

Presumption of Innocence

Policy Reasons

Owens v. State

Only two reasonable hypothesis

A conviction based on circumstantial evidence alone is not to be sustained unless the circumstances are inconsistent with any reasonable hypothesis of innocence.

Two Approaches to Punishment

Utilitarian - future benefit – Let's move forward and see what good can come from it

Retributivism - morally blameworthiness, even if no good comes, backward looking.

People v. Du

Will Mrs. Du recidivate, Looks at her past, and decides it's unlikely

Actus Reus

- **Voluntary Act (or omission)**
- **That causes**
- **The social harm of the offense**

Martin v. State

Crux of defense - *appearing in public involuntary*, police brought him private home to Public Street
BUT - getting drunk was voluntary

Under MPC 2.01(1) "liability is based on conduct which includes a voluntary act." **Broader**, does not require every act to be voluntary

People v. Decina

Voluntary act before the seizure. When he decided to operate and drive the car.

Omissions

Where does the duty to act come from?

1. Statute
2. Status relationship
3. Voluntary assumption of care that secludes
4. Contractual duty of care
5. Where a person creates a risk of harm to another

People v. Beardsley

Mistress on morphine. Worried his wife will come home. Gives mistress to Mr. Skoba. She dies.

Just boyfriend/girlfriend. No formal status relationship. **BUT**, putting her basement seclude her?

Or status relationship. She was a guest in his house (invitee) / As opposed to drinking buddies

How far does the act have to go, to satisfy duty? Tried to stop her from taking morphine

Once you recognize a duty to act, **it is complicated**. ***So court is reluctant***.

TAKE AWAY: even if duty, went far enough. **Don't** need a hero. **Need minimum standards decency**

Barber v. Superior Court

Issue is cutting off the food, removing the feeding tube.

This was an **omission**, not an act Even though required an action, they treat as the failure to feed

Men Rea – Guilty mind.

Mental state regarding the result/risk being created

Particular state provided for **in the definition of an offense**. This is the **elemental** meaning. *A person may possess mens rea in the culpability sense of the term, yet lack the requisite elemental mens rea.*

Regina v. Cunningham

Broke into gas meter, and gas escaped.

Trial ct - broad, intent to steal money is wicked and malicious

Appellate - narrow, **social harm of offense is theft is the bodily injury**, but intent theft, not injury

Elemental approach is right – Particular mental state provided for in definition of offense

Culpability approach is wrong – General immorality of motive

People v. Conley

Statute – Intentionally / knowingly, great bodily harm or permanent disability

Wine bottle at a party. Show **conscious objective** or **consciously aware**.

You can infer mens rea from actions.

Transferred intent is an **unnecessary doctrine**. Statute does not mention has to be particular victim

One intends that natural and probable consequences of his actions

MPC 2.02 (KNOW THIS COLD)

All of the material elements of an offense **require SOME** level of **mens rea**, unless strict liability

ELEMENTAL APPROACH. With respect to each material element of the offense.

One of the four culpability terms applies to *every* material element of a crime.

If a stat says a mens rea term, it applies to every material element **unless** a contrary term plainly appears, **absent a plainly contrary purpose of the legislature**.

If there is none stated, then MPC says it is purposely, knowingly, or recklessly.

Purposely

For **result**, your intent, objective, and goal was to do X, i.e., achieve a particular result

Conscious object to engage in conduct of that nature or to **cause such a result**.

For **attendant circumstances**, aware of existence of circumstances **or** believes **or** hopes that they exist.

Knowingly

For **result**, is aware that it is **practically certain** that his conduct will cause such a result

Slightly less than purpose, **doesn't have to be the goal**

To deal with **willful blindness**, the code states that **knowledge is established** if a person is aware of high probability the **attendant circumstance's** existence, unless he actually believes it does not exist.

For **attendant circumstances**, same as above

Recklessly (person was aware)

Conscious risk creation

Like knowledge, in that it has the subject component, but the awareness is not that virtually certain, but there is a good chance

Probability is high, but less than substantial certainty.

If he consciously disregards a **substantial** and **unjustified** risk that the material elements exist or will result from his conduct, *of which he was aware*.

Negligently (we don't care about mental state)

Actor's conduct constitutes **a deviation from the standard of care that a reasonable person** would have observed in the actor's situation.

You are being punished for the *failure to recognize* an unjustified/substantial risk.

UNLIKE RECK. Here we are looking at a reasonable purpose. Objective.

LIKE RECK. About proving risk existed.

Person lacks a moral blameworthiness, so needs to be expressed in statute to punish.

LINE BETWEEN recklessness and negligence IS NOT DRAWN ON BASIS OF ACTORS DEVIATION FROM REASONABLE CARE, but rather is founded on the actor's state of mind in regard to the risk,

A RECKLESS ACTOR consciously disregards the risk; the negligent actor's risk-taking is inadvertent.

Willful Blindness

- 1) Actor is **aware of a high probability** of the existence of the question in fact
 1. Actor takes **deliberate** action to **avoid confirming the fact**; or
 2. **Purposefully fails to investigate** in order to avoid confirmation the fact

Only comes into play where the statute requires knowledge. More than just a risk.

Not in all jurisdictions. This is kind of like recklessness (plus).

State v. Nations

No evidence of **direct knowledge** that she was 16. Girls dancing for tips.

You knew there was a high risk, and you **DELIBERATELY** kept yourself in the dark
Not in all juris, many feel it is basically just recklessness

Strict Liability (never the default, must be explicit)

Crime w/o mens rea requirement regarding one or more elements.

Minor punishment. **Public welfare offense.** More regulatory, w/o stigma of criminal law

MPC on strict liability - Disfavor it – Only allowable for minor violations

Criminal law is about bad choices, so you need to prove some mens rea

Staples v. US

They know strict liability is not default, **so I need to argue why it would be strict liability.** Since its public welfare. Guns are dangerous to public welfare.

Best argument: this is a serious felony, and when we talk about public welfare, we mean something civil and administrative, rather than moral stigma of criminal law.

Offense that doesn't become SL **unless legis. is very explicit**, and they were silent

Garnet v. State

Under 14, **And**; Person is at least 4 years older. Actus reus is easy. But, he had IQ of 52

Legis intent - clearly through about mens rea and **declined** to put it in

So, again, **silent on mens rea**, not default. But they show a **reason** why it is SL

1. Previous stat
2. Legis history – **raised, considered, and explicitly rejected**

Mistake of Fact

In a perfect world, **mistake of fact** would be a straight up mens rea.

Actor is unaware or mistaken to a **fact of an element** of an offense

Common Law

The **first step** in analyzing a mistake-of-fact claim is to identify the **nature of the crime** for which the D is being prosecuted, i.e., general or specific intent.

Specific intent– elemental approach –**WORKS** **if it negates particular mens rea requirement.**

The definition of the offense expressly required proof of a **particular** mental state.

