**BLAME**

* ***Regina v. Dudley***
	+ **Facts:** Two stranded sailors killed and feaster upon a third, weaker sailor.
	+ **Rule:** The only justification this court found for murder was self defense, other than that a person should rather die himself than kill an innocent.

**PUNISHMENT**

Punishment is primarily a policy issue which incorporates all sorts of philosophical principles.

**Theories:**

* **Incapacitation:** While imprisoned, a criminal has fewer opportunities to commit acts causing harm to society.
* **Special Deterrence (Utilitarianism):** Punishment may ***deter the criminal*** from commiting future crimes.
* **General Deterrence (Utilitarianism):** Punishment may ***deter persons other than the criminal*** from commiting similar crimes for fear fear of incurring the same punishment.
* **Rehabilitation (Utilitarianism)**: Imprisonment provides the opportunity to mold or reform the criminal into a person who, upon return to society, will conform her behavior to societal norms.
	+ Concerned w. punishing people for their prior bad acts.
	+ Just desert - deserved punishment for moral wrong.
* **Education:** The publicity attending the trial, conviction, and punishment of some criminals serves to educate the public to distinguish good and bad conduct and to develop respect for the law.

**SENTENCING**

* **MPC 1.02 2(a) and (b) -**
	+ provide that the Code’s sentancing provisions are intended “to prevent the commission of crimes” (deterrance) and “to promote the correction and rehabilitation of offenders”.
	+ **(e) -** states that sentences should “differentiate among offenders with a view to a just individualization of treatment”.
* The MPC reflects “indeterminate sentencing” in which Judges were encouraged to individualize maximum sentencing based on info gained in a post-conviction hearing that considered character and history. However it is parole boards who have the authority to let out a prisoner before the judges sentance, the judge only defines the outer reaches of a sentance.
* **IMPORTANT -** nearly ALL states have abandoned indeterminate sentencing because of a lack of faith in rehab. Determinate sentencing means that the prisoners sentancing is determined once and for all at the time of sentancing. in the majority of states it is the legislature or sentencing commision who determine the sentance for crimes.
* ***U.S. v. Milken*** **(Deterrence)**
	+ Sentencing judge placed heavy emphasis on the fact that Milken commited crimes that were hard to detect.
	+ Therefore, the judge found that Milken deserves greater punishment in order to effectively deter others.
	+ Deterrence appears to have played the bigges role in this decision.
* ***U.S. v. Jackson* (General Deterrence)**
	+ Showcases the appellate courts’ great deference to the judgement of trial judges in assigning punishment.
	+ So long as the punishment doles out was within the contemplation of the statute and wasn’t expressly barred, it was appropriate.
	+ Given the defendant’s propensity for crime, the trial judge decided that specific deterrence didn’t work and switched to general deterrence - locking up D for life.
* ***U.S. v. Gementera***
	+ D is made to wear a sandwich board that states “I stole mail. This is my punishment.”
	+ Appelate court again gives wide defence to the trial judge and reviews the sentence only to make sure that the 3 legitimate statutory purposes of detrrence, protection of
		- detternece
		- protection of the public
		- rehabilitation
	+ are reinforced.
	+ The court looked at the totality of the sentence, including the provisions for making a speech to a high school, and concluded that the sentence was tailored to the specific needs of the offender.
		- The court weighed the humiliation of the sandwich board with the social integration of giving back to the community.

**LEGALITY**

The MPC concerns itself with three principles: **legality, proportionality, culpability.**

**Fair Warning Rule-**

* A statute must give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute.

**Arbitrary and Discriminatory Enforcement Must be Avoided**

* A statute must not encourage arbitrary or erratic arrests and convictions.

**No Ex-Post Facto Laws**

* A law must exist at the time the illegal conduct is performed in order for the conduct to be punishable. The Constitution **prohibits ex post facto legislation**.

**No Bills of Attainer**

* Bills of attainder are also constitutionally prohibited. A bill of attainder is a legislative act that inflicts punishment or denies a privilege ***without a judicial trial.*** Although a bill of attainder may also be an ex post facto law, a distinction can be drawn in that an ex post facto law does not deprive the offender of a judicial trial.
* Any time a statute may reasonably be interpreted in different ways, the rule of lenity requires the courts to apply an interpretation most favorable to the defendant. The rule of lenity is **NOT** recognized by the MPC.

***Mc Boyle v. U.S.***

* Reasonable that a fair warning should be given to the world in language that the common world will understand.
* The line should be clear as possible to make the warning fair.
* Since the word “vehicles” conjures notions of land-moving devices, airplanes should not be considered vehicles.

**Plain Meaning Rule** -

* When the statutory language is plain and its meaning clear, the court must give effect to it even if the court feels that the law is unqise or undesireable. An exception to this rule exists if the court believes that applying the plain meaning of a statute will lead to injustice, oppression, or an absurd consequence.

**Lenity Doctrine -** If a statute is ambiguous and legislative intent is not determined, then the lenity doctrien says that such statute needs to be interpreted strictly against the government so as not to allow enlargening of its scope.

* Lenity Doctrine should be used as a tie breaker when there are two or more equally reasonable interpretations of a statute. So the one that favors D most wins out.

**MPC DOES NOT RECOGNIZE LENITY DOCTRINE**

* Instead requires that stautes be construed according to their fair import and that ambiguities be resolved in a manner that furthers the general prupse of the Code.

***Keeler v. Superior Court***

* Man is charged with murder for killing and unborn fetus.
* The pertinent section of the penal code does not define “human” so the court must look at the legislative intent.
* The court looked back all the way to 1850 and conlocuded that legislature did not intend unborn fetuses to be “humans” for porposes of murder.
* The court cannot reinterpret the definition of “human” because
	+ There are no common law crimes in California, and a court’s reinterpretation would represent the impostiion of a common law crime.
	+ And because doing so would violate Due Process principles of the Constitution.
		- The public must have notice of the illaglity of certain conduct. The notice does not have to be actual, but people must be able to fully inform themselves if they wish.

***City of Chicago v. Morales***

* Supreme Court invalidates Chicago ordinance that seeks control of gang loitering.
	+ Fails to provide any kind of notice that will enable ordinary people to understand what conduct is prohibited
	+ It authorizes arbitrary and discrimantory enforcement.
	+ Ordinance doesn’t apply to gang members, but anyone at all who may be standing near a gange member and doesn’t requrie police to distinguish between innocents and gang members.

**PROPORTIONALITY**

~**Doctrine is meant to ensure that prosecution and punishment accord with culpability.**~

* ***Ewing v. California***
	+ Plurality - Outside the context of capital punishment, successful challanges to the proportionality of particular sentances have been exceedingly rare.
	+ OConnors opion cites Justice Kennedy’s opinion in an earlier case, stating that the Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids extreme sentences that are grossly disproportionate to the crime.
	+ Although the 3 strike laws are new, the Court relies on the tradition of deffering to state legislature in making and implementing such important policy decisions.

**CULPABILITY**

**~MPC 2.01 - 2.03 CRUCIAL HERE~**

* To be culpable for a criminal act, two elements must be satisfied:
	+ Actus Reus - the voluntary act
	+ Mens Rea - the guilty mind.
* **MPC 2.02** - Explains the difference between the standard of conduct required for recklessness and negligence.

