

### Actus Reus (Voluntary Act Req.)

#### MPC

#### Voluntary Acts include

1. Habitual Acts (chainsmoker)
2. Voluntary decision (raising arm)

#### Involuntary Acts include

1. Reflex; convulsion
2. Habitual acts that do not arise from effort (epileptic seizure)
3. Bodily movement during unconsciousness or sleep
4. Hypnosis (Not CL)
5. Forcibly moved by another

#### Omission Liability

Generally, there is no duty to act. However, an omission to act can replace the AR req. if

- (1) There is a legal duty to act
- (2) The defendant was physically capable of acting

#### 5 situations for legal duty to act

1. Special relationship between D and V
2. Contractual duty
3. Statutory Duty to Act (taxes)
4. Defendant creates the risk of harm
5. Voluntary assumption of care to a secluded person (narrow)

### Mens Rea

#### MPC (Four Mental States)

#### 1. Purpose

Conscious desire to engage in the conduct or achieve the result of the crime

#### 2. Knowledge

Knowing that an element exists or knowing that a result is almost certain to occur

1. Actual
  2. Constructive Knowledge "Willfull blindness test"
- Jewell Test: High probability that a fact of wrongdoing exists and that he take deliberate actions to avoid learning of the fact: Conscious Avoidance = Willful Blindness

### Mens Rea (cont)

#### 3. Recklessness

Aware of the risk that conduct creates a severe substantial and unjustifiable risk that an element of a crime would occur but proceeds anyway

Cunningham- Accidental gassing of MIL, might cause injury and did it anyway

#### 4. Negligence

1. Creates a severe risk that an element of crime would occur and should have been aware of the risk
2. Objective: It is what a reasonable person would've known
3. Elonis: D's intent depends on whether D knew it could be seen as a threat

#### NOTE:

1. Default MR is Recklessness
2. Intent may be inferred by "natural and probable consequences" (Fugate)

#### Specific Intent/General Intent Distinction

MPC doesn't use it, CA does

#### Specific Intent

1. Intent to commit the prescribed act and the resulting social harm
2. Purpose or knowledge

#### General Intent

1. No specific future act or result contemplated at the time of the AR
2. KRAB (kidnapping, rape, arson, battery)
3. Recklessness or Negligence

#### Strict Liability

1. No Mens Rea required
2. ex) Statutory Rape

### Causation

#### 1. D's act/omission must cause the harm at the same time that

Must be both

1. **Actual or but for** cause of the harm
2. **Proximate or legal** cause of the harm

#### 2. D possessed the required the required mental state

#### 3. Concurrence must be proven BRD

#### 4. Proximate Causation

D must be both an actual cause and the proximate cause (and perform a voluntary act with the requisite mens rea) in order to be found criminally liable. When D's conduct is the direct cause of the social harm courts hold D criminal liable for the resulting harm.

#### 1. Intervening Causes:

Dependent Causes- a dependent cause is one that is dependent upon or responsive to the defendant's voluntary act (responsive). If the intervening cause is dependent, the general rule is that the defendant is the proximate cause unless the intervening cause is extremely unusual or bizarre.

Independent Causes (coincidental)- D is liable unless the independent intervening cause was not *foreseeable*. Independent cause is one that is coincidental to the D's voluntary act.

### Theft Crimes

#### Larceny

Anyone who engages in the trespassory taking and carrying away of the property of another with the intent to permanently deprive the owner or possessor of the property is guilty of larceny

#### 1. Trespassory

CA: \$950 or more is felony

#### 2. Taking

### Theft Crimes (cont)

#### 3. Carrying away

#### 4. Property of another

#### 5. Owner or possessor of the property

#### 6. Intent to permanently deprive

Claim of Right: cannot steal what's yours  
 There is a claim of right defense even if mistaken  
 Brown: Intended to return bike he stole, missing MR, cannot be charged w/ larceny

### Burglary

Anyone who by means of trespass breaks and enters a dwelling of another at night with the (specific) intent to commit a felony therein is guilty of burglary

