**CRIM LAW OUTLINE**

1. Purposes of Criminal law
   1. 3 **Pillars** of Crim Law
      1. Act – actus reus
      2. Thought – Mens Rea – “Bad thought not enough
      3. Notice – gov’t. projection of the crime
   2. 4 **Purposes** of Crim Law – **don’t use a single one, use a hybrid of all 4**.
      1. Retribution
      2. Rehabilitation
      3. Incapacitation
      4. Detterence
   3. *Regina v. Dudley & Stephens -*
2. **Actus Reus** – Requires Act & Voluntariness
   1. 2 categories
      1. Act, OR
      2. Duty + Omission
   2. Voluntariness
      1. If gov’t fails on voluntariness, go back to the **most recent voluntary act**
      2. Two kinds of involuntariness
         1. **External Force** – EX: Pushed into a lake (No consent allowed)
         2. **Automation** – **Capable** of action, but not **Conscious** of Will
            1. Involuntary acts

Reflex or convulsion

Bodily movement during sleep

Movement under hypnosis

Bodily movement not the product of an effort or determination of the actor either **conscious** or **habitual**

* 1. **Omissions** – requires a **legal** duty (not moral duty) and a failure to act
     1. First, establish that a duty **exists**, THEN find if the Duty was **Breached**.
     2. Types of **Legal Duties**
        1. Statute imposes a duty
        2. Special Relationship
           1. Parent/child
           2. Spouse – a spouse is a “co-equal” and can remove their partner’s duty
           3. Common Carrier
           4. Dr/Patient
           5. Family Live-in
           6. Occasionally employer/employee
        3. Contractual Duty – privity of K not required – EX: lifeguard owes a duty to the swimmers
        4. Voluntary Assumption of Duty of Care + Seclusion from others
           1. EX: Basement Baby Cage
        5. Put Others in Peril
           1. Weigh comparative experience to determine if you put someone in peril
           2. EX: Telling the blind kid the light is GREEN
     3. **Possession** 
        1. Framed as an omission – “You had control long enough to create a duty to get rid of control
        2. Split of Authority – Actual Awareness(Subjective) v. Reason to Know(Objective)
     4. Receiving – fail to terminate possession
  2. **Status Crimes** – Often Unconstitutional (8th amendment)
     1. Considered “cruel and unusual” to punish someone for “being” something
     2. Exception – voluntary intoxication will not succeed b/c the actor chose his status