**Section 2.02: In General**

* Section 2.02 takes an exclusively elemental approach to the concept of *mens rea*.
* Subsection (1) -
	+ exept in the case of offenses characterized as “violations” a person may not be convicted of an offense unless “ he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.”
		- Violations aside, the Code requries the prosecution to prove that the defendant committed the *actus reus* of the offense - indeed, *each material ingredient of the offense-* with a culpable state of mind, as set out in the specific statute.
* 1) A person may not be convicted solely o nthe gound that he acted with a morally blameworthy state of mind
* **2) the common law distinction between “general intent” and “specific intent” is discarded.**
* 3) the MPC removes the clutter of common law and statutory *mens rea* terms and replaces them with just four carefully defined terms:
	+ 1) purposely
	+ 2) knowingly
	+ 3) recklessly
	+ 4) negligently

**Actus Reus** **- A Physical Act**

* To fulfill the element of actus reus, the wrongful act must have been done voluntarily, and must have caused the harm.
* 3 Elements of Actus Reus:
	+ ( **1** ) The conduct element.
	+ ( **2** ) The result element.
	+ ( **3** ) The circumstance element
* **MPC 2.01(2) -** Some acts are excused because they are deemed to be involuntary.
	+ ***Martin***
		- D was taken to highway and arrested for being drunk in public. Held that D cannot be convicted since he did not appear on highway due to his own volition.
	+ ***Newton***
		- D entitled to another trial because he was involuntarily unconscious at the time of the shooting and the trial judge did not insturct the jury accordingly.
	+ Reflex or convulsion.
	+ Bodily movement during unconciousness
	+ Sleep
	+ Hypnosis
* While involuntary acts are techincally excused, voluntary acts done prior to the involuntery act are often used to support the element of actus reus. If a voluntary act taken by the wrongdoer leads to the involuntary act, then courts treat the underlying wrong as a voluntary one.
	+ e.g. An epileptic who knoes of his condition and gets behind the wheel of a car only to suffer a seizure and mow down you 96 year old grandma. The epilepsy is otherwise excusable, but the assumed risk of driving with epilepsy satisfies the voluntary act requirement.
* **Ommision of An Act**
	+ Under **both** the MPC and the common law, no one has an affirmitive duty to act to help another **unless** a defendant’s ***failure to act*** will result in criminal liability prvoided ***these requirements*** are satisfied:
		- There are five exceptions to this general rule
			* ( **1** ) If a statue imposes a duty.
			* ( **2** ) If there is a special relationship such as a spouse or parent.
			* ( **3** ) Contractual duty to care.
			* ( **4** ) If you assume a duty of care and seclude the person from other sources of aid.
			* ( **5** ) If you create the danger and then fail to help.
	+ ***Jones v. United States***
		- D is found guilty of involuntary manslaughter for not providing food and medical care to a 10-month-old baby that was living with D.
		- D appeals and argues that the jury should have been instructed that it must first find a legal duty of care for the baby before the D can be found guilty.
			* This is b/c D’s act leading to death of the baby was one of omission, rather than commission.
		- **Ruling:** Court agrees with this.
	+ ***Pope v. State***
		- D is charged w/ not rendering aid to an infant that was beaten to death by its mother in the presence of D.
		- The child abuse statute under which D was charged stated which persons it was to apply to:
			* Parent, adoptive parent, loco parentis, or those responsible for the supervision of the child.
		- The court firs concluded that D was netiher parent, not adoptive parent, not in loco parentis status.
			* Thus the only way to get D was through def. of supervision of child.
		- Court finds that just because the D had invited the child and its mother into her home does not mean that the D had supervision of the child.
			* The key is that the mother was present in the home with the child at all times, therefore the D had no duty to care for the child.
	+ **Medical Omissions:**
		- ***Barber v. Superior County*** *-* act v. omission when doctor removed patient for life support at family’s request
			* Omission of further treatment - physician has no duty to continue treatment once it is proven to be ineffective, so not homicide
			* If it was an act, it would be homicide

**Mens Rea** - **The Mental State**

~ One must act with a certain state of mind to be guilty of certain acts. The MPC defines all of the “levels” of this element in 2.02: **purpose, knowledge, recklessness, and negligence.**~

* **PURPOSELY:**
	+ In the context of a result or conduct, a person acts “purposely” if it is his “conscious object to engage in conduct of that nature or to cause such a result.”
	+ Purposely is a mental state comparable to the first of the two alternative common law definitions of the word “intentional”.
* **KNOWINGLY:**
	+ As applied to ***results***: A result is knowingly caused if the actor is aware that it is practically certain that his conduct will cause such a result.
	+ As applied to ***attendant circumstances and conduct***: One acts knowingly if he is aware that his conduct is of that nature or that such circumstances exist.
* **RECKLESSLY AND NEGLIGENTLY:**
	+ Neligence and Recklesness require the same degree of risk taking: “substantial and unjustifiable”.
		- Reckless actors consciously disregard the risk
		- Negligent actors’ risk taking is inadvertant.
	+ Section 2.02 (4) - A single *mens rea* term- whaterver it is- modifies *each actus reus* element of the offense, absent a plainly contrary purpose of the legislature.
		- **EXAMPLE:** Section 212.3 \*False Imprisionment\* provides that it is an offense to “Knowingly restrain another unlawfully.”
			* Apply section 2.02(4) - - - - -
				+ The prosecution must prove that the defendant knowingly restrained the victim, and that he knew that the restraint was unlawful.
* **\*IMPORTANT\*** -
	+ If a statute defines a level of culpability and does not distinguish between the elements of the crime, then that level of culpability applies to **all elements of the crime**.
	+ e.g. - “It is unlawful to knowingly possess nuclear weapons within 100 yards of a zoo.”
* **MPC -** uses straightforward elemental approach to matters of mens rea including mistake of fact. The fact that a person did not have the requisite *mens rea* to be guilty of a certain crime, does not mean that the person could not be guilty of a lesser crime that requires a lower level of *mens rea.* Good example of this is the MPC on homicide
	+ **2.02(1) -** one is not guilty of an offense unless he acted puposely, knowingly, recklessly, or negligently, as the law may require, with respect to each material element of the offense.
		- So each element has some mens rea analysis.
	+ **2.04(1) -**  provides that a mistake is a defense if it negates the mental state required to establish **any** element of the offense.
		- Either the actor was culpable as per the definition of the statute or not.
		- **Exception:**
			* Provides that the defense of mistake of fact is not availble if the actor would be guilty of another offense had the circumstances been as he supposed. **However** unlike the common law variation of this in legal wrong, in here actor is only punishable for the lesser offense.

**General and Specific Intent -** The common law approaches *mens rea* by distinguishing between general intent crimes and specific intent crimes. This is largely due to the replacement of the common law by the MPC.

* + In both *Cunningham* and *Faulkner*, accidental consequences were done by acts that were intended for other proposes. When a consequences of an act could not be said to be reasonably foreseeable by a reasonable prudent person, the state of mind necessary for conviction is missing.