It does not matter if the D's belief was unreasonable.

General intent – culpability approach – did mistake negate the moral culpability of the crime. The *culpability* approach.

An offense for which the any *mens rea* was a blameworthy state of mind.

The ordinary rule is that a person is not guilty of a general-intent crim **if his mistake of fact was reasonable**, but he is guilty if his mistake was unreasonable.

MPC DOES NOT MAKE THIS DISTINCTION between general/specific intent, so you would assume recklessness and see if recklessness could be negated

People v. Navarro

Stole 4 wooden beams? Jury was instructed that it has to be in good faith and reasonable.

HELD: improper jury instructions. When dealing with **specific intent**, mistake OF FACT does not have to be reasonable. Just needs to negate the mens rea.

Under *moral wrong doctrine*,

SPECIFIC INTENT CRIME (Navarro)

Common law rule, that for SI crimes, that you do a mistake of fact analysis as a mens rea

GENERAL INTENT CRIME (this is where shit gets fucked up)

Common law rule, then you have different approaches

3 flavors

1. Examine reasonableness of mistake (negligence)
 - a. Well, that's just a negligence standard, and you could be convicted of legal wrong
2. Moral wrong (even a reasonable mistake is not a defense)
 - a. Something morally bad anyways
 - b. One can make a *reasonable* mistake regarding an attendant circumstance and yet still demonstrate moral culpability worthy of punishment.
 - c. You were being bad**
3. Legal wrong
 - a. If conduct had been as I supposed, would it have been illegal
 - b. If a person's conduct causes the social harm prohibited by a more serious offense, he is guilty of that offense even if, based on his reasonable understanding of the attendant circumstances, he would have been guilty of the less serious offense.
 - c. You knew you were doing something illegal**

2.04

A mistake is a defense if it negates the mental state required to establish *any* element.

Irrelevant if it is a general or specific intent crime.

Does not work if D would be guilty of another offense. (Like legal wrong, but here lower crime)

Mistake of law

Law treats mistake of law **more seriously**. **Why?** Typically there is no mens rea element of an offense capable of being negated by an actor's ignorance or mistake of law.

People v. Marrero

Statutes looks like as a federal corrections officer, he is a "peace officer."

He wasn't unaware, he just misunderstood. HAD DONE RESEARCH. He was not blissfully ignorant

D: my misinterpretation of statute should shield me, **HELD: HE CANNOT OFFER THIS @ TRIAL**

What we really mean is, **very narrow**, must actually had to have been "**actually permitted**" reliance

(1) but we don't want to reward people for getting it wrong, or (2) deliberately being ignorant of law
(3) **but, we don't want to encourage ppl to search for loopholes.**

Causation (to the **MPC**, *just mens rea Q*, but there is a prox. Cause, was there intent, or substantial risk)

Actual Cause / But For (identifies **candidates** for responsibility)
Necessary but not sufficient condition of liability

But for the D's action, the result/harm to V have occurred **when and how and as** it occurred

Multiple Causes

If the action of the D **accelerates** the results, that is sufficient for causation, **even if** by a minute.

Takeaway: Must be AN actual cause, **does not have to be THE ONLY cause.**
OXENDINE V. STATE

T hurt V on Day 1. D hurts V on day 2, and he dies.

If T caused the death, D can be liable only if he accelerated it. **Acceleration is different than aggravation.** You can add to pain and suffering without speeding up the death

When two D independently acting D's took separate actions that **alone** would have caused the social harm at the exact moment. You can use but-for, just substitute it with, would X have died, **as he died.**

Two D take two separate acts, **neither alone** would have caused the social harm, then but-for works.

Proximate Cause

When there is a but for cause **+** intervening events in-between the social harm

When does an intervening cause become a **superseding cause?**

People v. Rideout

Voluntary act: driving drunk

car crash, get to **safe place**. V goes back to check on car, gets hit by 3rd party and dies

Shit happens in between, intervening causes

Welch's driving (3rd party)

V returning to his car

1) **Intervening cause** a straightforward Q of fact

2) Superseding cause is a Q of law that comes down to reasonableness

Factors

1. De minimis
 - a. Sometimes, a defendant's casual responsibility for ensuring harm is **exceptionally insubstantial** in comparison to of an intervening cause.
2. Foreseeable
 - a. **Responsive** IC usually not a superseding cause *unless* response was
 - i. **Unreasonable**; and **Abnormal**
 - c. More likely to be SC if it is **coincidental**, unless foreseeable
3. Apparent-safety doctrine
 - c. When a D's active force has come to rest in a position of apparent safety, the court will follow it no longer.
4. Free deliberate informed human intervention
 - c. E.g., the woman who freely chose to sleep outside in the cold.
5. Intended consequences doctrine
 - c. Basically when the result occurs but not as the D planned, and some weird intervening causes.
 - d. The D "you got exactly what you wanted. What right do you have to complain if we hold you responsible for the intended consequence"?
6. The omission factor
 - c. Omissions never are a supervening force. Even with a duty, just that the one who failed to act would also be guilty, if there is a duty.

Velazquez v. State

D was drag racing with V, and V got into a crash and died. Issue is whether D is liable.

Victim was not wearing seat belt and had BAC of .11. D not drinking

No proximate cause, victim killed himself by his own volition. **Drag was over, before the death.**

Homicide

<u>Murder 1</u>	<u>Murder 2</u>	<u>Manslaughter</u>	<u>Crim. Negl.</u>
*Intent/ express malice	*Intent/ express malice	*Intent BUT provocation ("heat of passion")	<u>Homicide</u> *No intent *Not
AND	NOT	OR	conscious of risk
*Premed./ Deliberation	premed. OR *Implied malice (reckless plus)	*No intent but <i>reckless</i> (<i>conscious</i> disregard of risk)	

- Homicide: Intentional Killings: In General

- **Common Law**

- Criminal Homicide: Killing another human being, but w/out justification or excuse

- Two Types:

- **Murder**: Unlawful Killing of a human being by another being w/ *malice aforethought*

- Malice aforethought**

- **Four Types of Intent:**

- 1. *Intent to kill*

- Willfully, deliberately, premeditated

- Killing is done after a period of time for prior consideration... **any** interval of time, btw the **forming** of the intent to kill and the **execution** of that intent, which is of sufficient duration for the accused to fully be conscious of that he intended, is sufficient to support a conviction of first degree murder.

