

*Criminal Law - Prof. Edmundson, G.S.U., Spring 2000*

- I. Punishment: harm to a person that requires justification.
- A. No punishment without crime.
  - B. Crimes must fall into certain categories/classifications before they can be punishable in order to:
    - 1. Give fact-finder guidance
    - 2. Make fact-finding process manageable
    - 3. Give notice to possible defendants of what acts will bring punishment.
    - 4. Reinforce the sharing of values (social solidarity)
    - 5. Give guidance for sentencing
  - C. 6 Reasons to Punish:
    - 1. Deterrence
    - 2. Incapacitation
    - 3. Rehabilitation
    - 4. Retribution (proportional; “Eye for an Eye”)
    - 5. Restitution/Compensation
    - 6. Vengeance (non-proportional)
- II. Actus Reus: the wrongful deed that comprises the physical component of a crime.
- A. **CL**- a voluntary act, distinct from the culpability requirement, is required to convict.
    - 1. Voluntary Act: product of habitual or conscious determination or effort of the actor.
    - 2. Acts done as during a seizure or convulsion or while unconscious are not voluntary.
      - a. If the person has a history of seizures and puts himself in a position where he might harm others, it is a voluntary act.
      - b. Acts made after quick, but conscious decisions, are voluntary.
    - 3. There is no duty to act to rescue others or prevent a crime unless a duty arises from:
      - a. Status Relationship: marriage, immediate blood relative, mutual interdependence.
      - b. Contract: lifeguards, babysitters, custodial care, etc.
      - c. Voluntary Seclusion: if a person starts to render aid, he cannot stop.
      - d. Statutory Duty: duty described in legislation.
      - e. Causing Danger: if a person causes the danger, he must help anyone hurt by it.
  - B. **MPC (2.01)**- conduct must include a voluntary act or the omission to perform an act.
    - 1. Non-voluntary acts are reflex or convulsion, bodily movement while asleep or unconscious, conduct during hypnosis, or bodily movement that otherwise is not a product of habitual or conscious determination or effort of the actor.
    - 2. For omissions to carry liability the omission must be expressly made sufficient by the law defining the offense, or a duty to perform the omitted act must be otherwise imposed by law.
    - 3. Possession is an act if the possessor knowingly procured or received the item, or was aware of his control long enough to have been able to terminate his possession.
- III. Mens Rea: culpability required to be shown as to each material element of an offense. (**MPC 2.02**)
- A. Purposely (Intent): the result is the conscious object of the conduct.
  - B. Knowingly (Willful): awareness of high probability that the conduct will cause the result.
  - C. Recklessly (Malice): the actor is aware of the risk that his conduct might cause the result.
  - D. Negligently (Unreasonable): the actor should be aware that his conduct might cause the result.
  - E. Strict Liability: certain crimes need only an act, no mens rea required to convict.
    - 1. Under Common Law, if a statute did not list a culpability requirement, it was either omitted, or the drafter meant to impose strict liability.
      - a. Infamous Crimes: culpability was intended; characterized by greater stigma, common law antecedent, higher penalties, and acts (crimes requiring omission are public welfare).
      - b. Public Welfare Offenses: strict liability was intended; administrative, regulatory, or morality crimes.
    - 2. Under MPC, if culpability is not listed, recklessness culpability is assumed. Strict liability is reserved for statute violations.

IV. Offenses:

- A. Crimes: punishable by jail time.
  - 1. Felonies: punishable by more than 1 year
  - 2. Misdemeanors: defined by statute/code.
  - 3. Petty Misdemeanors: punishable by less than 1 yr.
- B. Violations: punishable by fine only.

V. Mistake as a Defense

- A. Mistake of Fact: defense if it negates the required culpability element; if there were no crime if the facts were as the actor thought them to be, that mistake is a defense; if there had been a different crime if the facts had been as the defendant believed them to be, he is liable for that crime.
- B. Mistake of Law: generally mistake or ignorance about the law is not a defense. Under the due process clause, ignorance is a defense if the offense is based on passive conduct (prosecution must prove knowledge or probability of knowledge). Under the MPC (2.04) mistake is a defense when:
  - 1. It negates culpability.
  - 2. A statute says it is a defense,
  - 3. The law has not been published or otherwise made available.
  - 4. The defendant reasonably relied on an official statement that was later invalidated.