1. **Mens Rea –** Mental State
   1. **Concurrence** – The mens rea must occur at the time of the act
   2. **Culpability Standards**
      1. Purposely
         1. Conduct - Conscious Object
         2. Attendant Circumstance – Believes or Hopes
         3. Result – Conscious Object
      2. Knowingly
         1. Conduct – Is Aware
         2. Attendant Circumstance – Is Aware
         3. Result – Practically Certain
      3. Recklessness
         1. All 3 – Consciously Disregards a Substantial and Unjustifiable Risk
      4. Negligence
         1. All 3 – Should be Aware of a Substantial and Unjustifiable Risk
      5. Reasonableness –
   3. Homicide – Stratifies across all Mens Rea categories
   4. Strict Liability – To apply strict liability show,
      1. The conduct is a violation (not a crime) – no possibility of jail time, **AND**
      2. The legislature is silent
      3. EX: Statutory Rape – SL as to the age element – Because Tradition Dictates
2. Jury Instructions
   1. 4 steps to **convert** statute to Jury Instruction
      1. Elements – Break the statute into its constituent elements (CAR)
      2. Link – Link appropriate Mens Rea to each element
      3. Translate – turn to page 60 and translate into Layman’s terms
      4. Externality \*\*\*\*\*\*\*\*\*\*\*\*NEVER forget to add the act – “And the defendant actually and voluntarily did [input statute]”
   2. Mens Rea **Distribution**
      1. **Silence** – Assume recklessness for all elements
      2. **Front-loaded** – if the mens rea is at the beginning, AND there are no subsequent mentes reae, THEN, the first mens rea applies to **all**
      3. **Internal** – if the mens rea is in the middle of the element, it only applies to the subsequent element. All others get “Recklessly”
   3. Statutory Construction – How to Interpret
      1. Look for plain and unambiguous language – Lawyers will always find ambiguity
         1. **Rule of Lenity** – If any ambiguity – read the statute in the light most favorable to the Δ
      2. Look for Legislative Intent
      3. Look to the MPC
         1. Exceptions –
            1. Wildly Disproportionate Punishment
            2. Redundancy – if the statute doesn’t do something new, why did the legislature pass it.
3. Mens Rea Defenses
   1. Intoxication
      1. Old Approach – General/Specific Intent
         1. General – concerned with the act – No intoxication defense
         2. Specific – must intend the consequence – Intoxication may be used to show inability to form specific intent
         3. General v. Specific comes up in Intoxication & Mistake of Law/Fact situations
      2. Modern Approach – MPC – 2.08(4)
         1. Involuntary Intoxication – viable & complete defense
            1. If Δ is involuntary or pathologically intoxicated AND
            2. Unable to appreciation wrongfulness OR conform conduct to requirements of law
         2. Voluntary Intoxication – Bumps down to R
            1. Asks – “Had the Δ been sober, would he have been aware of the risk” – just for R, not N
   2. Mistake of Fact – also folds into Mens Rea Analysis
      1. Old Rule – required a showing that the mistake was reasonable before it could be a defense – No longer a requirement
      2. Modern Rule – Can be a defense to any level of mens rea (obviously not Strict Liability)
         1. 3 ways to Transfer Intent
            1. Personal – Different Person is hurt – TRANSFERS
            2. Injury – Different Injury Occurs – Only transfers down, NOT UP
            3. Route – Odd route occurs – EX: Ricochet Bullet – TRANSFERS
         2. Use the same Statutory Interpretation for Mistake of Fact as general Mens Rea
   3. Mistake of Law – Usable if the crime requires knowledge of the unlawfulness of the act – EX: Running from the cops
      1. Acts as a Defense if
         1. Reasonable Reliance
            1. Erroneous Conclusion In Good Faith
            2. Must make bona fide diligent effort to abide by law
            3. Acts in Good faith Reliance
         2. On an official statement of the law
         3. Contained in Dicrete Vehicles
            1. Statute
            2. Judicial Opinion
            3. Administrative Grant or Interpretation by a Public Officer
      2. Lawyers are not Officials of The Law
      3. Acts like a collateral defense – like Self-Defense