**Specific Intent -** An offense in which the definition of the crime expressly:

* + (1) Includes an intent or purpose to do some future act, or to achieve some futher conequence, beyond the conduct of result that constitutes the *actus reus* of the offense; or
	+ (2) provides that the actor must be aware of a statutory attendant circumstance.
* **Example of specific intent crimes**:
	+ ***Receiving stolen property with knowledge that it was stolen***.
		- The actor who receives the stolen property (*the actus reus of the offense*) must have knowledge--awareness-- of the attendant circumstances that the property was “stolen” in nature.
	+ ***Solicitation*** - Intent to have the person solicited commit the crime
	+ ***Attempt*** - Intent to complete the crime.
	+ ***Conspiracy*** - Intent to have the crime completed.
	+ ***First degree premeditated murder*** - Premeditated intent to kill.
	+ ***Assault*** - Intent to commit a battery.
	+ ***Burglary*** - Intent at the time of entry to commit a felony in the dwelling of another.
	+ ***Forgery*** - intent to defraud.
	+ ***False pretenses*** - Intent to defraud; and
	+ ***Embezzlement*** - Intent to defraud.

*An offense that does not contain one of the above features is termed general intent.*

**General Intent** - Generally, all crimes require “general intent”, which is an awareness of all factors constituting the crime; i.e. the defendant must be aware that she is acting in the proscribed way and that any attendant circumstances required by the crime are present.

* **Example of general intent crimes:**
	+ ***Battery***
		- The only mental state requried in its definition is the intent to “apply unlawful force upon another” the *actus reus* of ther crime.

**MISTAKE OF FACT** - **MPC 2.04(1) and (2)**

~At common law, a mistake of fact defense hinges on whether the crime committed is a general intent crime or a specific intent crime.~

* If the underlying offense is a specific-intent crime, then any mistake of fact that negates the specific-intent portion of the crime makes the defendant not guilty.
* If the underlying offense is a general-intent crime, then the mistake of fact analysis switches to whether the mistake was reasonable or not.
* **MPC**: Does away with all distinctions between general and specific intent crimes.

***Regina v. Prince***

* D is charged with taking a girl under 16 out of possession of father.
	+ D says he made a mistake of fact as the her age and should be acquitted.
* Court says that there is no acquittal b/c the D has done an act wrong in itself. The mistaken circumstances don’t change the culpability.

***People v. Olsen***

* D is charged with perfoming a lewd act w/ a child under the age of 14.
* Court relies on legislative intent to rule that the legislature does not intend to provide a defense of mistake of fact when the age of the victim is under 14.
	+ Court also relies on common law public policy of protecting children of tender years.

***Garnett v. State***

* Mentally retarded adult man charged w. rape for having sex w. a 13 year old girl who held herself out to be 16 to him.
* Ct. rejects defense of mistake of fact b/c of “traditional view of statutory rape as a strict liability crime”
* American approach differs from British in that it follows common policy that statuory rape is a strict liability crime.

**STRICT LIABILITY**

~The removal of a requisite *mens rea* from being required in order to prove guilt.~

* Strict liabiltiy is most widely imposed in two situations:
	+ **Public Welfare Offenses**
* Public welfare offenses are deemed conduct *malum prohibitum* and often contain no express *mens rea*.
	+ Examples: statutes that prohibit the manufacture or sale of impure food or drugs to the public, anti-pollution enviromental laws, as well as traffic and motor-vehicle regulations.
* Using the 5 factor test laid out in *Holdridge* courts frequently authorize criminal strict liability in public welfare cases:
	+ 1) public welfare offenses are not derived from common law
	+ 2) a single violation of such an offense can simultaneously injure a great number of people
	+ 3) the standard imposed by the statute is reasonable
	+ 4) the penalty for violation is relatively minor
	+ 5) conviction rarely damages the reputation of the violator.
	+ **Statutory Rape**
		- When a man has sex with a consenting girl who is below a certain threshold in age. Traditionally this has been a male-only crime, but modern state statutes don’t make distinctions and women (especially teachers) get charged with this regularly.

**Constitutionality of Strict Liability Offenses:**

* In *Morisette v. United States* the Court did not suggest that a legislature could not abandon the *mens rea* requirement with *traditional* offenses; it held only that a requirement of *mens rea* would be presumend in the absence of a contrary legislative purpose.
	+ In *Morisette* because the statute under which defendant was charged evolved from the common law offense of larceny, which contains a *mens rea* requirement, then the Supreme Court construed the conversion statute as requireing specific intent even though it was written as a strict liability staute.
* Proffessor Alan Michaels noted that a legislature may determine the constitutionality of strict liability stautes by determining if the state would have the power to ciminilize the elements of the offense that require *mens rea* with the strict liability element excluded.

**Model Penal Code:**

* The MPC refers to strict liability as absolute liability in 2.05. The MPC states that any offense for which absolute liability is imposed is a violation rather than an offense.
	+ Violations are offenses which carry non-penal penalties, such as fines.
* Generally speaking, the MPC allows for strict liability but only if applied to a crime that is a non-penal violation.
	+ **EXCEPTIONS:**
		- MPC 213.6(1) states that sex with a 10 year old or younger is strict liability, but sex with a child over the age of 10 is susceptible to a mistake of fact claim.
	+ **However...**
		- Statutory rape and rape laws are a major area where states impose both strict liability **and** heavy sentences, departing from the MPC.

**Strict Liability v. Recklessness**

* If a statute makes no mention of a *mens rea* element, how do I determine whether it is a strict liability offense, or whether I should apply a default level of recklessness as decribed in MPC 2.02(3)?
	+ **YOU DON’T!** No statute will begin by stating “This is a strict liability statute”
		- But, you can look at clues. Stat. rape or welfare offense..

**Mistake of Fact/Strict Liability**

* If an offense is considered a strict liability offense, mistake of fact is not a valid defense.
	+ Under MPC 2.04(1)(a) - a person is not guilty if the mistake negates the *mens rea* required to be guilty. **However**, with strict liability, no *mens rea* is required, therefore, no *mens rea* can be negated through a mistake of fact.

**MISTAKE OF LAW - MPC**

~GOVEREND BY MPC 2.04(3)~

Usually this shit don’t fly... *ignorantia legis neminem excusat* - ignorance of the law excuses no one. However, there are a few exceptions:

* **Reasonable Reliance Doctrine (Entrappment by Estoppel)**
	+ Under limited circumstances a person may rely on an interpretation of the law later determined to be erroneous.
	+ **Official interpretation of the law**
		- D will be excused for commiting a criminal offense if she reasonable relies on an official statement of the law, later determined to be erroneous.
		- Very narrow: For statement to be “official” must be in:
			* (1) a statute later declared to be invalid
			* (2) a judicial decision of the highest court in the jx later determien to be invalid
			* (3) an official, but erroneous, interpretation of the law, secured from a public officer in charge of its interpretation, administration or enforcement ie. attorney general
	+ **Fair notice and the Lambert principle:**
		- Under very limited circumstances a person who is unaware of a duly enacted and published criminal statute may successfully assert a constitutional defense in a prosecution of that offense.
		- *Lambert v. California* - L was a convicted felon, LA had ordinance which said u need to register if u stay in city for more than 5 days. L didn’t punished with up to 6 months in jail. SCOTUS said this was unconstitutional because
			* (1) it punished an ommission (failure to register)
			* (2) the duty to act
* **A person is not excused for commiting a crime if she relies on her own erroneous reading of the law.**
	+ *People v. Marrero -* Federal prison guard had a handgun at club and thought he could because he was a peace officer. D’s misreading or misunderstanding of a criminal statute does not excuse him from criminal liability.
* **However...** An exception lies at times when a person mistakes a non-penal law which leads to the criminal offense.
	+ e.g. A lady takes her car to a repair shop, and before paying takes the car back to her house. She in fact stole the car, yet did not know that there was a non-penal offense which says a repairman can take possession of a vehicle until the debt is paid.