VI. Criminal Homicide- causing the death of a human being with culpability.

- A. Murder:
  - 1. CL- Malice Aforethought: the culpability distinctive for murder (requires neither “malice” or “forethought”) includes any one of the following:
    - a. Intent to kill or knowledge that death will result.
    - b. Intent to seriously injure of knowledge that serious injury will result.
    - c. Extreme recklessness with indifference to human life (depraved heart negligence).
    - d. Felony Murder Rule: reckless disregard for human life is presumed while attempting, or committing an inherently dangerous felony; felony must be a “but for” cause of death.
  - 2. MPC (210)- homicide committed purposely, knowingly or “recklessly under circumstances manifesting extreme indifference to the value of human life”.
    - a. Felony Murder Rule: if the actor is engaged or is an accomplice in the commission, attempt to commit, or flight after committing robbery, rape, or deviate sexual intercourse by force or threat of force, arson, burglary, kidnapping or felonious escape.
    - b. Line between murder and manslaughter is “extreme indifference to human life”.
  - 3. If predicate felony is integral to the homicide, the felony and homicide merge, and felony murder rule does not apply, so prosecution has to prove culpability (merger doctrine).
    - a. Proximate Causation: once defendant is engaged in criminal activity, he is liable for any deaths that were reasonably foreseeable (minority).
    - b. Agency Test (Redline): defendants liable for killings by themselves or cohorts (majority).
- B. Manslaughter: a homicide committed recklessly or (MPC) a homicide that would otherwise be murder that is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse.
  - a. Provocation and Heat of Passion (without “cooling off” period) do not negate malice aforethought, but they can provide justification for finding manslaughter.
  - b. Under MPC, the jury, from the defendant’s viewpoint, determines reasonable explanation or excuse. Under common law, mere words are not adequate, the provocations that must be witnessed by the defendant are:
    - i. Adultery
    - ii. Extreme assault or battery
    - iii. Mutual combat
    - iv. Illegal arrest
    - v. Injury or abuse of close relative
- C. Negligent Homicide: a homicide committed negligently; death must be foreseeable result of negligent act.

D. Degrees of Murder:

1. First Degree: murder involving premeditation, poisoning, lying in wait or felony murder. Premeditation requires planning, motive, and a manner that suggests premeditation (using a weapon to kill creates presumption of premeditation).
2. Second Degree: all other killing with malice aforethought.

VII. Attempt

A. **Common Law-**

1. Requires intent to engage in all of the conduct, result and circumstance elements that would constitute a completed criminal offense.
2. Line between mere preparation and attempt is shown by what is left to be done in order to accomplish the target crime. If there are “substantial steps left to be done” it is not attempt (Dangerous Proximity to Success Test vs. Last Act Test).
3. An attempt cannot be done recklessly or negligently.

B. **MPC (5.01)-**

1. Must have the same mens rea for each element that is required for the object offense.
2. An act that is a substantial step (substantial step must be corroborative of actor’s criminal purpose) in the course of conduct designed to accomplish a criminal result, with criminal purpose to complete the course of conduct is attempt.
3. Renunciation of criminal purpose is a defense to attempt if renunciation was voluntary and with proper motive.
4. Impossibility (factual or legal) is not a defense to attempt.

VIII. Aiding and Abetting

A. **Common Law-**

1. Terms: (today, only accessory after the fact gets treated differently)
  - a. Principal in the first degree: absolute perpetrator.
  - b. Principal in the second degree: aiding or abetting; must have presence or constructive presence (convenient distance).
  - c. Accessory before the fact: absent, but encouraged the crime through procurement, counsel, command, etc.
  - d. Accessory after the fact: absent, but comforts, receives, relieves, assists, etc. afterward.
2. Must intend for words or actions to encourage or assist principal in order to be liable.
3. Principal must be found guilty of object offense before accomplice can be found guilty; accomplices get convicted of same offense as principal.
4. McVay- if reckless conduct results in death, accessory must only purposefully aid and abet the reckless conduct in order to be liable for manslaughter; does not have to show purpose in the death to be liable. (Compare to attempt, which requires purpose in the result.)
5. Courts treat attempt to aid as aid.
6. Those whose conduct is inevitably incident to the principal’s crime are not accessorially liable. (i.e. drug buyers are not accessories to drug sellers.)

B. **MPC-** a person is legally accountable when they:

1. With the mens rea required for the offense, cause an innocent or irresponsible person (innocent agent) to commit an offense.
2. Fit some special provision of the law.
3. Are an accomplice:
  - ◆ Accomplice: a person with the mens rea required for the offense who solicits, aids, agrees to aid, or attempts to aid by physical aid, words of encouragement, participation in a conspiracy, or standing by to help. Must have purpose that all conduct elements be completed and knowledge that all circumstance elements exist. Accomplice can withdraw prior to the commission of a crime if he either deprives the plan of its effectiveness, or tells the police.

- IX. Conspiracy: an agreement by two or more people with intent to commit crime, as a common object, evidenced by an overt act; a partnership in criminal purposes, not necessarily carried-out crimes.
- A. Conspiracy only requires the “meeting of the minds” of criminal purpose. (Compare to attempt, which is limited to distinction between preparation and “dangerously close to success”.)
  - B. Conspiracy can still be charged if the crime actually occurs (unlike attempt).
  - C. Any foreseeable overt act by any co-conspirator in furtherance of the conspiracy is considered to be the act of all co-conspirators; co-conspirators can be linked in prosecution and the venue can be anywhere an overt act occurred.
  - D. Agreement to conspiracy can be inferred from conduct. Evidence of conduct must show that:
    - 1. Actor had knowledge of,
    - 2. A conspiracy, and
    - 3. Aided the conspiracy.
  - E. To find a supplier of goods or services guilty of conspiracy, it must be shown that:
    - 1. Supplier knowingly gave aid to the offender, and
    - 2. Supplier had a Special Interest, shown by S.N.U.G.:
      - a. Stake in the venture.
      - b. No legitimate use for goods or services.
      - c. Unusual volume of business, not proportionate to any legitimate demand.
      - d. Gravity of the offense.
  - F. Withdrawal from conspiracy will eliminate liability for offenses committed after withdrawal if the defendant communicates his withdrawal to the co-conspirators, and tells police.