4. Causation – Prior to Mens Rea – Can result be attributed to the Δ
   1. Actual – “But For”
      1. Concurrent Causes – ask if either cause was a “substantial factor” – if both, you’ve got both
   2. Proximate
      1. Standard – Natural & Probable Consequences
         1. Foreseeable under the totality of the Circumstances
         2. Too Remote or Too Accidental – Not enough – MPC – 2.03(2)(b) - pg. 138
      2. Special Situations – all are objectively analyzed
         1. Acts of Nature – too remote or too accidental
         2. 3rd Parties – Must anticipate Negligence but not Recklessness
         3. Eggshell – must be foreseeable
         4. Suicide – was it foreseeable
5. Inchoate Offenses
   1. Complicity –
      1. 4 types
         1. Principal 1 – You did it
         2. Principal 2 – On the scene & Aided
         3. Accessory before the fact – Helped Before BUT not present
         4. Accessory After the Fact – Assisted after crime was complete – not an inchoate offense today – It is now Obstruction of Justice
      2. Sequencing – Can you convict an accessory if the principal is not convicted
         1. Old Rule – You Couldn’t
         2. Modern Rule – You Can
      3. Notice – If indicted as a principal, can you be indicted as an accessory
         1. Good Prosecutor – Charges with both Principal and Accessory
      4. Advantage to Complicity – Able to prosecute criminals who would not be able to get on principal liability
      5. Actus Reus –
         1. Presence is not usually enough – Could be enough it the Presence is intended to aid & the Principal must know of aid
         2. Affirmative Act or Omission is Required
      6. Mens Rea – 2 parts
         1. Intent to Assist Principal – “Help Mens Rea” – level is P – to protect shopkeepers
         2. Intent that Principal Actually Commits – “Target Offense Mens Rea” – Imports the mens rea from the Principal – “XXX”
      7. Abandonment of Complicity – MPC
         1. Must terminate Complicity, AND
         2. Try to stop the offense, OR Give warning to Authorities
   2. Attempt
      1. Relatively New (1784) – Whe prosecute attempters
         1. Likely to try again
         2. We don’t want to tie the hands of the police
      2. Actus Reus
         1. Majority – Substantial Step – how far removed from lawful conduct
         2. 7 factors – MPC
            1. Lying in wait
            2. Enticing victim to scene of crime
            3. Reconnoitering
            4. Unlawful Entry
            5. Possession of Unique Tools for the Crime – EX: anesthiologist rapist
            6. Possession of Unique Tools at or near the scene
            7. Soliciting an Innocent Agent – he’s only innocent if he’s tricked
      3. Mens Rea
         1. Ratchet everything up to PPP
      4. In Attempt – the Actus Reus and the Mens Rea must line up together
      5. Attempt & Complicity can occur together –but can’t be convicted of both
      6. Punishment –
         1. Complicity – Same punishment as principal
         2. Attempt – usually ½ punishment of principal offense
      7. Attempt Abandonment
         1. Majority – To abandon, the actor must
            1. Voluntarily abandon – can’t be because of external forces – EX: Hearing the Sirens
            2. Complete – can’t just be a delay for more favorable circumstances
         2. Minority – No abandonment after a substantial step is taken
      8. Impossibility
         1. Factual – Not a defense – a mistaken belief as to the facts of the situation is not a defense
         2. Legal – is a Complete Defense – EX: Thinking that something is illegal that turns out to be legal
   3. Conspiracy – Punishes the “Agreement” to commit a crime
      1. Actus Reus – agreement is the conduct, the MPC requires an overt act for misdemeanors and less offenses
         1. Unilateral- only 1 person needs to agree (Ex: agreeing with under cover cop. MAJORITY RULE)
         2. Bilateral- both must be able to agree (MINORITY RULE). If you cant get bilateral there are fallbacks (attempted conspiracy and solicitation)
      2. Mens Reus
         1. Agreement- purposely
         2. Target Offense- purposely
         3. Pinkerton Rule (Minority): Imputes substantive liability on the conspirators.
            1. In furtherance of the crime
            2. Within the scope of the project
            3. Foreseeable