#### 1. Trespassory

Other types of entry:  
 1. D remains beyond authority (hiding in a store);  
 2. Fraud or trickery: Consent by trickery or fraud is unlawful entry  
 --Schrack: (D enters w/ fake story about surprise party)  
**CA:** Trespassory entry of a (1) dwelling or (2) or any other structure

#### 2. Breaking

Some physical movement of a structural impediment: even a slight displacing an already open door is physical movement  
 1. Without use of force: By fraud or trick  
 2. Within the dwelling: applies to locked door or safe but not a drawer/trunk/box.  
 3. Use of force to exit: not breaking  
**CA:** No breaking element required except for vehicles

### Theft Crimes (cont)

#### 3. Entering

- Bodily:** Entry is found when any part of the body enters the plane of the dwelling (even a pinky)
- Instrumentality:** Entry is found when the instrument passes through the plane of the dwelling in order to commit the crime  
 --NO: Entry for purpose of breaking and entering (shooting a lock to gain entry)  
 Tragni: Not entry where Ds drilled holes to insert separate instrument to steal safe  
 --YES: Entry for the purpose of committing a felony inside (fishing rod for jewelry, gunshots @ victim)

#### 4. Dwelling

Structure used w/ regularity, for sleeping purposes, even if used for another purpose  
**CA:** Doesn't have to be a dwelling of another

#### 5. Of another

Occupancy is requirement, ownership is irrelevant

#### 6. At Night

Begins 1/2 hr after sunset and ends 1/2 hour before sunrise (dark enough difficult to see D's face)

### Theft Crimes (cont)

#### 7. (Specific) Intent to commit a felony therein

At the time the D enters the property, she must have specific intent to commit a felony on the premises: felony need not be carried out!

- Tackett (attempted rape w/coat): Where D entered the home, he had specific intent to commit rape
- Creasy (dorm case): specific intent to commit a theft because D had possession of items

**Exceptions:** If the original taking is with the owners permission, if D was taking property was originally his, even if mistaken, claim of right, or if he was borrowing it.

**CA:** Petty theft also (however, creation of petty larceny in a store during regular business hrs: shoplifting is a misdemeanor)

### Robbery

#### 1. Felonious taking

#### 2. Carrying away

Miller: Process of asportation is continuous when force or fear in order to escape, until D gets to a safe place

#### 3. Personal property

#### 4. Use of force or the threat of force from victim

#### 5. Or in the immediate presence of the victim

From the person's body or within their reach or sight

#### 6. Intent to permanently deprive the victim of the property

**Exceptions:** : If the original taking is with the owners permission, if D was taking property was originally his, even if mistaken, claim of right, or if he was borrowing it

### Homocide

#### CL Definition

Unlawful killing of another

#### Murder

Unlawful killing of a human being by another with malice aforethought.

#### Manslaughter

Unlawful killing of a human being by another without malice aforethought

#### MPC Definition

#### Criminal Homicide

Purposeful, knowing, reckless, or negligent death of another human being is murder when it is committed purposely or knowingly, or when it is committed recklessly "under circumstances manifesting extreme indifference to the value of human life."

#### Manslaughter

#### CA Definition

#### Murder

Malice can be express or implied

#### Malice Express

-When there is manifested a deliberate intention unlawfully to take away the life of a fellow creature

-Intentional killing

CL- Intent encompasses MR of Purpose or Knowledge

**Deadly Weapon** If a person uses a deadly weapon on a vital part of a body, intent to kill can be inferred (natural and probably cause)

#### Malice Implied

When the circumstances attending the killing show an abandoned and malignant heart:

1. Intent to inflict grievous bodily harm
2. Deprave Heart Murder (DHM) MR of ER
3. Felony Murder

### Homocide (cont)

#### CA 1st Degree

Intentional killing plus premeditation and deliberation.

All murder which is perpetrated:

- (1) by means of a destructive device or explosive, weapon of mass destruction, use of ammunition designed to penetrate metal or armor, poison, lying in wait and torture.
- (2) Any murder perpetrated by means of discharging a firearm from a vehicle intentionally at another person with the intent to inflict death.

#### CA 2nd Degree

Intentional killing without Premeditation and Deliberation (however can be unintentional by DHM)

#### CA Manslaughter

Unlawful killing of a human being without malice.