**RAPE**

Rape is covered in MPC 213.1.

**Taditionally**

* Traditionally, a conviction for forcible rape requires proof that the female did not consent to the intercourse and that the sexual intercourse was secured by force. **Both** elements must be shown.
* With regard to consent, the traditional approach is to focus on the victim’s state of mind and what outward statements or actions she took to indicate or withhold consent.
* Also the force element will not be satisfied unless it can be shown that the woman resisted and was overcome by force.
* The threat of serious force rather than its infliction is sufficient to be guilty of forcible rape as long as both the threat and the victim’s fear can be shown.
* A man cannot commit the crime of rape upon his wife.

**Modern Trend**

* The modern trend is to remove the requirement of resistance, or at least lower the threshold at which the female must resist.
* The modern trend is also to abolish the force requirement and instead focus on whether the female wanted to engage in sexual relations. In doing so, the focus is not on what or how she communicated but whether the male received consent to engage in sexual acts.
	+ Consent may be verbal or through actions.
* Modern trend is to abolish martial immunity for rape but the status of the law depends upon the jurisdiction.

**Actus Reus:**

* Intercourse was forcible;
* by means of certain forms of deception;
* while the female was asleep or unconscious;
* or upon a female incompetent to give consent.

***State v. Rusk***

* D charged w. rape under statute that requires force or threat of force.
* Court notes that force or threat of force is an essential element of the crime of rape.
	+ The fear has to be genuine.
* Because it must be determined whether the complaining witness’s fear was reasonable under the circumstances, the court remands for retrial.

***State in the interest of MTS***

* Juvenile charged with sexual assault for engaging in penetration without consent.
* The facts are in dispute but the fact that penetration occurred is not.
* D is arguing that force outside of force necessary to carry out penetration is necessary for a conviction for sexual assault.
* Court notes that the legislature left out any indication that physical force outside of that necessary to carry out penetration was necessary.
	+ **It is enough that penetration took place without consent.**

***People v. Evans***

* D posed as a psychologist and convinced a naive girl to sleep with him.
* Court finds that forcible compulsion is a required element of rape.
	+ There was no forcible compulsion because no force took place and because the defendant’s statements of “I could kill/rape you” could be interpreted in different ways.
* There was neither **force** nor **threat** so the D is not guilty.

**Rape - Fraud**

* Fraud in the factum occurs when, as a result of the fraud, the woman has no idea she has consented to sexual intercourse.
	+ Fraud in the inducement is not rape. Any sort of deception or fraud that will lead a woman to give knowing consent to sex is not rape.
	+ A female’s consent to engage in sexual intercourse is invalid if, as a result of fraud, she is unaware that she has consented to the act of sexual intercourse **itself**.

**Mesn Rea:**

* **Rule:** A person is not guilty of rape if he entertained a genuine and *reasonable* belief that the female voluntarily consented to intercourse with him.
	+ Rule conforms with ordinary common law mistake of fact principles relating to general intent offenses.
	+ **However...**
		- In recent years some American jx’s have removed reasonable mistake of fact... unlike England.
* Rape is ordinarily denominated as a general-intent offense in non-MPC jurisdictions.
* As such D need not possess an intention that sexual intercourse be consensual.
* It is enough that he possess a morally blameworthy state of mind.

**Rape Shield Laws -**

* Came about in the 1970’s.
* Limit the admissibility of evidence bearing on a rape complainant’s prior sexual behavior.
* Rape shield laws are motivated primarily by the need to protect victim-witnesses from serious abuses in the trial process.
* Rape shield law approaches:
	+ Admitting evidence of sexual history only when it involves prior acts with the defendant.
	+ Providing certain exceptions to a general rule of exclusion.
	+ Provide for pretrial hearings and leave the decision to the judge.

**Rape - MPC 213**

* A male is guilty of rape if, acting purposely, knowingly, or recklessly regarding each of the material elements of the offense, he has sexual intercours with a female under any of the following circumstances:
	+ the female is less than ten years of age
	+ the female is unconcious
	+ he compels the female to submit by force or by threatening her or another person with immenetn death, girevous bodily harm, extreme pain or kidnapping
	+ he administers or employs drugs or intoxicants in a manner that substantially impairs the female’s ability to appraise or control her conduct.
* **Code recognizes a partial martial exemption:**
	+ The preceding conduct does *not* constitute rape if the female is his spouse, unless the parties are living apart under a formal decree of seperation.
		- Thus immunity extends only if you live together with your wife.

**Rape is a felony in the 1st degree if:**

* + the defendant inflicted serious bodily injury upon the female or another in the course of the rape
* or
	+ the female was *not* a “voluntary social companion” who had “previously permitted him sexual liberties”
* In all other circumstances the felony is of the 2nd degree.

**Gross Sexual Imposition -** a male is guilty of this 3rd degree offense if he has sexual intercourse with a female in any of these three circumstances:

* If female submits as a result of a threat that would prevent resistance by a woman of ordinary resolution
* If he has sex with a female with knowledge that, as the result of mental illness or defect, she is unable to appraise the nature of her conduct.
* male is guilty of this if he knows that the woman is unaware that a sexual act is being committed upon her or that she submits because she mistakenly supposes that he is her husband. (kind of like common law fradulent rape)

**MPC AND CL IN RAPE**

***Simmilarities:***

* gender specific - legally only males can commit the offense and only females are victims.
* Marital Immunity - reaffirms the principle that nonconsensual intercourse with a spouse is not rape.

***Differences:***

* Term “sexual intercourse” is defined broadly:
	+ includes gential, oral, and anal sex.
* Rape is defined in terms of the male’s act of agression or overreaching, ***rather*** than in the negative terms of the ***female’s lack of consent***.
* Def. of rape is broader:
	+ Offense is commited if the female submits as the result of the violence directed at a third party
	+ it is rape if the victim submits as a result of a threat to kidnap her or another.

**HOMICIDE**

~Adressed in MPC 210~

**\*CL HOMICIDE\***

~The killing of a human being by another human being~

**Human Being**

* Fetus must be born alive to constitute “human being”.
* Homicide still applies if fetus is attacked during birth and is considered human when it dies.

**Murder -** Murder is the unlawful killing of another human being with malice aforethought. Malice aforethought ma be express or implied.