- 2. *Intent to cause grievous bodily injury to another person where death result*

- 3. Depraved heart - *Extreme recklessness disregard for the value of human life. Wanton and willful disregard for an unreasonable human risk*

- 4. Felony murder - *Intent to commit a felony, during which a person is killed. Strict liability*

- Homicide Statutory Reformulations (Two Types of Murder)

- First degree murder:

- Murder committed in some statutorily-specified manner

- Any “willful, deliberate, and premeditated” killing

- Any homicide that occurs during the commission of certain other felonies (felony murder)

- Some jurisdictions will use felony murder

- Second degree murder:

- All other forms of murder:

- Intentional killings not

- willful/deliberate/premeditated

- Intent to inflict grievous bodily harm killings

- “Depraved Heart” killings

- Felony Murder (some jurisdictions)

- **Manslaughter**: killing of a human being by another human being w/out malice aforethought

- Voluntary manslaughter: **heat of passion killings**

- Heat of passion killings

- Partial Defense:

- in the absence of this partial defense, voluntary manslaughter cases would all be charged as second degree murder.

- intent to kill can be found

- **Common Law** – Provocation mitigates the offense to voluntary manslaughter if:

- 1. Must be adequate provocation at *the moment of the homicide*

- 2. The actor must have acted in the heat of passion

- 3. Defendant must not have had a *reasonable opportunity to cool off between provocation and killing*
- 4. there must be a *causal link* between the *provocation, the passion, and the homicide*
- Standard for “adequate provocation”
 - Must **be calculated to inflame the passion of a reasonable man and tend to cause him to act for the moment from passion rather than reason**
 - Words alone cannot be legally adequate provocation unless they are accompanied by conduct indicating a present intention and ability to cause the defendant bodily harm –
 - where words are recognized as potentially adequate provocation are INFORMATIONAL WORDS as opposed to insulting words - I slept with your wife v. your mama is a hoe
 - MODERN VIEW OF PROVOCATION
 - Shifting away from rigid categories to case specific jury questions: Provocation is sufficient to cause an ordinary man to lose control of his actions and his reason”
 - Mutual combat can suffice, aggravated battery.

- MPC
 - A person is guilty of criminal homicide if, w/out excuse or justification she takes the life of another human being purposely, knowingly, recklessly, or negligently
 - (Prisoners Knit Really Nice.)
 - Three Forms of Criminal Homicide:
 - **Murder**
 - Killing another person w/out excuse or justification:
 - Purposely or knowingly
 - Recklessly, under circumstances manifesting “extreme indifference to the value of human life” AKA extreme recklessness

- Murder differs from common law: no degrees; abandons language of malice aforethought
 - **Manslaughter**
 - an unlawful killing of a human being by another human being without malice aforethought.
 - Intentional killing done with provocation or heat of passion
 - Voluntary Manslaughter
 - **Extreme Mental or Emotional Disturbance**
 - Criminal homicide constitutes manslaughter when
 - 1. A homicide which would otherwise be murder is committed under the influence of EED for which there is reasonable explanation or excuse.
 - Standard of reasonableness: The *reasonableness* of such explanation or excuse shall be determine from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be
 - 1. ask whether they acted under EED – THIS IS WHOLLY SUBJECTIVE
 - 2. Was there a reasonable explanation for that EED? – This is a jury question of fact and there is an objective aspect to it
 - Manslaughter if the D acted while suffering from EMED for which there is a reasonable explanation of excuse

Mention that some do not distinguish between 1st and 2nd degree. All you need is an intentional killing, whether you thought in advance, or whatever. Just call it murder.

Murder 1

To Premeditate - quantity of thought

To Deliberate - quality of thought, weighing the pros and cons. Evaluate major facets of a choice

Murder 2

Implied Malice (reckless plus) (depraved heart) (does not require intent)

Bad mental state, you don't intend the result, **but you might as well have met it** because you acted with a wonton disregard for human life.

Manslaughter

Voluntary

Provocation ("heat of passion"). Must be a **really big** provocation.

A **concession to human frailty**; sometimes humans cannot control themselves.

This is about **free will**

THIS QUESTION SHOULD BE:

Whether the emotional reaction, **to the extent where it would be hard to control yourself**, reasonable. Homicide is not reasonable. **Reasonableness** that person had **compromised free will**.

Involuntary

Conscious disregard of the risk

Criminal Negligent Homicide

A reasonable person should have been aware.

State v. Guthrie

So the dishwasher stabs the guy in a neck after being provoked. This kind of provocation is not legally adequate. So focus here is on premeditation and deliberation.

Midgett v. State

So a father had been beating, choking, and starving his 83 lb 8 y.o. son. One day, he delivered four blows, and his son died. The autopsy said death was consistent with blow by a human fist.

Trial court said 1st degree, and this court says 2nd degree.

The evidence in this case supports only the conclusion that **the appellant intended not to kill his son but to further abuse him** or that his intent, so **no premeditation or deliberation.**

State v. Forest

Son shoots father in hospital. Doesn't matter that he was going to die, you just have to **accelerate**

He *really* thought about it. **Premed**

He *weighed* if it was a good idea. **Deliberation**

Manslaughter

Girouard v. State

So they were married 2 months. She called him a lousy fuck. Jumped on his back and pulled on his hair. He asks he is she was joking, she said no. He got a knife, hid it behind a pillow

Issue: **can words alone constitute provocation**

Worried about a slippery slope. A lot of domestic homicides are preceded by hurtful arguments.

Rationale: under no circumstances can words alone be provocation,

As a human being, nothing anyone can say that a reasonable person unable to control themselves.

Common law

1. There must have been adequate provocation;

Common law had rigid categories

extreme assault or battery upon the defendant; mutual combat; defendant's illegal arrest; injury or serious abuse of a close relative of the defendant's; or discovery of a spouse's adultery.

2. The killing must have been in the heat of passion; Subjective.

3. It must have been a sudden heat of passion—killing must follow the provocation before there had been a reasonable opportunity for the passion to cool;

During cooling off, free will is restored

4. Causal connection between the provocation, the passion, and the fatal act.

Modern View

Shifting away categories; **give it to the jury**, measuring by an ordinary person.

Information Words (more appropriate for provocation)

"I just slept with your wife"

Insulting Words (not enough)

"Your wife is a whore"

Holley

Ok so we are moving away from common law rigid approach, but how do we decide what an adequate provocation is.

About provoking anger.

1. **Subjective** or factual ingredient
 - a. This includes evidence of any mental or other abnormality making it more or less likely that the D lost his self-control
 - b. **This is easy, were you actually enraged**
 - c. **Everything** about D was relevant
 - a. **Bring it all in, I'm an angry drunk; We don't care about reasonableness**
2. **Objective** or evaluative ingredient
 - . Questions whether the provocation was enough to make a reasonable man do as he did.
 - a. **This is hard, here we ask was it reasonable to get upset and find it difficult to control yourself.**
 - b. Application of external standard of self-control

2 ways where a person's characteristics matters

1. How do they **relate** to the **adequacy** of provocation?
 - 1) e.g. calling Barnhizer a fucking idiot, v. calling a brain injured person a fucking idiot
2. How do they **affect** accused's level of self-control?