#### Includes 3 kinds:

- (1) Voluntary - upon a sudden quarrel or heat or passion.
- (2) Involuntary- in the commission of an unlawful act, not amounting to felony or in the commission of a lawful act which might produce death in an unlawful manner (does not apply to acts committed in a driving vehicle.
- (3) Vehicular- driving a vehicle in an unlawful act with gross negligence which might produce death.

#### Intentional Killings

1st or 2nd Degree

#### 1st Degree

Intentional killing plus premeditation and deliberation

**Premeditation:** Amount of time (Quantity)

**Deliberation:** Nature of thought. Thinking coolly and requires reflection (Quality)

Gilbert: Mercy killing of dementia wife decided w/in an hour

**Enumerated Felonies: BARRK** (burglary, arson, rape, robbery)

### Homocide (cont)

#### 2nd Degree

Intentional killing without Premeditation and Deliberation

Brown: repeated blows by child abuser do not show proof of P&D

Bingham: 3-5 minute manual strangulation is insufficient to find P, because P must take place before the commencement of the act

#### Felony Murder

Automatic Implied Malice/No proof of MR

1st or 2nd Degree

Killing proximately caused by and during the commission or attempted commission of an inherently dangerous

CL imposes strict liability for the D for the homicide

1. Alternative theory that can be used in addition to, or instead of, MR based theory
2. Substantive rule that allows the jury to find implied malice automatically

#### 1st degree

FM is bumped to 1st Degree if killing is during an enumerated felony (BARRK- Burglary, Arson, Rape, Robbery, Kidnapping)

#### Limitation of Felony Murder Rule

##### 1. Inherently Dangerous

Two approaches:

1. **Facts Specific:** Look at the facts of the case to see if there was a death
2. **Abstract:** Irrespective of facts, look to the statute and not to the facts of the case (Meth Mama)

##### 2. Res Gestae

-> **Felony and homicide must be close in time and distance**

Bodily: Felony is continuous during flight and ends when D gets to a safe place

### Homocide (cont)

-> **Must be causally connected to the homicide**

Split in Jurisdiction: But for v. Proximate Cause

1. Stamp: Doctrine is not limited to those deaths which are foreseeable
2. King: Death must be a consequence of hte felony and not merely a coincidence. Must be foreseeable.

#### 3. Agency

-> **Majority rule/CA**

1. Washington: Killing must be committed by D or D's felon
2. Co-felons are agents of each other and are responsible for each other's actions

-> **Minority rule**

Proximate Cause rule-  
D is liable if death reasonable foreseeable, even if killing committed by police officer, bystander, or victim of the felony

#### 4. Merger

(Independent-felony) Was the felony that underlies the FM part of the killing

-> **Majority:** Look at the statute in the abstract (Does it involve a threat of immediate violent injury) Chun: Test is whether the felony is **assaultive**

-> **Minority:** Minority: Rose- If felony is part of hte killing is a facts question for the jury to decide

#### Intent to inflict grievous bodily harm

##### Depraved Heart Murder

Unintentional killing

Defintion

Conscious disregard of human life

Malone: Russian Roulette is conscious disregard for human life

Knoller: DHM can be based on an omission to act

### Manslaughter

#### Voluntary Manslaughter

Heat of Passion and Imperfect self-defense/defense of others

#### Heat of Passion

##### Categorical

- 1) Aggravated assault/battery
- 2) Mutual combat
- 3) Serious crimes against close relative
- 4) Illegal arrest
- 5) Seeing spouse in act of adultery

*Exceptions (Girourd):*

1. Any passage of time between provocation and the killing negates the defense
2. "Mere words" never suffices

#### Reasonable Person

1. D acted in HOP
2. RP in the situation would have also been provoked
3. D did not "cool off"
4. RP would not have cooled off
5. Provocation caused the killing
6. V was the provoker or was acting in concert w/ provoker.