NOTE: If all 3 are met, then conspirators can be charged with the substantive offense

* + 1. Size of Conspiracy- 2 analogies
       1. Chain- on the hook if anywhere in the chain of conspiracy. (Ex: Drug conspiracy: manufacturer, middleman, and distributor all culpable)
       2. Wheel- All spoke agreements are treated as separate conspiracies.
       3. Use Pinkerton with the Chain analogy/situation.
    2. Worton’s Rule- In agreement crimes, can charge for conspiracy only if there is more than the minimum required people for the crime. Ex: Referee in Dueling
    3. Legal Impossibility:
       1. If immune from the principle, also immune from conspiracy
       2. Impossible to conspire with someone who cannot legally conspire

Note: Bright line rule- Impossibility applies to bilateral and unilateral jurisdictions

* 1. Abandonment/Withdrawal/Renunciation
     1. Withdrawal
        1. only gets you off for the substantive offense
        2. Must notify all reasonable members of the conspiracy that you are aware exist
     2. Renunciation
        1. Gets you off for conspiracy and substantive offense
        2. Must report or thwart, must renounce before the substantive offenses

1. Homicide
   1. Murder 1 – Premeditation present
      1. Split of Authority: Actual Reflection vs. Opportunity for Reflection
         1. Actual Reflection – requires that the ∆ had time to reflect and confirm desire to kill (thinks that he wants to kill and later confirms)
         2. Opportunity for Reflection – Minority - ∆ had the time necessary to reflect (proof of actual reflection not required)
      2. Intoxication – interrupts chart (comes after premeditation question before defenses) – speaks to ability to premeditate
   2. Murder 2 – No premeditation – lesser penalty – no reflection
   3. Mitigating factors – Only available for M1 / M2 – only way to get to VM
      1. Imperfect Defense – Generally based off of self-defense
         1. Scrape away objective standard (not reasonable belief)
         2. Must show that ∆ honestly believed he was acting reasonably
         3. Insanity doesn’t work for Imperfect Defense – Insanity has it’s own defense / covers middle ground for those alleging insanity but aren’t in fact mentally ill
         4. Easier than provocation (only subjective) / harder because you have to show you were fearful for your life
      2. Heat of Passion / Provocation – must acknowledge the subjective provocation then apply objective person / ∆ must meet both tests/ ∆ Burden
         1. Subjective
            1. Was the ∆ provoked
            2. Had he/she cooled down
         2. Objective
            1. Would a reasonable person be provoked
            2. Would a reasonable person have cooled off
         3. What is the reasonable person?
            1. Is it a reasonable person with the same disabilities? Most say yes – but impotency doesn’t count
         4. Harder than Imperfect (Subjective + Objective) / Easier (no need to show fear for your life)
      3. If you can’t show fear of death, fall back on provocation; if you can’t meet objective test, fall back on imperfect
      4. Complete defenses are still an option
   4. Recklessness Plus – Only available in Murder Statutes
      1. Depraved Heart – Extreme indifference to the value of human life
      2. Eligible for Murder 2 – mitigators may bring down to VM
      3. If ∆ brings intoxication – ask – would ∆ have known better if sober
      4. Messy distinguishing between R+ and R (Use hypos to explain to jury)
      5. Mitigation: R+ concerned with result element / R concerned with act
         1. Was your intentional act based on provocation or imperfect defense?
            1. Voluntary manslaughter is available to get you to super-recklessnes
   5. Involuntary Manslaughter – to get, must go through R, N, or Reasonable / SL
      1. No Mitigation / Complete defenses still effective
      2. Look to statute (varies by jurisdiction, may be Neg or Reck)
         1. May allow a showing of Neg Per Se to elevate to IM
      3. Majority - ∆ guilty when acted with gross negligence
      4. Minority – Higher showing than majority - greater than gross negligence
      5. Ultra-minority - ∆ need only act with ordinary majority
      6. Reckless – Knew or should have known (subjective test)
      7. Negligent – A reasonable person should (objective test)
   6. Felony – Murder
      1. Must only establish elements of the felony, strict liability for murder
      2. Limited to dangerous felonies (see statute) / violent
         1. Sexual Assault, Arson, Burglary, Robbery, Escape, Resisting arrest or kidnapping
         2. State does not have to show intent to kill
      3. Completed felony not required
         1. Requires dead person
      4. No attempted-felony murder
      5. Rationale – use care when others lives may be in danger
      6. Must occur during time period - starts substantial act (attempt) and ends with escape rule.
         1. Escape rule determines the end of time period
         2. Arrive at safety
         3. Substantial step > Crime Committed > Leave > Physical Safety
      7. Why battery doesn’t work --- FM only works on crimes when murder is not a normal outcome of the crime
      8. Curb felony murder doctrine
         1. Only protects the victim
         2. FM is Murder 2
         3. Don’t want to protect the accomplice
   7. Chart

|  |  |  |
| --- | --- | --- |
| Mens Rea | Stakes | Defenses |
| P | Premed – M!  UnPremed – M2 | Mitigating (heat of passion / imperfect) – Vol Man  Complete (Self D/ D of Other / Necessity) – Go Home |
| K | Same as P | Same as P |
| R + (depraved heart) | M2 | Same as P |
| R | IM | Complete |
| N | IM | Complete |
| SL | IM | Complete |