To access the **level of self-control to be expected of a reasonable person?**

- o For **magnitude of provocation**, we can consider the context. **But for the response to the provocation, we look to an ordinary person.**

All we care about is age + gender

E.G. I tell you "I murdered your children," and the person doesn't have any children.

You have to know about the context before you get to the reasonable person.

MPC on Manslaughter

Cool off? Emotions build.

MPC wanted to do a **case-by-case** analysis, rather than rigid categories.

So they came up with **extreme mental and emotional disturbance.**

People v. Casassa

Dude was casually dating a girl. She rejected, stabbed her was steak knife.

So we have to deal between Murder 2 and Manslaughter.

1. **Did he act under EMED?**

Subjectively, yes. This is a **threshold Q**

All evidence is relevant. **Could be anger, could be grief or fear.**

2. **Next, was there a reasonable explanation or excuse for the EMED?**

MPC 2 step much simpler. We don't need **cooling off** test, nor casual connection. The **linchpin** of each is, do we empathize w/ why D had a hard time controlling himself in the situation.

CL v. MPC

1. No need for a specific provocative act / fixed category
2. No rule about cooling-off period.
3. Words alone could be enough
4. We look more to subjective, we don't care about their moral values

Unintentional Killings: Unjustified Risk-Taking

When do we say, **YOUR AS BAD AS SOMEONE WHO DID IT ON INTENTIONALLY.**
2nd degree implied malice **or** involuntary manslaughter **or** crim neg. homicide

Implied Malice (recklessness plus)

2-step approach for IM

- How **substantial** was risk
- How **justifiable** was the risk

Malice is implied when the killing is proximately caused by an act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his conduct endangers the life of another and who acts with conscious disregard for life

MPC – What would state have to prove to convict moore of murder under MPC?

His conscious disregard of the risk manifested extreme indifference tot he value of human life

People v. Knoller

Dogs were bread and trained to be aggressive. Knoller is charged with second degree murder.

So we look at Knoller taking a risk, and was Knoller aware of the risk. To use **implied malice.**

Actor must be conscience of risk of dying, and **not** just the risk of bodily harm. **Not enough to be aware of risk that a dog can hurt someone; need to be aware that dog can kill.**

Recklessness (involuntary manslaughter) **v.** Recklessness Plus (murder)

RP - you might as well have meant it, and you are no better than the person who did it on purpose. Kind of like **willful blindness (reck+)**

Hernandez

Neg v. reck – Same risk, but in neg we do not have to show that the person was aware of the risk

He has bumper stickers, "I love older whisky and younger women."

State Argues

State had to prove negligence, not reckless, so this was more prejudicial than probative.

Dissent. **They proved more than they needed to.** They met and exceeding their obligations.

Felony Murder Rule

A form of strict liability. Show the person committed the **underlying** felony

The homicide is strict liability

Only show mens rea as to the underlying felony

People v. Fuller

(D's burglary on parked cars in lot, then chase)

Look at statute.

It lists the predicate felonies, so that is what you look at. **You don't need to go any further.**

Burglary fell within the statute, so they could pursue under murder in the 1st degree.

Has to be in the commission of felony, **during perpetration.** Here, flight from crime is within this rule

Justification:

Deterrence - don't commit felonies, but if you do, be careful

Sanctity of Human Life

Transferred Intent

Felon's intent to commit felony transfers to more serious social harm of homicide

Easing Pros. Burden of Proof

Under the MPC, they allow it, but **FM comes via implied malice.**

Presumed that you acted with extreme recklessness, but you can rebut it.
Not strict liability.

Inherently dangerous felonies

People v. Howard (D at traffic stop, and then chase)

Is the predicate felony, evading a police officer in willful or wanton disregard for the safety of persons or property. Sounds pretty damn dangerous

LINCHPIN – **WE LOOK to elements in the abstract, not just how it turned out in this case.** Could this felony be committed in a way that is not inherently dangerous?

Driving 56 mph, Driving w/ a suspended license, Not using a turn signal

So some states look to THIS crime. (In the abstract; majority view)

The INDEPENDENT FELONY LIMITATION

The underlying felony **cannot merge** with the murder – prevent bootstrapping

People v. Smith (assault child then the child died)

Pretty much every criminal homicide would default to felony murder, and every¹ would be treated the same, regardless of culpability level

You would never argue:

Merger and not inherently dangerous; **mutually exclusive** concepts

So what is independent?

Robbery, the point is to get money, **arson**, to burn, **rape**, to get pleasure

It's ok if the felony has an assaultive component, so long as it has an **independent** purpose

Forcible RAPE

Second degree rape involves

- 1. Vaginal intercourse** (this excludes men, **more broad today**) with the victim both by:
- 2. Force** (actual or threatened) **and**
- 3. Against the victim's will.** (i.e. w/o consent)

Consent by the victim is a complete defense, but consent which is induced by fear of violence is void.

State v. Alston (View I)

He told her to lay down on a bed which was in the living room. She complied and the defendant pushed apart her legs and had sexual intercourse with her. **Brown testified that she did not try to push him away. She cried during the intercourse.**

Next day he called her. When he got to her apartment he threatened to kick her door down and Brown let him inside. **He performed oral sex on her and she testified that she did not try to fight him off because she found she enjoyed it.** The two stayed together that night.

The issue on appeal is FORCE.

GRABBING HER / FIXING HER FACE was deemed **unrelated** to sex

Gender Subtext

A proud woman would not survive if she didn't consent

Rusk Rd. 1

Case where girl left club with dude, and he took her keys, then raped her

Court recognizes some threats are so severe that resistance would be worthless.

The V's subjective fear is not enough; **but the fact that she verbalizes it is important.**

Best evidence "if I do what you want, will you let me go and not kill me."

HELD - the evidence is insufficient.

Dissent

If you resist, you are more likely to get hurt.

Compares to robber. Give up wallet w/o resistance. And D is still criminal

But rape, well there are many more situations where people fuck
Many alternative narratives, while well, how many ways can someone rob your wallet?

Round II – Sup. Ct.

RESISTANCE REQUIREMENT

No longer require V to resist her attacker to the utmost, but instead require earnest resistance **or** resistance sufficient to establish that sex was w/o consent + by force.

View 2

Forcible Compulsion. Power imbalance. Do not need to show actual force.

Berkowitz

Girl walks into college dorm and she doesn't physically resist or scream. **She just says no.**

"wow we got carried away" . . . "no you got carried away"

Pennsylvania Statue

(1) by forcible compulsion;

So the issue here is **forcible compulsion.**

HOW IS THIS DIFFERENT?

Resistance is relevant to proving the rape, but not absolutely necessary.

Forcible compulsion - includes force of Aulstin, **but expands/broadens** whats considered

Position of dominance

A person of r'able resolution doesn't have much of an option to resist

State Argues

He locked the door. Prevented her from removing herself from the situation. **But this is equally consistent with innocence.** She knew how the door worked

It's hard to ignore what happened in the past, in terms of naughty convos and her coming over drunk.