##### *Important--*

1. Not the def's own std. of conduct, but whehter a person of avg disposition would have been provoked and would react in the same situation knowing the same facts
2. (Berry) "Mere words" are sufficient for provocation, "rekindling" of provocation can make up for the cooling period time

#### Misdemeanor Manslaughter

##### Imperfect Self Defense

##### Imperfect Defense of Others

##### Involuntary Manslaughter

Unintentional Killings

### Manslaughter (cont)

Gross/Criminal Negligence:

Objective, reasonable person standard  
D should've been aware creating a substantial and unjustifiable risk to human life

Welansky: Omission to act when a reasonable person

Williams: Native American Parents should've taken baby to hospital

### Rape

#### Actus Reus

1. Use of force or threat of force

2. Penetration

Vaginal intercourse-(And any other proscribed act, if any)

#### Circumstances

3. Lack of consent

If D honestly (subjectively) and reasonably (objectively) but mistakenly believed that V consented

CA and many states use this defense

John Z.: Consent to sexual intercourse once given be withdrawn

4. (Resistance by victim in some states)

Rusk: V did not resist, thus lack of consent could only be shown by reasonable fear

#### Mens Rea

General Intent Crime

5. D must intend tot use force/threat of force

6. D must intend to have intercourse

Or another proscribed act, if any

### Defenses

#### Self-Defense

D has a complete defense if D had a honest and reasonable belief of an unlawful and imminent deadly threat of force against the D

### Defenses (cont)

#### 1. D's Belief: must have

1. Honest (subjective) and reasonable (objective belief) of an
2. Unlawful and imminent threat of force against the D's person

#### 2. Role of Aggressor Status (unlawful)

1. Unlawful assumes that V did not have a lawful basis for threatening force against D
- Ex) That V and not D was the aggressor
- Losing Aggressor Status:
  1. By withdrawing from the conflict and making that w/drawal clear to the D
  2. When the D engages in a disproportionate response
- Ex) X uses non-deadly force and Y responds w/ deadly force, then Y may become the aggressor and X may be justified in using deadly force in response

#### 3. D's response to the threat is proportionate

1. Enough to repel the attack and no more
2. Deadly force for deadly force
3. Deadly force: likely to cause death/grievous bodily injury
4. Response must be necessary
5. Right to use self-defense begins and ends w/ necessity

#### 4. Imminence Requirement

Right to use self-defense begins and ends w/ the threat

#### Exceptions-

Stewart: Two hours while the V is sleeping is not immediate threat

#### 5. Reasonable Mistake

1. If the facts are ambiguous as to the imminent threat
2. D made a mistake and in fact there was no imminent threat
3. D must have an honest and reasonable belief that there was a such a threat
4. If so, D is not guilty

### Defenses (cont)

#### Goetz Factors (Subjective)

1. Physical circumstances
  2. D prior experiences
  3. D's knowledge of V's past
  4. Physical attributes of D and V
- Wanrow Instruction: Sex of D and V

#### Defense of Others

D has a complete defense if D honestly and reasonably believed that the 3rd party could use SD

#### 1. D's belief

1. Honest (subjective) and reasonable (objective belief) of an
2. Unlawful and imminent threat of force against the D's person

#### 2. Must be necessary and proportionate

#### 3. D put themselves in the shoes of 3rd party

Self-Defense analysis: 1) Honest, 2) Reasonable, 3) Unlawful, 4) Imminent, 5) Proportionate

#### 4. (Minority Approach)

D had to be correct that the 3rd party would have been able to be use SD  
That D had to have a special status to the 3rd party

If D's belief is honest but unreasonable, in many states would be an imperfect defense of others

D would be guilty of Vol. Mans.

