

Criminal law outline

[Law](#), [Crime](#)



Criminal Law Outline Justifications of Punishment

1. Consequentialist Theory
 - a. Actions are morally right if and only if they result in desirable outcomes
 - b. Rely on theory of utilitarianism to justify punishment: Forward looking effects of punishment. General deterrence, specific deterrence, rehabilitation, incapacitation
2. Nonconsequentialist Theory
 - c. Actions are morally wrong in themselves, regardless of the consequences
 - d. Theory of Retributivism: look back at the harm and calibrate the punishment to the crime

Theories of Punishment

- 1) Incapacitation: Incarceration to render them harmless
- 2) Retribution: collective condemnation of society bearing down. “ Just Deserts”
- 3) Rehabilitation: give the criminal skills and values to make them a law-abiding citizen
- 4) General Deterrence: deter other criminals from committing crimes
- 5) Specific Deterrence: deter the punished criminal from future crimes

Justifications for Punishment in Context

1. The case of Thomas Dudley (Eng. 1884): Stranded at sea for 24 days, 2 men conspire and kill a third to eat. Charged with murder and sentenced to death
 - a. Necessity defense doesn't apply. Lawfully killing another to save yourself is only in reference to necessity and self-defense (violence towards yourself)Retributive in nature
2. People v Suite: Man owned . 32 caliber pistol, not licensed as required by 1980 legislation. Sentenced to 30 days in jail
 - b. Principle aim of the gun licensing law is general deterrence. Reduction of jail time would proclaim that first time offenses would not result in jail for first time offenders and would declare 30 days to be too harsh/abuse of discretion. Upheld to further principle of general deterrencelegislature intended

Standards of Proof

Prosecution: beyond a reasonable doubt (state has high burden b/c innocent until proven guilty)

1. Curley v US: Judge must ask if prosecution has

introduced sufficient evidence such that a rational jury could decide that the prosecution has proven its case beyond a reasonable doubt. If evidence reasonably permits a verdict of acquittal or guilt, decision is for the jury to make. Defense: by the preponderance of the evidence. (self-defense, insanity, necessity) Rule of Lenity When statutory intent is unclear, the ambiguity must be resolved in favor of the Defendant. US v. Dauray Actus Reus Definition: Voluntary Act, social harm A voluntary act that results in social harm, or an omission where there is a duty to act. 1. Thoughts do not constitute criminal acts 2. Actions compelled by the state do not constitute criminal acts 3. Criminal "acts" must be voluntary 4. No liability for omission unless there is a duty to act 5. "Status Crimes" are unconstitutional Cases Act, not thought 1) Proposition against thought crimes- State v Dalton: "act" was the writing of a child molestation diary. Acquitted. From a deterrence perspective he should not be guilty; from rehabilitation perspective maybe. Since regime is generally geared to deterrence it was the right outcome 2) Hate crimes/speech- Wisconsin v Mitchell: group of black men beats up young white boy a. Rule: Statutes penalizing bigoted motivations (thoughts) are justified b. Rationale: these acts are more likely to provoke retaliatory crimes, so society has a greater interest in punishing them. Deterrence and retribution justify harsher penalties Voluntary, not involuntary MPC 2.01: Requirements of Voluntary Act (1) A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act. (2) NOT voluntary Acts: reflex/convulsion; bodily movement during unconsciousness or sleep; conduct during hypnosis; bodily movement that otherwise is not a product of the effort or determination of the actor, whether conscious or