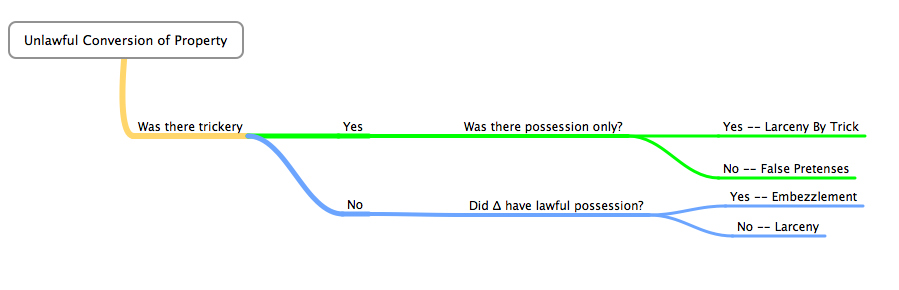
1. Assault & Battery
   1. Battery (Punch Connect)
      1. Slight touching, Physical Consequence, Actual Injury
         1. Slightest touching in a rude or offensive manner, tangible
            1. Court worried about slippery slope
         2. Physical Consequence – more than a touching but non-injurious
            1. Intangibles -
      2. Majority requires actual bodily injury (MPC)
         1. Reckless > Act or Omit > Causing Bodily Injury> To Another Person
            1. Causation always relevant to causation in Homicide or A/B
            2. Actual injury - required
   2. Assault 1 (Punch Miss)
      1. Purposely (act or omit) (to cause bodily injury) (to another person) (w/present ability)
         1. ∆ has actual ability to cause SBI (loaded gun ready to fire)
         2. Present ability is closer than substantial step towards completion
   3. Assault 2 (Punch Fake)
      1. Purposely (act or omit) (to cause bodily injury or fear) (to another person) (with apparent present ability)
         1. Victim just must think that ∆ is capable of causing SBI (no actual gun)
         2. Apparent – Objective / Subjective / None / Both
            1. Objective – would reasonable person be in fear
            2. Subjective – was the victim in fear
            3. MPC is none
         3. Reckless Endangerment – Assault 2 with Mens Rea of Recklessness
            1. EX: Coke using mother to be not Assault 2 – Others assaulting mothers to be are on the hook. Mothers have different relationship to the fetus than the rest of the world
   4. Aggravated Battery
      1. Four Buckets/Baskets/Categories
         1. Intent to Murder/Rape/Rob
         2. Battery with a Deadly Weapon
            1. How to define deadly weapon
            2. See Page 379 Note
         3. Crimes against Protected Status Person
            1. Cops, firefighters, teachers, bus drivers, young people, elderly
            2. Split as to whether ∆ knows or should know of special status
         4. Causes SBI
   5. Consent
      1. At CL – could not consent
      2. Modernity – May consent
      3. Sports Exceptions
         1. Top Shelf – Any Injury
         2. Low Shelf – Any Injury for conduct within the rules
      4. What is foreseeable – see racist stereotypes spoken during session
   6. Modern Variants
      1. Stalking / Domestic Violence (Not on EXAM)
2. Theft –
   1. 4 Types
      1. Theft By Unlawful Taking
         1. Larceny – Reckless Taking of Another’s Property with the Intent to Deprive That Person of that Property
            1. Majority Rule –

R as to (1)Taking, (2)Property, and (3) Another

Pure mens rea element – “Purposely intend to affect a permanent deprivation”

Only do externality as to the R elements

* + - 1. Embezzlement – Taking Another’s Property when you have lawful possession
         1. Essential Question – “Was he entrusted with possession?”
         2. Bailor – Bailor who takes property is guilty of larceny b/c he never had “possession” of the contents of the bail.
    1. Theft By Deception
       1. Larceny-by-Trick – Gaining Only Possession By Trick
       2. False Pretenses – Gaining Both Possession and Title by Trick
  1. Relevant Definitions
     1. Taking – Trespass on Possessory Right of another
        1. Only needs Slight Movement – don’t need a huge asportation
     2. Property – Anything with value – even de minimis
        1. MPC – Need to show that it cost the owner something
        2. Can be intangible – EX: emails
     3. Constructive Possession – What the true owner retains by having both power and intention to exercise dominion over a thing
  2. Derivatives
     1. Robbery – Taking Property From another with the use of Force (Threat of force is sufficient)
     2. Burglary – Taking Property + an illegal entry
  3. Defenses
     1. Claim of Right – (Complete) – “That’s my stuff”
        1. Most courts require an honest belief that the property in question actually belongs to you
        2. Some add a “reasonable belief” to this defense
     2. Wrong Indictment – At CL, if prosecutor charged with the wrong Theft offense, perp got off
        1. Modern Rule – if prosecutor charges with the wrong Theft Offense, then court will transfer the indictment to the correct one.



1. Defenses
   1. Justifications
      1. Self-Defense – can apply to almost any offense
         1. Elements
            1. Δ must be presented with unlawful force

Initial Aggressor Exceptions

Disproportionate Response – if the responder comes at the initial aggressor with a disproportionate response, THEN the initial aggressor can respond with equal or less force

Baiting – If the initial aggressor is “baiting” the victim to respond with a disproportionate response, this exception is not available

Withdrawal – withdrawal effectively wipes the slate clean if the withdrawal is communicated either by words or implied by actions

* + - * 1. Threat of Imminent Harm (concerned with the Threatener)

SPLIT – some jurisdictions have moved from imminence to “Immediately Necessary” (concerned with Δ’s act)

Battered Women

Imminence Jurisdictions – “Is the reasonable person w/ battered spouse syndrome entitled to use force.”(Similar to Goertz)

Only successful in 1 in 5 cases (20%)

* + - * 1. Proportional – What force is “Necessary”