#### Cultural Defenses

### Complicity/Accomplice Liability

D is liable for crimes he did not commit when he aids in the commission of hte crime with the intent to promote the target offense

Accomplice liability/complicity/aiding/abetting are all synonyms for a form complicity

#### Principal

Person who actually commits the crime

### Complicity/Accomplice Liability (cont)

#### CL

1. Principals in the 1st degree- commit the crime
2. Principal in the 2nd degree- present and assists
3. Accessory before the fact- aids and abets beforehand
4. Accessory after the fact- helps in escape (afterwards)
5. All, except accessory after the fact are guilty of hte crime committed by the principal n the 1st degree

#### Actus Reus

1. Actual aiding, abetting, encouraging
  2. Pate: (Omission to act) When can mere presence suffice??
- >When it encourages the behavior

#### Mens Rea

1. Intent to aid and abet PLUS
2. D has to have the same MR required for the particular object crime (purpose, knowledge, recklessness, or even negligence)

#### "Natural and Probable Consequences"

#### Doctrine

-- Split in jurisdiction, CA included

1. Whether the other crimes were a reasonably foreseeable consequence of the Principal's object crime
  2. Imposes liability on D both for the object crime committed by P and for other crimes that are the N&PC of the object crime
- NOTE.** Chiu: Aiders and abettors can be convicted of 1st degree murder only if hte state show that the D encouraged the murder w/ knowledge of the killer's specific (premed and delib) purpose

### Inchoate Crimes

#### 1. Attempted Crimes

Attempt to commit the "object" crime

#### \*Defenses\*

##### MPC

Abandonment: (1) Must be complete and voluntary. (2) Not complete and voluntary if: motivated by new circumstances that make it likely D will be caught (e.g., store guard sees shoplifter or motivated by decision to postpone the crime until a better time, or to transfer the effort to another but similar objective or victim.

##### CL

Factual (not a defense) v. Legal Impossibility (is a defense).

*Legal Impossibility Ex's:* Receipt of stolen property- property not stolen. Bribing a juror- there person is not a juror. Shooting a deer out of season- stuffed animal.

*Factual Impossibility:* When the intended crime is impossible of accomplishment because of some physical impossibility unknown to D. D has made a mistake about the circumstance needed for the crime to occur.

MPC or CL- Pure legal impossibility: It is never a crime to attempt to do something that, if completed under circumstances as you believed them to be, would be a crime.  
*Ex:* Voting at a age 20 believing the the voting age is 21 when in fact it's 18.

#### MPC or CL- Pure legal impossibility:

It is never a crime to attempt to do something that, if completed under circumstances as you believed them to be, would be a crime.

*Ex:* Voting at a age 20 believing the the voting age is 21 when in fact it's 18.

#### AR

### Inchoate Crimes (cont)

#### CL-

Acts beyond "mere preparation", Dangerous Proximity (DP) of committing crime corroborates intent. Must be close in time/ distance of the criminal goal.

#### MPC-

"Substantial step" corroborating D's intent (purpose to commit the offense)  
*Ex)* Lying in wait, enticing V, reconnoitering, unlawful entry, possession of special materials, possession of materials for the crime, soliciting innocent agent

#### MR

Specific intent to commit the object crime

#### 2. Solcitation

**MR:** Specific intent that solicited party commit the object crime

**AR:** Inviting, requesting, encouraging the solicited party to commit a crime

#### Exceptions --

1. D must intend that the solicited party understand the criminal threat
2. If D tries to use X as an innocent dupe, this is NOT sollicitation because this does not pose a danger of group criminality

#### Brandenberg Test (1st amendment issue)

1. Speech is done with the purpose to incite
2. Speech is likely to incite
3. Threat is immediate

#### 3. Conspiracy

#### MR:

1. Specific Intent (purpose) to agree, with knowledge of the unlawful object, AND,
2. Specific Intent (purpose) that the object crime occur

**AR:** There is an agreement

1. Bilateral Approach (CL and CA)
2. Unilateral approach (MPC)

### Inchoate Crimes (cont)

**Pinkerton Rule:** Vicarious liability D is liable for committed by co-conspirators if

- 1) The crimes are within the scope of the conspiracy
- 2) In furtherance of the conspiracy
- 3) Reasonably foreseeable consequence of the original agreement

#### Merger:

(CL and CA) Crime of conspiracy does not merge w/ the object crime (However, MPC does merge!)

#### Exceptions --

AR: Plus an "overt act" if req. by statute  
MR: (Lauria) Knowledge may be sufficient for serious crimes.

#### Lauria Factors (businesses)

- 1) Emotional or financial stake in venture;
- 2) No legitimate use for goods/services;
- 3) Volume grossly disproportionate