Talks about factors

Age

Walked in on her own volition

No coercive way

No physical or mental difference

No authority or domination

Victim not under duress

Both students, so no authority

Reluctant submission

View 3

If sex is w/o consent, the act of sex itself is force. **Lack of consent = force.**

M.T.S.

She woke up, and he had penetrated her.

Wanted to get away from looking at the V and **shift focus on the D.**

There is **no evidence of force**, threatened or actual

The act of sex itself is force, by definition. IT ALL TURNS ON CONSENT.

BUT WHY WOULD YOU ASSUME REDUNDANCY IN THE STATUTE. WOULD THE LEGIS PUT THE WORD IN IF IT MEANT THE SAME THING?

Rule of lenity? IGNORED

Alston, where force had to be linked to the sex

Berkowitz, said we can look at the whole context

M.T.S., don't do any work. No consent, game over.

Larceny

It is a crime against possession (**physical**).

1. **Nonconsensual**, **Trespassory** taking (caption) and
2. **Carrying away** (asportation)
 - a. **Actus reus**
 - b. Doesn't have to be a lot of movement / distance
3. Of the personal property of another (attendant circumstance)
4. **With the intent to steal (permanently deprive the possessor of) the property**
 - a. **Mens rea**
 - b. Does not mean I have to keep it or convert it to my own use.
 - c. Specific intent. This can develop later.

The significance of possession v. custody

We don't care about ownership. We can focus on the relationship between parties involved.

POSSESSION

Sufficient control over it to use it in a **reasonably unrestricted manner.**

Actual – person is in physical control of it

Constructive – he is not in physical control but nobody else has actual possession

CUSTODY

If he has physical control over it, **but his right to use it is substantially restricted** by the person in constructive possession of the property.

A person in physical control of property has mere custody if

- 1) he has **temporary and extremely limited authorization** to use the property
- 2) received the property from his employer for use in the **employment relationship**
- 3) is **a bailee of goods** enclosed in a **container**; or
- 4) obtained the property by **fraud**

Employers and Employees

Employers frequently furnish property to employees in furtherance of the employment relation.

Master retains constructive possession, **servant** has mere custody of it.

Third Person to the Employee for the Employer

Does not apply when an employee **receives** property from a person who has **no special authority over him**, but who wants the property delivered to the employee's boss.

Here employee gets **possession upon delivery**, and this is consensual, so no larceny

Bailors and Bailees

Basically ppl would open these packages, remove what was valuable, and then deliver them.

Bailee receives **possession of the container** but mere custody of the contents.

When bailee open container, **he breaks bulk**, so a trespassory taking of possession of the contents results. **If he sells w/o opening of the container, then no larceny occurs.**

Fraud and Larceny by Trick

Because of P's fraud, **constructive possession** of the horse remained with V.

If P was honest at the start, **later decided to steal**, then **embezzlement**

Rex v. Chisser

O puts the ties into the hands of C. C runs off without paying. **Element at issue: trespassory taking**

Did he take possession when O hands them over, or when C runs out of the store. **If when O is handing it there is possession, well then it wasn't trespass, because O consensually handed them over.** C only had custody until the moment he ran out of the store

So we are not 100% literal when it comes to possession.

United States v. Mafnas

Mafnas is getting bags of money. He is hired to transport them. Armored car service.

Court says well, D **only acquired custody**. The subsequent decision to keep the property for himself is larceny. **The latter decision was beyond the consent of the owner.**

REX V. PEAR

P rented a horse from V w/ intent to sell, which he did. Looks like a consensual taking.

What made the taking of the horse nonconsensual? Larceny by trick.

People v. Brown

Stole a bike, **not to take it forever**, **but to teach them a lesson** because they were throwing oranges at him. Gets caught b4 he has opportunity to give it back, supposedly.

This instruction is erroneous, and demands a reversal of the judgment.

The pure test is, **did he intend to permanently deprive the owner of his property?**

What if he ONLY AFTER TAKING, like 2 days later, decides he is going to deprive the owner.

Common law: **continuing trespass**

People v. Davis

Petty theft crime. Dude was at a department store. **Tried to return an item that was never purchased.** They got him on camera. Camera man directed cashier to give him a store credit, and they stopped him on the way out. D argues, how I can deprive you of property that I want you to take back.

Argues not a trespass because the store consented to the issuance of the refund

Store does not consent to a customer stealing

You are asserting a claim of ownership when you attempt to return a shirt.

Created a substantial risk of permanent loss. (if they say no, he will cover his tracks).

Embezzlement

This is a gap filler.

1. Get possession in **non-trespassory** way; and
2. Converts it for their **own use**
3. **Usually requires an element of entrustment**

Rex v. Bazeley

G gives \$ to servant C. G has constructive possession. C has mere custody.

C goes to bank and hands \$ to B, the bank employee.

Possession passes from G to B

Here B took possession consensually from the servant, so not trespassory. **Not larceny.**

False Pretenses

Knowingly and designedly obtaining the property of another by means of untrue representation of fact w/ intent to defraud.

People v. Whight

D discovered his defunct ATM card was paying out at certain stores. Got thousands of dollars.

So they didn't rely on the code. In making a policy decision, **they relied on customer, that when they got no response, the customer would be good for it.**

To support a conviction of theft for obtaining property by false pretenses:

- (1) that the defendant made a false pretense or **misrepresentation**,

He proffering the CC, it is an implied representation.

Representation need not be oral or written statement; it may also consist of conduct.

- (2) that the representation was **made with the intent to defraud** the **owner** of his or her **property**, and

Suppose he didn't know no \$\$\$ on CC

(3) that the owner was in fact defrauded in **reliance on the representation**.

D argues

They relied on Wells Fargo code issues, not the D's presentation of the ATM card

They didn't rely on CPU because they never got an authorization.

the reliance element of the crime may be found lacking in three typical situations:

(1) Where the complainant **knew the representation was false**/did not believe it to be true.

(2) Where, **even if he believed it, he did not rely on it, but investigated for himself** or sought and relied on other advice.

(3) Where, although representations are proved, **the complainant parted with his money or property for other reasons** or in reliance on other representations not shown to be false.

Misrep does not HAVE TO BE THE ONLY THING I rely on.

Larceny by trick, is a crime against possession.

Owner has no intent of giving it up for good. **You can borrow it.**

FP is a crime against ownership. **Owner intends to party with the property forever.**

Self-Defense Elements

1. **Threat**—actual or apparent—of the use of deadly force against the defender
2. Threat was **unlawful and immediate** (if you have time to reflect, then it's not immediate)
3. Actual and reasonable belief of peril or death or serious bodily harm
4. Response to threat must be proportional/necessary to deflect threat

This is tough to prove, and is a **last resort**.