habitual 3) Acting under State Compulsion- Martin v State: drunk on public highway b/c police brought him there c. Rule: no voluntary act where state compelled the action. d. Rationale: prevent the government from punishing the innocent 4) Involuntary Acts- State v. Decina: epileptic who knew of his condition drives and kills children e. Rule: an involuntary act can be voluntary when the individual knew of its likelihood and failed to preventatively act f. Rationale: it doesn't matter if a person is unconscious when the harm occurs as long as the act took place only because, during consciousness, there was bad thinking- here, recklessness or negligence in failure to prevent the harm. He purposefully put himself in a situation that created a further risk. 5) Powell v Texas: Powell charged with public intoxication g. Rule: Voluntary because he could have prevented his appearance in public h. Rationale: criminalizing involuntary behavior is cruel and unusual (8); this wasn't involuntary MPC 2. 01: Voluntary, involuntary, omission, possession * Involuntary: Convulsion, moving while unconscious or asleep, conduct during hypnosis, or a movement not a product of the effort or determination of the actor; Voluntary defined by the negative * Omission: liability for an omission cannot arise unless the omission is made sufficient expressly in the language defining the offense, or a duty to perform is imposed by law. * Possession: D must have been aware of possession for sufficient period to have been able 2 terminate it Status Crimes- Criminalizing a status violates 8th Amendment: Cruel & Unusual 1) Robinson v California: man with track marks charged with narcotics addiction a. Rule/Rationale: The act of using narcotics can be criminalized; addiction can't. Criminal penalties may not be inflicted upon a person for

INVOLUNTARY acts. 2) Powell v. Texas: a chronic alcoholic was charged with being drunk in public b. Rule: public drunkenness is not a status crime because it is PUBLIC. c. Rationale: convicted of being D. I. P. not chronic alcoholic. Volitional act of choosing to drink without preventing oneself from being in public is sufficiently proximate to the inviolate act of going out while drunk to give the state an ACT to punish. 3) Jones v City of Los Angeles: punished behavior on sidewalks 24-7 which homeless people can't avoid. d. Rule: it is unconstitutional to punish acts arising out of an involuntary status because these acts are also necessarily involuntary. Omissions 1) Omission can be an actus reus where there is a legal duty to act, and D was physically capable of acting. (mens rea, causation, and concurrence still required) a. Contracts for care b. Special relationships c. Statutory duty d. D created the risk of harm e. D voluntarily assumed care (especially if others are prevented from giving care) 2) People v Beardsley: man and woman get drunk over weekend, she surreptitiously takes morphine and dies after D gave her to someone else to let her sleep it off f. Rule: no legal duty existed because none of the 5 above were present. g. Rationale: a legal duty is not the same as a moral obligation; acquaintances aren't close enough relationally to create a legal duty without one of the above. 3) Commonwealth v Howard: mother failed to prevent her daughter's torture and murder by a third party h. Rule: parents have a legal duty to protect their children- special relationship i. Rationale: parents can be legally forced to act; additionally, the omission was the direct cause of the death (medical testimony). 4) Commonwealth v Pestinikas: couple contracted to care for old man for \$300/mo j. Rule: failure to care for another is only a breach of a legal duty

when the caregiver has undertaken the responsibility of care through contract or voluntarily k. Rationale: the omission in situation of duty caused harm D could have prevented. Mens Rea Definition The particular mental state provided for in the definition of an offense. Rationale for Requiring Mens Rea Deterrence or Utilitarian Justification: you cannot deter someone who does not have a guilty mind. Retributive Justification: " Just Deserts." You should not punish someone who is morally innocent. MPC v Common Law Equivalents of Mens Rea MPC 2. 02(2) | Common Law | Purposefully: conscious object to commit | Intent- natural and probable causes | Knowingly: awareness; substantial certainty | Knowledge- aware of the fact, or correctly believes it exists, including willful blindness | Recklessly: conscious disregard of foreseeable risk- subjective standard. Awareness. | Concepts of " recklessness" and " negligence" are often embodied | Negligently: should have been aware of risk and disregard it- reasonable person would have been aware No distinction b/n general, specific intent | Distinction b/w general, specific intent | CL: Uses the concept of mens rea in many terms: Willfully, wickedly, maliciously, knowingly, intentionally, negligently. No uniformity across states as to definitions MPC: 4 mental states that are precisely defined. If no mental state is referenced in a statute, read in recklessly. Proving " Intent", common law- natural and probable consequences doctrine 1. Regina v Cunningham: Son in law stole gas meter to sell; mother-in-law was exposed to coal gas. a. Malice means (i) an actual intention to do the particular kind of harm that was in fact done or (ii) recklessness as to whether such harm should occur or not (foresaw risk; continued anyways) 2. State v Fugate: D shoots and kills store owner after