X. Justification Defenses

A. Self Defense- Two Requirements:

- 1. Imminent unlawful threat of death or serious bodily injury.
  - a. Belief of “immediate unlawful threat” must be an objective, reasonable belief (reasonable person in that situation); if belief is unreasonable, it is imperfect self-defense, and the charge can be reduced from murder to manslaughter..
  - b. **MPC**- must be “immediate” threat (right there, right then)
- 2. Response is not any greater than what is necessary.
  - a. **MPC**- If retreat is possible (knowing that it is possible with complete safety), there is a duty to retreat, except there is no duty to retreat from dwelling or workplace. Common law does not require retreat in any circumstance.
  - b. In some cases, if there are two aggressors, neither aggressor may be able to claim self-defense; imperfect self-defense, may reduce charge to manslaughter.
    - ◆ Aggression: an affirmative, unlawful act reasonably calculated to produce an affray foreboding injuries or fatal consequences.

B. Defense of others:

- 1. **CL**- actor’s right to defend another is no greater than the victim’s right to defend himself.
- 2. **MPC**- actors actions must be reasonable given the circumstances (even if victim did not have right to defend self).

C. Injury to 3<sup>rd</sup> parties:

- 1. **CL**- if use of force exceeds necessity or is unreasonable, then actor is liable for death or injury to innocent 3<sup>rd</sup> persons.
- 2. **MPC**- if self-defense is reckless or negligent concerning risk to 3<sup>rd</sup> persons, then actor is liable for death or injury to innocent 3<sup>rd</sup> persons.

D. Deadly Force

1. **CL**- deadly force could be used, if necessary, to prevent a burglary (assumes that victim is personally using deadly force). Use of deadly force to defend property alone (spring gun, trap door) is never justified.
2. Deadly Force during an arrest:
  - a. Cannot be used to arrest a fleeing misdemeanor or an unarmed suspect fleeing from a non-violent felony.
  - b. Can be used in a felony arrest when:
    - i. It is necessary to prevent escape from violent felony.
    - ii. The officer has probable cause to believe that suspect poses a significant threat of death or serious bodily harm to himself or others.
  - c. In case of citizen's arrest, the citizen acts at his own peril when he uses deadly force. If no felony has actually been committed, then the citizen may be criminally liable for his actions. **MPC**- no deadly force unless citizen believes he is assisting a police officer.

E. Necessity: defense to all crimes except homicide; conduct must be lesser evil than the offense sought to be avoided; cannot be self-created; requires:

1. Specific threat of death, rape, or serious bodily harm in immediate future.
2. No time to complain to authorities, or history of futile complaints.
3. Reported to authorities as soon as possible after act is done.
4. Actor did not create the dangerous situation.

XI. Excuse Defenses: understandable, but not condoned.

A. Duress: defenses to all crimes except homicide; actor faced with imminent threat, which would induce reasonable fear of death or serious bodily harm to self or other, ("do it or else").

B. Intoxication:

1. A drugged intent is still intent; a drugged act may not be an act because the drug may loosen an actor's inhibitions (disinhibition).
2. **CL**- Voluntary Intoxication may excuse only a specific intent crime because it may negate the specific intent element of a crime. Involuntary Intoxication can be used as a defense to specific and general intent crimes.
3. **MPC**- In self-induced intoxication, actor is deemed to be aware of risks they would have been aware of, had they been sober, and only purpose and knowledge culpability can be negated. If not self-induced, intoxication may also negate recklessness.

C. Insanity- four views:

1. McNaghten Rule: mental disease or defect caused defendant to lack the ability, at the time of his conduct, to understand the wrongfulness or the nature and quality of his actions (wrongfulness determined by society's morals, not those of the actor).
2. Durham Rule: actor is legally insane if his act was the product of a mental disease or defect (used in small minority of jurisdictions because it is too vague).
3. **MPC**- defendant lacked the ability to appreciate the criminality of his conduct or conform his conduct to the requirements of law.
4. Irresistible Impulse (Volition Test): due to mental illness, actor lacked ability or capacity of self-control or free-choice.
  - ◆ Deific Decree Exception: if actor's actions were because he believed "God" told him to do it, it may be a defense because his free will was subsumed by his belief in the deific decree. His belief may actually emphasize his insanity, even though he understood what he was doing, and knew it to be wrong under the laws of man.