    - EXCEPTIONS
      - 1. D was a non-deadly aggressor confronted with deadly force
      - 2. D withdrew initial aggression but other party does not
  - 5. No opportunity to retreat
    - EXCEPTION: If attack took place at home or in place of employment
  - Ex. Goetz
    - D claims justified in shooting assailants based on reasonable belief that his life was in danger
    - Justified in use of deadly force if a reasonable man in his position would believe that his life was in danger
- Cannot kill an innocent!

Defense of Others – if all elements satisfied, outright acquittal

- Two schools of thought
  - Reasonableness Test – Can come to the defense of others “when it is reasonable to do so”
  - “Stands in the shoes of” Test – If person being defended can validly assert self-defense, defender can validly assert defense of others – 5 Part SD Test Applied

## Imperfect Self-Defense/Defense of others = Voluntary Manslaughter (Mistaken Justification)

Necessity – when successful, outright justification – must be created by circumstances

- Five Elements (“Ha, No I’m In NC.”)
- 1. Harm sought to be avoided must be greater than harm committed
- 2. No third alternative that would avoid harm or be non-criminal
- 3. Harm must be imminent
- 4. Situation must not be caused by D
- 5. Cannot kill an innocent
  - Ex. Dudley & Stevens
    - D&S killed cabin boy to eat him
    - Homicide may not be excused when the person killed is an innocent, unoffending victim
- Does not apply in case of civil disobedience
  - Ex. Schoon
    - D’s vandalized IRS office to protest El Salvador
    - Necessity unavailable – 2,3,4 never satisfied

Duress – Excuse, not justification – conviction of lower-level crime (TRID)

- 1. Threat by third person
- 2. D has reasonable fear of threat
- 3. Imminent Danger
- Ex. Toscano
  - D engaged in illegal acts when he and his wife were threatened
  - Duress valid – D coerced into illegal conduct by threat of force that a “person of reasonable firmness” could not resist
- EXCEPTION? – Duress not a valid defense for murder, just reduces it to manslaughter

Intoxication – Important consequent of GI/SI Jurs.

- If intoxication is enough to negate needed attempt, no crime
  - Ex. Roberts
    - Drunken D fires at V, assault with intent to murder?
    - No. D could not form needed intent to murder.
  - Ex. Hood
    - Drunken D resisted arrest, grabbed officer’s gun, shot him – assault with a deadly weapon?
    - Yes. Intoxication does not affect GI crime
- In non-GI/SI Jurisdictions, intoxication is valid when it negates MR of charged crime
  - EXCEPTION – If person had intent to commit a crime, but drank heavily to reduce inhibitions before committing it, intent before being drunk transfers (exception to concurrence requirement)
  - Identical for alcohol and drug intoxication
- In GI/SI jurisdictions, was intoxication voluntary or involuntary?
  - Involuntary – intoxication brought about by force, fraud, or mistake (e.g. pharmacy error) – Good defense to either GI or SI (but not SL)

- Voluntary – Good defense to SI, but not GI.
  - EXCEPTION – Stasio – NJ case, for policy reasons, do not want to create incentive to drink, voluntary intoxication is no longer a defense.

#### Insanity – Affirmative Defense

- Insanity != mental illness
- Insanity does not mean acquittal - not guilty by reason of insanity = mental hospital
- Common Standards – “If as a result of Mental Disease or Defect...”:
  - M’Naghten’s Rule
    - D does not know nature/quality of act OR
    - D knew nature/quality of act, but is unable to tell difference b/w right and wrong
      - Strict: D has total lack of cognitive capacity
      - Loose: D has less than a total lack of cognitive capacity
    - Majority rule for all Jurs.
    - Ex. M’Naghten’s Case
      - D kills private secretary to PM, not guilty by reason of insanity
  - Irresistible Impulse Rule
    - D was unable to control self, even if they knew difference between right and wrong
      - Strict: D has total lack of ability to control
      - Loose: D has less than total lack of ability to control
      - Never alone, but frequently used as supplement to M’Naghten Test
  - Durham Rule
    - D’s act was the “product” of that mental disease or defect
      - Even slight impairment may suffice
      - Largely abandoned, only NH still uses
  - MPC Rule
    - D lacks “substantial capacity” to either
      - 1. Appreciate the criminality [wrongfulness] of their conduct, OR
      - 2. Conform their conduct to the requirements of the law
        - EXCEPTION – Does not include abnormalities manifested only by criminal or anti-social conduct
    - Used in minority of Jurs.
    - Ex. Blake
      - D robs bank, claims he was insane, convicted
      - MPC rule upheld
  - Federal Rule – result of Hinckley acquittal
    - MD or D must be SEVERE
    - D unable to appreciate the nature and quality, or wrongfulness, of their acts
    - Used in all Federal Cases

M'N	II (+M'N)	Durham	ALI/MPC	Federal Rule
<p>MD or D Inability to Reason Does not know nature/quality of acts</p> <p>Most Prosecution friendly - only 1 way to satisfy it</p>	<p>MD or D Inability to control self</p> <p>NO standalone II jurisdictions - supplement to M'N</p>	<p>MD or D Act was "product" (Very easy) "But for" causation</p> <p>Even slight impairment will suffice - Most Defense Friendly - -Covers everything covered by M'N, II, and others</p>	<p>MD or D Lacks <u>substantial</u> capacity either</p> <p>To appreciate criminality [wrongfulness] of act OR To conform conduct to the requirements of the law</p>	<p>(result of Hinckley Trial) <u>Severe</u> MD or D Unable to appreciate the nature and quality or wrongfulness of his act</p> <p>D has burden of proving defense by clear and convincing evidence?</p> <p>Most prosecution-friendly</p>

Other Insanity Rules:

"Guilty But Mentally Ill"	ALI/MPC Minority Test (1985)	Abolitionist Approach
<p>Shift in terminology or something more? Way of assuaging public frustration</p> <p>States are divided: 16 J's shifted terminology to GBMI, half of those just changed words; in others, judge will impose criminal sentence, but suspend it because of MI</p> <p>If/when found sane, judge will impose remaining terms of sentence</p>	<p>"If at time of the act, D suffered from MD or D to such a degree that he cannot justly be held responsible."</p> <p>Only 6 votes out of 2500 ALI members voted in favor?</p> <p>Are labels really helpful?</p>	<p>ABOLISH Insanity Defense! (5 states have done this, 1 later found it unconstitutional)</p> <p>Person forced into Mens Rea defense, and if they succeed, simple acquittal!</p> <p>No distinction between punishment and treatment</p>