Retreat –

No Duty to retreat from non-deadly force

Deadly Force – Split

Majority – No duty to retreate

Minority – Some duty to retreat unless you are in your “CASTLE”

Co-occupants – Majority requires not duty to retreat, Minority requires a retreat within the home

Invitees – different jurisdictions extend/don’t extend “Castle” doctrine to invitees(pizza guy)

* + - 1. Mens Rea – Self-Defense mens reas is Reasonable
         1. Subjective – All jurisdiction have this one

Did the actual Δ believe self-defense was necessary

Tough to disprove

* + - * 1. Objective – Majority require this with a split

Majority – Would a reasonable Person “in that situation” believe self-defense was necessary

Δ’s interactions with the dead guy are relevant in this approach.

Minority (Goertz) – Imports a greater amount of the past experiences of the particular Δ into the objective test.

* + - * 1. MPC mens rea -

If Δ’s response is reasonable – Complete Defense

If Δ’s response is negligent – Negligent Homicide(or battery)

If Δ’s response is Reckless – Reckless Homicide(or battery)

* + - 1. Judge’s role in self-defense – Gatekeeper
         1. Judge will allow an instruction on self-defense if a “reasonable juror” could conclude that self-defense is allowed
    1. Imperfect Defense
       1. Allowed when one of the 3 self-defense elements fails on objective standard
       2. Self-Defense is available to R & N homicide – because there is still some intentional conduct
          1. Minority of states do not allow Self-Defense to R & N homicide
    2. Defense of Others
       1. At CL – “Others” had to have a special relationship with the defender
       2. Majority – MPC
          1. Subjective & Objective standard to

Defended party faced imminent threat

Defended party faced unlawful threat

Defender used necessary(proportionate) force

* + - 1. Minority – Alter Ego Rule
         1. Subjective & Objective Standard to

All Self-Defense elements from the perspective of the “Defended”

All self-defense elements from the perspective of the “Defender”

* + - 1. Defense of Others against Cops – All jurisdictions use the Alter Ego Rule
    1. Defense of Property
       1. Elements – same 3 elements as Self-Defense
          1. “Unlawful Entry with property, that is Imminent, and the response is Necessary(proportional)
       2. When is Deadly Force Allowed
          1. Majority – Forcible Entry into Dwelling & Reasonable Belief there is an Intent to commit a felony within

Whom may use? (Split)

Any Occupant – anyone legally in the dwelling

Possessor – Those who have Dominion & Control

Which felonies – some say all, some say just the “hardcore” ones

* + - * 1. Minority – Forcible Entry creates a presumption of unlawful force.
    1. Necessity
       1. Elements (6)
          1. Harm to be avoided – Must be Imminent
          2. Harm Caused by Δ –

Ratio of Death – in necessity, the harm caused cannot kill more people than the harm being avoided

* + - * 1. Present Intentions must be to avoid harm

No windfalls

* + - * 1. Reasonable Balance – by Ordinary Societal Standards
        2. Cannot be any 3rd alternatives which offer a legal or less harmful option
        3. SPLIT – the Δ cannot be at fault for bringing about the situation
  1. Excuses
     1. Duress
        1. Must be in response to threat of SBI or death
        2. SPLIT – Most jurisdictions require no balancing of Harm Caused to Harm Avoided. Some Do
        3. Distinguishing Duress from Necessity
           1. At CL – Distinction was

Necessity – arose from naturally occurring consequence

Duress – Pressure exerted by a person

* + - * 1. Modern Distinction – Accomplice Liability

Necessity – Accomplices are not culpable when aiding someone acting out of necessity

Duress – Accomplices are culpable when aiding someone acting under duress

* + 1. Insanity
       1. Majority
          1. At Time of Act – The Δ was under a defect of reason b/c of a Disease of the Mind
          2. Capacity Options

Cognitive – Cannot perceive reality correctly

Moral – Can’t tell right from wrong

Irresistible Impulse – Don’t have the power to resist

EX: Schizophrenia – voices in the head

Starts to blend with automation involunariness

* + - 1. Other Approach
         1. Product Test – Δ not liable of unlawful action was the product of mental illness

It’s a catch-all

* + - 1. How to deal with Insane People
         1. 1st Step - Is the Δ competent to stand trial – “Would that person be able to assist in his defense if the concepts were explained to him as a 6-yr. old person – If not, no trial – just involuntary hospitalization
         2. 2nd Step - Use Insanity Defense at Trial