* **Malice Aforethought**
	+ In the absence of facts excusing the homicide or reducing it to voluntary manslaughter, malice aforethought exists if the defendant has any of the following states of mind:
		- ***Express***
			* Intent to kill
		- ***Implied***
			* Intent to inflict great bodily injury
			* Reckless indifference to an unjustifiably high risk to human life; or
			* Intent to commit a felony
* **Deadly Weapon Rule**
	+ Intentional use of a deadly weapon authorizes a permissive inference of intent to kill. A deadly weapon is any instrument-used in a manner calculated or likely to produce death or serious bodily injury.
		- piloting a speed boat through a crowd
		- firing a bullet into a crowded room
		- pro boxer who beats and kills a belligerent tavern owner

**~Manslaughter -** An unlawful killing that does not involve malice aforethought.~

**Voluntary Manslaughter -** An intentional killing distinguishable from murder by the existance of adequate provocation i.e. *killing in the heat of passion*.

* **Elements of Adequate Provocation -** At CL provocation would reduce a killing to voluntary manslaughter only if it met four tests:
	+ The provocation must have been one that would arouse ***sudden and intense passion*** in the mind of an ***ordinary person*** such as to cause him to lose his self control;
	+ The defendant must have ***in fact*** been ***provoked***;
	+ There ***must not have been a sufficient time*** between the provocation and the killing for the passions of a reasonable person to cool.
	+ The defendant ***in fact*** did not cool off between the provocation and the killing.
* **When Provocation is Adequate -** Most frequently recognized in cases of:
	+ Being subjected to a ***serious battery*** or a threat of ***deadly force***; and
	+ Discovering one’s ***spouse in bed with another person***.
* **When Provocation is NOT Adequate -** At CL provocation is not adequate when it is in reaction to ***mere words***.
* **Imperfect Self-Defense -** Some states recognize an “imperfect self-defense” doctrine under which a murder may be reduced to manslaughter even though:
	+ The ***defendant was at fault*** in starting the altreacation; or
	+ The defendant ***unreasonably but honestly believed*** in the necessity of responding with deadly force.

**Involuntary Manslaughter** - Two types:

* **Criminal Negligence**
	+ If the death is caused by criminal negligence, the killing is involuntary manslaughter. Criminal negligence requries a greater deviation from the “reasonable person” standard than is required for civil liability.
* **“Unlawful Act” Manslaugher**
	+ A killing cause by an unlawful act is involuntary manslaugher. There are two subcategoaries of such acts:
		- **“Misdemeanor-Manslaughter” Rule -**
			* A killing in the course of the commission of a misdemeanor is manslaughter, although most courts would require either that the misdemeanor be malum in se (i.e. an inherently wrongful act) or if malum prohibitum, that the death be the foreseeable or natural consequence of the unlawful conduct.
		- **Felonies Not Included in Felony Murder** - (IMPOSES VICARIOUS LIABILITY) - all felons responsible for the felony will be guilty of felony murder if conditions apply.
			* If a killing was caused during the commission of a felony, but does not qualify as a felony murder case, the killing will be involuntary manslaugher. The death also must be a forseeable consequence of the felony.
			* 6 limitations
				+ The D must be guilty of the underlying felony.
				+ The felony must be inherently dangerous.

It will be obvious which crimes are really dangerous.

* + - * + The felony must be separate from the killing itself.

Merger Rule

An aggrevated battery cannot be the basis for felony murder.

The killing must be during a felony or during immediate flight from the felony.

The death must be forseeable.

The victim must not be a co-felon. If the dead person is one of the felons it won’t be felony murder.

\***MPC HOMICIDE\***

~There are no degrees of murder under the Code, however, the offesne of murder is graded as a felony of the first degree, which means that the offense carries a minimum sentence of from one to ten years, and a max sentance of death~

**Murder -** Homicide constitues murder when the actor unjustifiably, inexcusably, and in the absence of a mitigating circumstanc, kills another:

* **( 1 ) - Intent to Kill -** purposely or knowingly;
* **( 2 ) - Extreme Recklessness -** or recklessly, under circumstances manifesting extreme indifference to the value of human life.
* **MPC** definition of murder abandons the CL element of malice aforethought.
	+ As such the CL mental state of “intent to commit grievous bodily injury” (A form of malice) has no independent significance under the MPC.
	+ Instead such a crime would be considered as a case of extreme recklesness or a lesser form of unintentional homicide.
* **( 3 ) - Felony Murder**
	+ Changed in the MPC.
		- Extreme recklesness (murder) is non-conclusively presumed if the homicide occurs while the actor is engaged in, or is an accomplice in, the commission or attempted commisssion of one of the dangerous felonies listed in the code.
			* ONLY THESE FELONIES:
				+ Burglary
				+ Robbery
				+ Arson
				+ Kidnapping
				+ Escape
				+ Sexual Assault
			* aka. if D unintentionally kills V during a bank robbery then the jury should be instructed that it may, but not need to, infer extreme recklessness fomr the commission of the crime.
		- **But**
			* If the felony was not commited with an extreme indifference to the value of human life, the felon is not guilty of murder for the resulting homicide.

**Manslaughter**

~A person is guilty of manslaughter if:

* **( 1 ) - Reckless Killing -** a killing which means the D is aware of and conciously disregards a substantial and unjustifiable risk of death.
* **( 2 ) - Intentional Form -** or kill another person under circumstances that would ordinarily constitute murder, but which homicide is committed as the result of “extreme mental or emotional disturbance” for which there is a reasonable explenation or excuse.

**Negligent Homicide -** D should have known about a substantial and unjustifiable risk.

* **Misdemeanor-Manslaughter -** Code does ***not*** recognize this!
* **Reckless Homicide -**
	+ Under MPC reckless killing can be both murder or manslaughter, it all depends on whether you manifested an extreme indifference toward human life.

**DEATH PENALTY**

~Based on *Ewing* seven justices believe that the Eighth Amendment prohibits grossly disproportional punishment, but they are divided on whether the relatively broad *Solem v. Helm* three-pronged test, or Justice Kennedy’s narrow formulation from *Harmelin v. Michigan,* should control.