U.S. V. PETERSON (common law viewpoint)

Weird, go into alley and the D comes out of his house. Altercation. **Safely goes into house to get a pistol**. Warns V not to move or take any steps. V has a lug wrench. Doesn't listen to warnings and gets shot in the face and dies. D says his act was one of self-preservation.

Trial Court - looked at who is the aggressor.

Think of it as a clean hands doctrine.

Well the right to self-defense here kind of easy to lose at common law.

Withdrawal rule; must be

1) **In good faith and**

2) **Informed V by words or acts**

(ALLOWS YOU TO RE-CLAIM A CLAIM OF **SELF-DEFENSE**). I renounce my aggression.

Place of comparative safety.

Here, he escaped and then reentered the dangerous area.

Retreat Rule

If there is an avenue of retreat

1. THAT DOESN'T PUT YOU AT RISK, and
2. ARE AWARE OF THE AVENUE.

EXCEPTIONS

The Castle Doctrine

Stand your ground that applies in the home/workplace).

STAND YOUR GROUND

But this leads to bad results in mistakes. Shoot 1st, ask Q's later.

MPC ON SELF-DEFENSE - 3.04

If A starts a fight, and B responds with excessive threat (thus unlawful), A can now protect himself.

A is still on hook for starting the fight.

REASONABLE BELIEF

PEOPLE V. GOETZ

Atmp murder, assault, for shooting and wounding 4 yths on NYC train, small convo.

Prosecutor: r'able belief means the r'able man in the D's situation.

D argues: test should be whether D's actions were r'able to himself.

Problem: every1 would get off

So its **objective**. **But this doesn't foreclose consideration of the D's personal history.** Of course we look to the **context** which includes D's personal experiences.

What can a jury consider - r'able person

- D's relevant knowledge about aggressor
- Parties' physical attributes
- D's prior experiences that could provide a r'able basis for believing the other person intended to harm D or that deadly force was necessary
- The **context** matters

Defense of Others (more mistakes here)

1. **Common law** - yes, if special relationship
2. **Now** - no relationship required

People v. Kurr

Pregnant woman punched in stomach. Warned V. he didn't listen. She stabbed him.

Self-defense not bought by jury, doesn't matter, defense of others is different

Extend to fetus at any stage based on a state based by legis.

Necessity (Choice of Evils)

1. Actor faced with **clear and imminent danger**
2. Actor must **r'ably expect** that his **action will abate the feared harm.**
3. **No adequate legal alternative**
 - a. If there is another alternative, game over **not a blank check to commit crimes.**
4. Harm caused must **not be disproportionate** to the harm prevent
 - a. Not about what the fuck actually happened
 - c. LINCHPIN: evaluate @ time of the decision. THIS IS PROSPECTIVE.**
5. **D did not create** the dilemma

Objective standard

It is a utilitarian/value judgment call. Not just that you are acting for your own good.

Nelson v. State

Ok so 3 D's got their 4-wheel drive truck bogged down 250 ft off the highway. **stole** from government a **dumptruck** from a highway dpt yard and the dumptruck got stuck too.

The rationale of the necessity defense is **not that a person**, when faced with the pressure of circumstances of nature, **lacks mens rea**. Rather, **it is this reason of public policy**: the **law ought to promote** the **achievement of higher values at the expense of lesser values**, and **sometimes the greater good** accomplished **by violating the literal language of the criminal law.**

Reasonable Belief

In balancing, D's actions should be weighed against the harm r'ably f'able at the time, **RATHER THAN** the harm the actually occurs. **But**, not a Q of whether D believes he made right choice, but whether the value judgment was in fact correct.

DUDLEY & STEPHENS

Court here imposes a duty. You have to sacrifice yourself, instead of taking some1 else's lives.

Worried about long term effect. **Crimes here not devilish.** But this could open up the floodgates.

A man has **no right** to declare temptation an excuse. **Though he might himself have yielded.**

Do we want a doctor to harvest organs of 1 to save 5?

Duress (this is an EXCUSE)

US V. CONTENTO-PACHON

1. **Immediate FEAR of death or serious bodily injury**
 - a. Vague, veiled threat of future unspecified harm doesn't work
 - b. Here, J was powerful and lots of \$\$\$ at risk
2. **Well-grounded fear that threat would be carried out**
 - a. Knew where he lived, and name of family
 - b. He was being watched
3. **No reasonable opportunity to escape the threatened harm**
 - a. Need jury to decide if P believe the police were in fact paid informants for drug trafficking
 - b. Also, when it comes to fleeing, a jury Q

How is this different from necessity?

Duress - someone is making you do something against your will. Human being causing situation

Case where he swallows balloons of cocaine because the drug dealer threatened his family.

Didn't go to police because they were corrupt. Drug dealer knew facts about his family + children.

Do not argue that duress negates mens rea.

Why doesn't necessity work? Smuggling drugs causes a lot of harm to society, so hard to decide.

NECESSITY V. DURESS (common law)

Necessity	Duress
Imminent	Imminent
Natural forces	Unlawful (human) threat
No legal alternative	No escape of threat
Harm avoided > Harm caused	Harm avoided >, = or < Harm caused
Protection of person <i>or</i> property	Protection of person <i>only</i>
Clean hands	Clean hands
No homicide	No homicide

MPC on NECESSITY

Necessity	Duress
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A threat based on a person of **r'able firmness**.

People v. Anderson

You **cannot** kill innocent person bc of duress. **does not support reduction to manslaughter.**

V molested 2 girls. Dad of one of the girls told D, **kill the V or I will beat the shit out of you**

Policy - duress to prevent evil, and **nothing is more evil than killing an innocent person.**

Law must encourage people to seek an alternative to killing innocent person

Intoxication

Can be voluntary or involuntary. Not an exculpatory defense, but can be relevant in sentencing.

Relevant to identity of D

You can always offer the evidence to show "there is some element of the crime that this negates"
e.g. I was drunk so I couldn't have been the sniper

Relevant to an element of crime

e.g. intent, broke in house because I was drunk and thought was X house.

US v. VEACH

So car crash. D was drunk. Struggle with cop, and the cop, "im going to fucking kill you."

Intoxication may negate mens rea for specific intent

Not a defense for **general** intent.

Yes a defense for **specific** intent.

ATTEMPT

A criminal attempt occurs when a person, **with the intent to commit a substantive offense**, performs some act done towards carrying out that intent.

One must go from the **preparatory** stage to the **perpetration** of the target offense.

Similar to conspiracy in that, it is its own distinct crime, Attempt to so _____ X _____.

BUT – an attempt **will merge** with a completed substantive offense.

Complete

You've done everything to commit crime, and it just doesn't work. (No actus reus issue here)

Incomplete

You have taken some steps, but there is a **superseding intervention** or a **moral intervention**, so I have not taken all of the steps necessary to commit the crim (actus reus is difficulty).

Why punish / policy?

- Risk = harm
- Encourage **law enforcement** officers to intervene
- Less culpable because, by chance, you failed? **Still morally culpable.**

Two Intents Needed

1. Intent as to **performing the conduct** (this is the actus reus)

2. Intent as to **desiring the specific harm** (attempt is a specific intent crime, **even if** the target offense is a general-intent crime) (this is the mens rea).

COMMON LAW – WHAT YOU HAVE LEFT TO DO

1. Whether the act comes **dangerously close** to causing tangible harm.
2. **Seriousness** of threatened harm (relates to how quickly police should intervene)
3. **Strength** of evidence of actor's **mens rea**

You could have done a lot, but less likely to say that you have crossed the line.

Very conservative. Objective approach.

The great irony of attempted crimes

Mental state must be greater

And

Punishment is lower

- Mens rea of attempt **MUST BE** purposeful
- Required purpose/knowledge as to the attendant circumstance.

MPC - WHAT YOU HAVE ALREADY DONE

1. The purpose/knowingly to commit the target offense (mens rea)
2. **Substantial step** – Strongly corroborate the actor's criminal purpose

Subjective approach. Look strongly to mens rea, and what was the attempt. **Does NOT punish less severely.** Except for attempted murder.

Provides a list of circumstances that "**shall not be held insufficient as a matter of law.**" (basically leave it to the jury)

- 1) Lying in wait
- 2) Possession of materials to commit offense
- 3) Searching for or following victim
- 4) Reconnoitering the contemplated scene of the crime
- 5) Unlawful entry into a structure or building which the crime will be committed;

- More liberal and willing to punish for attempt. Broadens liability.
- We just need to show knowing or purpose for a result crime under 5.01
- **Attendant circumstances**, based on statute, even if negligence

ATTEMPT TO AID/ABET

The common law is confused on this, but the MPC, focusing on mental culpability, treats as attempt.

- If the purpose of her conduct is to aid another in the commission of the offense and
- Such assistance would have made her an accomplice in the commission

Justification: a person who attempts to aid in the commission of an offense is as dangerous as one who successfully aids in its commission or attempted commission. **Subjective principles at work.**

Abandonment (MPC only - affirmative defense; not a common law defense)

Relevant **only after** actor has **crossed the line** from preparation to perpetration

completely and **voluntarily** renounce criminal purpose. *We prefer if you'd change your mind.*

As a practical matter, even @ CL, court look at abandonment to see whether you crossed the line.

- Must be voluntarily in good faith; and
- Must show that you're not going to go through with it in the future (mere postponement)

WHAT DOESN'T WORK

1. You stop because you notice the police is watching
2. I don't think it's going to work

MENS REA

PEOPLE V. GENTRY

Facts: couple was drinking and began to argue. D poured **gasoline** on V. when V went near a stove, the gas ignited and caused burns to the V. the D tried to put out the fire by placing a coat on the V.

Statute: attempted murder when, **with intent** to commit murder . . .

Jury instruction gives definition of murder **with all the levels of culpability**

Well jury could have found murder **w/o finding intent to kill, as needed by the statute.**

Start an attempt, then feel bad and mitigate, still on the hook. **Different than abandonment.**

Think about attempt as **trying to do X, obviously reckless are inconsistent with trying to do X.**

Bruce v. State (attempted felony murder?)

D enters shoe store masked and armed w/ hand gun.

Statute for FM does list robbery.

FM stat requires proof of a **specific intent** to commit the underlying felony. **Attempt FM is not a crime.** By definition, FM has **no mens rea** as to the murder itself.

Aries where D accidentally fires gun during a felony. **few states recognize this offense.** This is consistent with the general rule that the offense of attempted murder required a **specific intent.**

Attempt - Actus Reus

Only talking about incomplete attempts. Line between preparation and perpetration?

We look for conducts that show us what the person was trying to do. The earlier in the process, more interpretation, more likely to make a mistake.

ASSAULT

Common law (narrow) (special bread of intent)

1. Unlawful attempt
2. Coupled with present ability
3. To commit violent injury on another

More recently includes

Placing someone in reasonable apprehension, even w/o the intent to harm or present ability

MPC – Merges assault with the completed offense of battery. **Assault is an attempted battery**

CONSPIRACY

Think of conspiracy as "**an agreement**" between two or more persons to commit a criminal act.

Conspiracy to do X. Just like attempt to do X.

A twofold specific intent is required

1. Intent to **agree/conspire** with other
2. Intent to **commit/accomplish** the conspiracy's **target offense**

Justify: **group criminality is inherently more dangerous than individuals.**

Law needs to intervene right away. BUT. *Are we punishing for thoughts alone?*

Some juris also want overt act in furtherance of conspiracy; **less than a substantial step.**

Any act, **no matter how trivial**, was sufficient. The allegation and proof of a single overt act by **any party** to a conspiracy is sufficient to prosecute **every member of the conspiracy.**

Policy: show the conspiracy has moved beyond the talk stage, and is at work.

PINKERTON doctrine

Agreed with his brother tax crime. Walter commits the substantive offenses, while Daniel was in **jail**.

No question **Daniel** was guilty of a conspiracy.

Issue whether **Daniel** is guilty of substantive offenses that he did not do?

A party to a conspiracy is responsible for any criminal act committed by associate if:

- Falls within the **scope** of the conspiracy;
- In **furtherance** of the conspiracy; or
- Is a **reasonable foreseeable** consequence of the unlawful agreement (**negligence**)

But is Pinkerton too broad. Some juris reject it.

One effect of the rule is that it **potentially makes relatively minor parties in a large conspiracy criminally responsible** for many completed offenses over which they had little or no control.

Not only are you treating small actors as big actors, **but for policy**, it gets **flipped with plea deals**, because the big fish have more information to exchange.

MENS REA - People v. Swain

Conspiracy to commit murder. **drive by shooting**. Well D says **original plan was to steal a car**, not to commit murder?

jury should **not** be instructed on **implied malice**, because this does not shown intent to kill.

This is a specific intent crime. Not just that they intended to agree, **but also that they intended to commit the elements of that offense.**

Illogical to conclude one could **agree to kill someone accidentally**

People v. Lauria

Girls using D's telephone services, supposedly for business purposes.

When does the **supplying of goods** and services for a crime make X a party to a conspiracy.

(1) **Knowledge of the illegal use of services**

AND

(2) an **intent to further that illegal use**

- a. if **a stake in the venture** is acquired
- b. When **no legitimate use for the goods or services existed**.
- c. When the **volume of business** w/ the buyer is grossly disproportionate
- d. The **seriousness/gravity** of the crime.

Actus Reus

People don't write down their agreements. We need to look at **circumstantial evidence**.

Azim

D drove car w/ 2 passengers. Passenger called V to curb, 2 passengers got out of car, robbed V.

The essence of criminal conspiracy is a common understanding, that a particular criminal objective be accomplished.