* ***Atkins v. Virginia -*** Do not execute the mentally retarded.
* **Rummel v. Estelle**
	+ Man given life imprisonment on a repeat offenders law because of a felony of cashing a check under false pretenses. Rummel had two previous convictions of theft.
	+ Supreme Court ruled 5-4 to uphold judgement even though it did not stand by general retributivist thought.
	+ Dissent argued the disproportionality of his sentence could be figured through 3 steps:
		- 1 - gravity of offense compared to severity of penalty
		- 2 - penalties imposed within Texas for similar offenses
		- 3 - penalties imposed in other jurisdictinos for similar offenses
* **Solem v. Helm**
	+ Helm was punished with life in prison, no parole, because of a seventh conviction of fradulently passing a $100 check.
	+ Based on Rummel Helm’s defense was weak, but Supreme Court invalidated his sentence with a 5-4 decision in his favor.
	+ The Court applied the three prong test the dissent used in Rummel and determined Helm’s sentance was too harsh.
	+ Court distinguished this ruling from Rummel because there was a looser policy on parole in Rummel (Texas).
* **Harmelin v. Michigan**
	+ Harmelin was given life without parole for possesion of 672 grams of cocaine, harshest judgement in the nation for the crime and the harshes judgement possible in Michigan at the time.
	+ Court upheld the judgement but no opinion had a majority ruling.
	+ Scalia and Rhenquist wrote that the 8th Amednment did not guarantee against disproportionate sentences.
	+ Overall this case did not overrule Solem.
	+ The Concurring justices noted that proportionality decisions can be reconciled with the following 4 principles:
		- 1 - the fixing of prison terms should be left to the legislature
		- 2 - the 8th Amendment does not mandate adoption of punishment to the legislature
		- 3 - divergences in sentencing are inevitable in the federal system
		- 4 - proportionality should be informed by objective factors.
* **Ewing v. California**
	+ Ewing stole three golf clubs and was convicted on a count of felony grand theft.
	+ Ewing was previously convicted of robbery and three counts of bulgrary, and was thus sentanced to 25 - to life based on the California three strikes recidicist law.
	+ 2 justices held that there was no proportionality in the 8th.
	+ 3 justices held that there was limited proportionality
	+ 4 justices would have upheld a broad Solem holding in this case.
	+ The plurality used the 4 principle test for limited proportionality from Justice Kennedy’s opinion in Harmelin.
	+ Scalia wrote for the concurrence noting that there was no proportionality in the 8th and that the plurality did not prove that 25 to life was a proportional punishment for stealing three golf clubs.

**CAUSATION**

~A defendant’s actus reus must result in or cause the harm~

* Causation is only an issue in “result” crimes - those crimes that have a result element in them.
	+ It is illegal to carry a firearm within 50 yards of a school
		- No result element.
	+ It is illegal to use a vehicle to cause bodily injury
		- Causing bodily injury is the result element.
* Causation allows us to determine who should or should not be held responsible.
* ***Actual Cause*** allows us to identify cnadidates for responsibilty. The ***proximate cause*** will narrow it down.

**Actual Cause (Factual Cause)**

* **But For Test**
	+ D cannot be held criminally responsible for social harm unless the prosecution proves beyond a reasonable doubt that the harm could not have happened but for the actions of the D.
		- If harm would have happened anyway, D is not guilty.
		- If harm would not have happened but for D, then you must analyze proximate cause (legal causation).
* **CL Year and A Day Rule**
	+ The death of a victim must occur within one year and one day from the infliction of the unjury or wound. If it does not occure within this period of time, there can be no prosecution for homicide, even if it can be shown that “but for” the defendant’s actions, the victim would not have died as and when he did. The rule has been sharply criticized by the SCOTUS.
* **Do not confuse *Actual Cause***  **with** *Mens Rea*.
	+ The two are independent concepts, and both are required for a showing of guilt.
		- e.g. If D and V have an argument, V leaves the house and gets hit by a car crossing the street, D may be the actual cause of the death because V owuld not have crossed the street but for the argument with D, but D has no requisite *mens rea*.
* **Multiple Actual Causes**
	+ **Accelerating a Result**
		- D1 and D2 shoot V at the same time. Each wound independent of the other would have killed V in one hour. However, the two wounds together cause V to die in five minutes.
			* Both D1 and D2 are actual causes of V’s death:
				+ But for D1’s acts, would V have died *when he did?*

No, V would have died not in five minutes, but in an hours. D1 is actual cause.

* + - * + But for D2’s acts would V have died *when he did?*

No same thing... D2 is also actual cause.

* + **Concurrent Sufficient Causes**
		- D1 shoots V in the heart, simultaneously D2 shoots V in the head. V dies instantly and autopsy shows that either attack alone would have killed V instantly.
			* Applying ***traditional but for test*** fails b/c:
				+ But for D1’s acts, would V have died when he did?

Yes, b/c D2 shot him... so techincally D1 is not actual cause.

* + - * + **However,** the same can be said when applying test to D1.
			* ***So...***
				+ **Change the But For Test...**

But for the acts, would V have died when he did *as he did?*

V died from two simultaneous mortal wounds and he could not have died this way without both D1 and D2 being but-for causes.

* + **Obstructed Cause**
		- D1 shoots V in the stomach. Simultaneously, D2 shoots V in the head, killing V instantly.
			* D1 is only on the hook for attempted murder because were not sure that his bullet caused V’s death. However we know D’2s bullet did. D2 is on the hook for murder.

**Proximate Cause (Legal Cause)**

* From the list of candidates ascertained through the actual cause analysis, we now use legal cause to pick the responsible party or parties most closely linked to the harm.
* **Direct Cause**
	+ An act that is a direct cause of social harm is also a proximate cause of it.
		- D shoots V and kills V instantly, or D shoots V and V later dies in the hospital after recieving proper medical care. There is no ***intervention by a human or non-human force*** that caused V to die.
* **Intervening Causes**
	+ An independent but-for force, human or not, that occurs only after the defendant commits his act.
		- A wrongdoer may be relieved of guilt if the wrongdoer’s act contributed negligibly to the resultant harm.
			* D punches V. V drives himself to the hospitabl but is struck by a drunk driver and is killed instantly. But-for D puniching V, V wouldn’t have been there but D didn’t contribute enough cause to be guilty.
	+ Proximate Cause is satisfied if an intervening party’s acts are reasonable forseeable.
	+ ***Responsive Intervening Cause***:
		- An act that occurs in ***reaction*** or response to the D’s prior wrongful act.
		- D shoots and seriously wounds V. V is rushed to the hospital, receives poor medical treatment, and dies. The poor medical treatment is a responsive cause and it is reasonable forseeable that the medical treatment could be negligent, so D is still on the hook.
			* However, if the medical treament is ***extremely negligent*** or out of the ordinary, the medical treatment can be treated as an intervening cause of death.
		- Intervening causes excuse the defendant from causing the underlying harm if the cause isnt jsut unforseeable but also highly abnormal.
	+ ***Coincidental Intervening Cause***
		- Typically relieve the D of responsability unless the intervention was forseeable.
			* Coincidental intervening causes are those that don’t occur as responses to the D’s wrongful conduct. Rather, the D may place the victim in a position for another cause to independently act on the victim.
				+ i.e. D robs V and leaves V stranded on the side of a highway at night. V is then hit by another driver and is kileld.

The test is whether V being hit by another car is forseeable to a reasonable person. If yes, D is on the hook. If no D is not guilty of his death.

* + - Causation will stop following once the D reaches a safe place.
		- Free, deliberate, informed human intervention will relieve the wrongdoer of responsibilty. This is tricky! For example:
			* If D rapes V and V commits suicide due to depression, D may be on the hook.
			* If D shoots V and V is on a respirator and chooses to end her life, this does not absolve D of any responsability.

**Causation MPC Approach**

* The MPC uses just the but for test for causation!
	+ Legal cause is satisfied if the D meets the requisite culpability and the actual result is not too remote or accidental in its occurance.
	+ **MPC** treats proximate cause merely as issues relating to the D’s culpability.
	+ Thus in **MPC** the issues is not whether, in light of the divergences, the D was a proximate cause of the resulting harm, but rather whether it may still be said that he caused the prohibited result with the level of ***culpability*** - purpose, knowledge, recklessness, or negligence- required by the definition of the offense.
* Under the Code, the D has ***not*** acted with the requisite culpability unless the actual result, including the way in which it occured, was not “too remote or accidental in its occurance to have a just bearing on the actors liability or on the gravity of his offense”.
* The varying proximate cause factors in CL are replaced with a single standard, which expressly invites the jury to reach a commonsense or just result.

**INCHOATE DEFENSES**

~Imperfect or incomplete crimes~

**Withdrawal -** What happens if I change my mind?

* CL - Whithdrawal is no defense.
	+ Vicarious Liability - If you withdraw from a conspiracy you are still guilty of the conpiracy but no longer liable from future vicarious liability.
* MPC - Allows withdrawal only if the D voluntarily and completely renounces the crime.
	+ Means the renunciation has to be motivated by a change of heart and not because of fear of getting cought.

**Merger -** When can a D be convicted of multiple crimes for the same act?

* CL -
	+ Lesser Included Offense -
		- A crime that necessarily includes all the elements of a greater crime.
			* Larceny is a LIO of robbery. Impossible to commit a robbery without also commiting a larseny.
			* A LIO will merge with a greater offense.
				+ Cannot be convicted of both larseny and robbery, just for robbery.
	+ Inchoate Defenses -
		- Solicitation Merges
		- Attempt Merges
		- Conspiracy does not merge - If I agree with someone to commit the crime and we then do it we are guilty of the conspiracy and the intended crime.

**Solicitation**

**\*Asking someone to commit a crime w. the intent that they do it\***

 **- Because this is inchoate, completion is not necessary.**

* **Mental State -** Intent.
* The crime is in the **asking.**

**Conspiracy**

\*An agreement between two or more people to commit a crime plus, an overt act in furtherance of that crime\*

* **Mental State -** Specific Intent. You must specifically inted for the crime to be commited.
* **Overt Act -** You need something … but it can be very minimal.
* **One Person Conspiracy -** CL says no, there must be an actual meeting between two guilty minds.
	+ **MPC -** Unilateral Rule -
		- You can have a conspiracy when two people reach an agreement even though one of them doesn’t really intend for the crime to be commited.
			* Aka... one between a guilty guy and an undercover agent.
* **Vicarious Liability -** If you are a member of a conspiracy you are guilty of all the forseeable crimes commited by the other conspirators.

**Attempt (big difference between CL and MPC)**

* **Two Varieties of Attempt:**
	+ *Complete but imperfect*, where the wrongdoer performs the act but does not succed in her intended outcome.
	+ *Incomplete*, where the actor quits or is prevented from continuing.
* **Mental State -** Need to specifically intend to commit the crime. You cannot attempt unintentional crimes!
	+ No attempt for :
		- reckless crimes
		- Negligent criems
		- or felony murder
* The policy concern is how long to wait until punishing attempt. The earlier police interven to stop an attempt, the higher chance that society will be punishing mere thought. The longer police wait to intervene increases the chance of an attempt becoming realized.
* Generally speaking, an attempt occurs when an actor, with the intent to commit an offense, performs a ***substantial step***, ***beyond mere preparation***, toward commission of an intended offense. The substnatial step ***has to pass*** the preparation stage and moved into the preparation of the offense stage.
* If a wrongdoer commits the target offense, she cannot be charged with both the substantive offense and attempting that offense. The attempt charge merges into the offense for the substantive crime.
	+ However if the D is charged with the substantive offense, a jury may return a verdict for the lesser offense of attempting the substantive offense.
* **Attempt requires two intents:**
	+ The actor must intentionally commit the acts that constitute the *actus reus* of an attemptl the actor must intentionally perform acts that bring the actor in proximity to commission of the substantive offense.
	+ These acts must be performed with the specific intention of commiting the target crime.
		- D is hunting in the woods and fires a gun, wounding V. For D to be guilty of attempted murder, D has to intentionally pull the trigger with the intent to kill V.
* **Different tests exist regarding when a would-be wrongdoer’s conduct crosses the threshold for attempt.**
	+ **Last Act Test -** Attempt only occurs when the actor performed all of the acts the actor believed to be necessary to commit the target offense. Attempted murder doesn’t occur until the person pulls the trigger of a firearm.
	+ **Physical Proximity Test -** Must be proximate to the target offense, the act must go so far as to result in the target offense if not hindered by other circumstances.
	+ **Dangerous Proximite Test -** Attempt is met when an act is so near to the result that the danger of success is very great.
	+ **Indespensible Element Test -** No attempt unless the actor has acquired control over any indispensible aspect of the criminal behavior.
		- No attempted murder unless the actor acquired control over the firearm first.
	+ **Probable Desistance Test -** Attempt is met when the actor reaches a point where it is unlikely that he would have voluntarily desisted.
	+ **Unequivocality Test -** Attempt is met when an act ceases to be subject to multiple interpretations. *Res ipsa loquitur -* The thing speaks for itself.
* **Impossibility Defense 2 Types:**
	+ **Factual Impossiblity -** This is **NEVER** a defense under CL. Inherent factual impossibility may be however.
	+ **Pure Legal Impossiblity** - This **is** a defense under the CL.
* **Factual Impossibility (Not a DEFENSE TO ATTEMPT)**
	+ Occurs when the crime would have been consummated if the circumstances would ahve been as the actor believed them to be, or hoped that they were.
		- Pointing an unloaded gun at aperson, not knowing it is unloaded, and pulling the trigger.
		- Putting your hand into the empty pocked of another, hoping to steal a wallet of phone.
		- Shooting into an empty bed where the intended victim usually sleeps.
	+ Theres also **inherent factual impossiblity**, which may be used as a defense in CL. An inherent factual impossiblity occurs when the method to accomplish a crime is completely inapproprate to the objective sought, like attempting to kill a human being with a banana.
* **Legal Impossiblity (claim that it was impossible to commit the crime because what the D was trying to do was not illegal) THIS IS A DEFENSE BUT RARELY HAPPENS … these are generally very dumb...**
	+ Pure legal impossibility arises when the law does not proscribe the goal that the D sought to achieve.
		- A person who commits a lawful act wit ha guilty conscience by believing that the actor is commiting a crime when she isn’t.
		- A person cannot be guilty of attempting to commit a substantive crime that the person did not commit due to legal impossiblity.
	+ Hybrid legal impossiblitty is just factual impossiblity.
* **Abandonment Defense**
	+ Abandonment isn’t always recognized as a defense, but to the extent it is, it must be done voluntarily and completely.
	+ The D must renounce his criminal purpose voluntarily and completely and this renunciation must be the product of repentance or a genuine change of hear - NOT seeing a police car and all of a sudden having a chage of mind.