CAREFUL: *not stopping a crime and just being complacent* does not suggest a prior agreement. Not enough for liability. **SIMPLY KNOWING A CRIME WILL COMMIT is not enough.**

Cook

You can have accomplice liability w/o conspiracy. Clear case for rape and accomplice liability.

8pm: V socialized with D and his brother for 45 minutes.

She slipped and fell. D jumped on V and told her she was going to love it.

The circumstances under which the victim and the Cooks met and socialized were **not indicative of a preconceived plan** between the defendant and his brother to commit a sexual assault. No evidence that they caused V to fall to the ground, they showed the V their ID.

People v. Foster

D approached Rag and asked him if he was interested in making some money. D told Rag of an elderly man AO who key valuables in his possession. Rag told the police.

Compares to **MPC**. Similar stat, and **commentary that follows adopts the unilateral.**

Well, the **legis history** is **silent**, and **this is so important**, so there would be some discussion And Illinois has a **very broad solicitation state**.

DEFENSES

Iannelli v. U.S.

Wharton's Rule - **exception to the general principle that** a conspiracy and the substantive offense **are discrete crimes** for which separate sanctions may be imposed.

Basically, the crime cannot be committed without an agreement

CAREFUL - a crime that requires 2, and then a 3rd or 4th person comes in, **Wharton's rule does NOT APPLY. (third party exception.)**

Or if two people conspiring **will not be committing the crimes themselves.**

Wharton **presumed to apply** absent legis intent to exclude it. Comes into play with **merger.**

Argument for Wharton is most persuasive if they actually go through with the crime.

- Basically, once you commit the crime, it merges at that moment, and until that moment, conspiracy charge is still independently alive, **in some juris.**

MPC does not recognize Wharton, **but MPC merges.**

Unless state shows agreement involved commission of additional offenses **not yet committed.**

Gebardi (Wharton doesn't apply; LEGISLATIVE-EXEMPTION RULE)

Conspiracy to violate the **Mann act. We cannot frustrate the legis intent.**

The **woman** is consenting to the travel, and she is the co-conspirator. But really, she is the victim. So this would be inconsistent. You cannot conspire with a victim.

Abandonment only a defense in MPC

Conspirator must renounce his criminal purpose and thwart the success. **She must negate the danger of the group that she joined.**

Accomplice liability

An accomplice is a person who, **with the requisite mens rea**, assists the primary party by:

- 1) Assistance by **physical conduct**
- 2) Assistance by **psychological influence** (entice, solicit, encouragement)
- 3) Assistance by **omission**, if the ommitter has a duty

Amount of Assistance Required

Presence or *knowledge* or **secret intention to aid** is NOT enough.

Unless the presence encourages the perpetrator, facilitates the unlawful deed (lookout)

We need some actus reus, **not very much**, but we need something.

TWO intents of accomplice liability

- The intent to **assist** the primary party to engage in the conduct that forms the basis for the offense
- The **mental state required for the commission of the offense**, as provided in the definition of the substantive offense
 - Do you have the mens rea for the underlying crime

Need intent as to aiding the conduct, but as to the result, it's whatever it is for the substantive crime

Common Law Terminology (First 3 merge because **treated same**)

Principal in the First Degree- one who actually **commits** a crime.

Principal in the Second Degree- one who aided based on his **presence at crime itself**, either **actual** or **constructive**.

Accessory Before the Fact (**insiders**)- one who aided **without having been present** at the moment of perpetration.

Accessory After the Fact (**criminal protectors**) one who, **with knowledge of other's guilt**, renders assistance to a felon in the effort to hinder his detection, arrest, trial or punishment.

- a. Distinct crime
- b. Accessory after the fact is circumstantial evidence that you were a part of the whole offense

State v. Hoselton:

- No evidence that he discussed the facts before the committed conduct by his friend.
- He was in a position to serve as a lookout, **BUT** it would not make you an accomplice if you did not receive any benefits or any of the stolen items
- Lookout, I have to know why I am a lookout. I have to know what the PP is doing

Riley v. State

FACTS: both fired a gun, no one knows who fired shot that hit the victim.

Prosecutor charged them with first degree assault, based on recklessness.

State v. Linscott:

He and a friend decided to rob cocaine dealer because he usually has a lot of cash on hand. Fuller went rogue and shot dealer and killing him.

The act is not in dispute, easy case for accomplice liability for the robbery.

D argues, Murder was improper because he lacked intent to aid in that offense. Unfair to convict him for an intent crime based on his mere negligence.

Natural and Probable Cause Doctrine (rejected by MPC)

A co-conspirator may be held criminally liable not only for the underlying crime, but also for any other offense that were the natural and probable consequence of the crime he aided.

Four Step Analysis (goes both ways)

- 1) Did the Principal commit the target crime A?
- 2) If so, did the Secondary culpably assist in the commission of crime A?
- 3) Did P commit any other offense?
- 4) Were those crimes, although not contemplated or desired by S, **reasonably foreseeable** (negligence) consequences of crime A?

MPC does not recognize the natural and probable cause doctrine.

Criticism is that an accomplice may be convicted of a crime of intent although his culpability regarding its commission may be no greater than that of negligence. Effect of the rule is to permit conviction of an accomplice whose culpability as to the non-target offense is less than is required to prove the guilt of P.

Actus Reus

Usually this is clear cut. Can be a problem when the secondary party's participation is relatively slight; or

State v. V.T.

D and 2 friends go to relatives apt and spend night to avoid being picked up by police for curfew violations.

Camcorder stolen. It was pawned. Film showed Moose phone a friend, in D's presence, discussing pawning the stolen camera. **P never spoke or gestured in the film.**

Directly commits the offense, who solicits, requests, commands, **encourages**, or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct.

State argues: continued **presence during theft**, and friendship, is enough to show he **encouraged** theft.

If we can show a previous conspiracy that can mean mere presence is enough for aiding and abetting.

Mere presence at the scene is not enough, **nor is mental approval of the actor's conduct.**

Does a state have to prove causation in accomplice liability? **No**, It all comes back to **derivative** liability. Its not but-for the assistance Because **the causation is satisfied by the primary actor.**

State v. Helmenstein

Weiss – Expression for desire for bananas is a form of encouragement

PEOPLE V. GENOA

Attempted possession with intent to deliver 650 grams of cocaine.

Here D was only helping to finance, not obtain cocaine. But there never was a deal.

No crime to derive liability. Theory is **derivative liability**, any claim of accomplice liability **has no doctrinal root.**

- (1) the underlying crime was committed by some other person (**state fails here**)
- (2) the defendant performed acts/encouragement which aided and assisted the commission of the crime, and
- (3) the defendant intended/knowledge that principal intended its commission at the time of giving aid

OK for the state to not convict the primary actor, but they must show that the crime occurred.

MPC

You have a better argument to hold the D here guilty. But it wouldn't be accomplice. **It would be an attempt**