**Attempt MPC**

* **MPC 5.01**
	+ 5.01(1)(a)&(b) pertain to completed attempts
	+ 5.01(1)(a) should be considered when the target offense involves conduct. 5.01(1)(b) applies to result.
	+ 5.01(1)(c) pertains to incomplete attempts .
* D gives a gun to X to kill V. X does not attempt to kill V. D is still guilty of attempted murder under 5.01(3).
* The MPC abolishes hybrid legal impossiblity but does not abolish pure legal impossiblity
* MPC recognizes the defense of abandonment in the same way as the CL 5.01(4)

**DEFENSE OF PROPERTY**

**ACCOMPLICE LIABILITY - COMPLICITY**

~you can be responsible criminally for something someone else does ~

* **Principle -** The person who commits the crime.
* **Accomplice -** The person who helps.
	+ Someone who helps someone else commit a crime intending that they do it, or if they encourage someone else commit a crime intending that they do it.
	+ Guilty of whatever crime the principle commited just as he did it, and he is also guilty of all forseeable crimes commited by the principle.
	+ Accomplices guilt does not depend on the Principle.s
	+ Accomplice can be guilty even if the Principle is not, and even if the Principle has a valid defense.
* **The Act -** Aiding or encouraging the principle.
* **Mental State -** With the intent that the crime be commited.
* **Mere Presence -** DOES NOT make someone an accomplice unless you actively helped or encouraged the princple.
* **Mere Knowledge -** Simply knowing a crime will commited does not make you an accomplice.
	+ **But....** Sometimes that can get you guilty of being an accessory after the fact.
		- Must assist the principle who has already commited a felony with knowledge that the crime has been commited and with the intent to help the principle avoid detection.
* **Members of the Protected Class -** The victim of the crime cannot be an accomplice... An underage person...
* **Withdrawal -** How to get out of accomplice liability? Depends on what you did.
	+ If you encouraged - You must discourage to get out.
	+ If you actually aided then you have to take ***affirmitive steps to prevent the crime from happening***.
		- Might require going to the police.

**DEFENSES**

**~Apply to all criems~**

**Capacity Defenses**

**Insanity - The Defendant Suffers from A Mental Disease or Defect**

* ***Mc’Naughten Test -***
	+ Did the D know his act was wrong or understand the nature of his act?
		- If he did not understand the nature of his act he will be not guilty by reason of insanity.
* ***Irresisteble Impuls Test-***
	+ D was either unable to control his actions or unable to conform his conduct to the law
* ***Durham Test / Product Test- EXPIRED***
	+ Was the crime the product of the D’s mental illness?
		- Much broader, and quickly fell out of favor and is no longer used in any jx.
* ***MPC TEST - McNaughten + Irresistible Impulse***
	+ If the D lacked the substantial capacity to either appriciate the criminality of his conduct or conform his conduct to law.
	+ How is this different?
		- McNaughten says did D know it was wrong
			* MPC says could he appriciate that it was criminal?
		- ***Irresisteble***  asks could he conform himself?
			* MPC says did he have the substantialy capcity to conform himself to the elements of the law.
	+ EXAM - More likely looking that you can demonstrate the tests.
* Need to distinguish Insanity from Incompetency.
* For Insanity issue is ***whether or not the D was insane at the time of the crime.***
	+ About guilt or innocence.
	+ If found to have this defense he goes to a mental hospital.
* Incompetency asks ***whether or not D is insane at the time of trial***.
	+ This is not about guilt or innocence just about the right to have counsel represent you. So we wait untill he gets healthy enough to be tried.

**Intoxication**

* **Involuntary Intoxication - A defense to any crime but rare.**
	+ Someone injected you against your will with an intoxicating drug.
	+ In a way eliminating your mens rea.
* **Voluntary Intoxication -**
	+ **CL -** This can be a defense to specific intent crimes if the intoxication negates the intent.
	+ **Cannot be a defense to malice crimes or general intent crimes or strict liability crimes.**

**Infancy**

* **CL -** If under 7 you cannot be prosecuted.
	+ If under 14 rebuttable presumption against prosecution.
	+ Over 14 can be prosecuted.
* **Modern -** Juvenile delinquency proceedings.
	+ Are they going to be prosecuted as an adult in family court or be sent to regular.
* **MPC -**
	+ Under the age of 16 go to family court.
	+ 16 or 17 up to the trial judge to decide where you go.

**Justification or Self Defense**

* Homicide - Self Defense usually in the same question.
* **1st -** distinquish between deadly force and non-deadly force.
	+ How?
		- Guns and knives are deadly force.
		- Bare hands, punches and shoves are not deadly force..
			* Sometimes..
* **Non Deadly Force -** A D can use non deadly force in SD if it is reasnoably necessary to protect against an immediate use of unlawful force against himself.
* **Deadly Force -** D can use deadly force only if he is facing an imminent threat of death or serious injury.
	+ **Agressor Rule -** A D may not use deadly force if he is ***the initial agressor.***
		- **Except:**
			* **If the Agressor withdraws from the confrontation and communicates that to the other person***.*
			* **If the victim suddenly excalates a non deadly fight into a deadly fight.**
	+ **Retreat Rule** - A D is required to retreat before using deadly force.
		- Exceptions:
			* If you cannot retreat in complete safety.
				+ If a dude has a gun, you dont need to turn your back to retreat you can use self defense.
		- **Castle Exception -** Do not have to retreat if you are in your own home.
		- **Defending Against:** Kidnapping, rape, robbery, arson or burglary.
			* You can use deadly force to prevent these crimes wihout retreating.
* **Reasonableness -**
	+ If the D’s mistake was reasonable he
	+ If the D’s mistake was not reasonable
		- Then there is no self defense...
* **Use of Force to Prevent a Crime**
	+ **Non- Deadly -**
		- You can use non deadly force to prevent any crime.
	+ **Deadly**
		- Only to prevent a felony risking human life
* **Defense of Others**
	+ Same rules apply as those that apply to defending yourself.
* **Defense of Prperty**
	+ Deadly force may not be used to defend property
		- Exception
			* Burglary Most jx you can use deadly force to prevent burglary if you are inside the house.
* **MPC Deadly Force Rule**
	+ **Retreat Is NOT REQUIRED ( TRUE MAN RULE)**
	+ **If a D kills in Self defense, after having made an unreasonable mistake the crime will be manslaughter and not murder.**
		- **Imperfect Self Defense**
			* Walking down a dark alley, a dark figure steps out of doorway, and they dont respond to my requests and I think he will pull out a gun, but all he did was pullt out his wallet and I shoot him.
				+ Was the mistake reasonable?

If yes then both CL and MPC say ok.

* + - * + If not.

CL - guilty of murder

MPC - manslaugher, not murder.

**Necessity Defense**

* Self Defense but we are not talking about using force agaisnt others.
* About the choice of evil in other context...
	+ Out hiking on a mt. when a blizzard comes up and the only shelter is a small cabin unocoppuied. Either stay and die, or trespass to live.
		- If you are charged for those crimes, you claim the necessity defense, my evil was less than dying in the snow.
	+ **CL - This is not a defense for murder... ever... remember the cae with stranded sailors.**
	+ **MPC - Allows to be a defense to homicide.**

**Duress**

* If D was forced to commit a crime under a threat of imminent death or serious bodily injury.
	+ Yes i smuggled the drugs but dealers said they would kill my family.
* **CL - Not a defense to murder.**
* **MPC - Allows to be a defense to homicide.**

**Entrapment**

* Show criminal design originated with the government
	+ Govt was the one offering me drugs.
* Defendant was not predisposed to commit the crime
	+ Only reason i bought the drugs was because the govt. agent was tempting me.