forcing him into basement. b. Intent can be inferred from attendant circumstances and composite picture developed by evidence, including instrument used to produce death and the manner of inflicting a fatal wound. c. Intent to kill may be presumed where the natural and probable consequence of a wrongful act is to produce death. 3. Foreseeability Issues: If harm is so foreseeable as to almost be certain to occur, intent can be found. Proving “ Knowledge”, common law- willful blindness 1. US v Jewell: a person acts knowingly for common law if the person is aware of the fact OR correctly believes it exists OR suspects the fact exists and purposefully avoids learning the truth a. Deliberate ignorance and positive knowledge are equally culpable. To act “ knowingly” is not necessarily to act only with positive knowledge, but also to act with an awareness of the high probability of the existence of the fact in question. When such awareness is present, “ positive” knowledge is not required. Transferred Intent — only where harm is to people; NOT property 1. Regina v Pembrilton: D threw stone at enemy, hit window instead. Intent to hit friends is not intent to hit window; mens rea is lacking. 2. Regina v. Falkner: intent to steal rum is not intent to burn down a ship. 3. People v Scott: D intended to shoot A and shot B instead; mens rea (intent) transfers. Society has a greater interest in deterring and punishing (retribution) people who kill than damage property. Common law Specific v General Intent — consider the attendant circumstance * Specific intent statute: requires intent to cause harm to the attendant circumstance; to be convicted under a specific intent statute, you must intend (and succeed) in burning a BOOK. You must have a conscious objective that is more than just lighting a match. * Intending to complete the act- purposefully, knowingly *

General intent statute: requires intent to do the act, only. Might punish setting fire to instead of saying, setting fire to woodland flora. Drunk people are likely to get netted under a general intent statute because the attendant circumstance is general. * Intending the act- negligent, reckless * People v Atkins: Attempt to raise voluntary intoxication to charge of Arson. * Court finds Arson as general intent crime. Inadmissible b/c only need to do actus reus. How MPC Avoids Specific Intent-General Intent Distinctions 1. MPC 2.02(1): Minimum Requirements of Culpability a. Except as provided in 2.05 (strict liability provision), a person is not guilty of an offense unless he acted purposely, knowingly, recklessly, or negligently with respect to each material element of the offense 2. MPC 1.13(9): " element of offense" means (i) such conduct or (ii) attendant circumstances or (iii) such a result of conduct as b. is included in the description of the forbidden conduct in the definition of the offense; or c. establishes the required kind of culpability d. negatives an excuse or justification for such conduct e. Negatives a defense under the statute of limitations 3. MPC 1.13(10): " Material element of an offense" means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue, or any other matter similarly unconnected with (i) the harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or (ii) the existence of a justification or excuse for such conduct Strict Liability Crimes * Statute lacks mens rea component. MPC reads recklessness into any statute missing a mens rea. * TRUE STRICT LIABILITY CRIMES: regulatory crimes, crimes against the public welfare, morality offenses (statutory rape), felony murder. MPC 2.05 recognizes only minor " violations" and violations outside the MPC where it is plain that the

legislature intended to create strict liability Morissette: Ordinary presumption is to read mens rea in the statute (recklessness). Courts are likely to construe the following as strict liability offenses: 1. Statute protects the public welfare 2. D is in a position to prevent the harm and it is reasonable to expect this of her 3. The penalties imposed are light 4. There is little stigma associated with the offense 5. It is a newly created crime Commonwealth v Barone: Woman killed another in a car crash, appeals on grounds that the statute imposed strict liability and she shouldn't be punished 1. If a statute is ambiguous, must read in reckless or negligent and cannot impose strict liability. Heavy penalties and negative stigma associated with this type of crime. Mistake and Ignorance In general: D commits a crime with a belief that turns out to be wrong. MPC: what does the statute require for mens rea? Rationales for Mistake and Ignorance Defenses 1. Deterrence/Utilitarian Justification: you cannot deter someone who does not possess a guilty mind 2. Retributivist justification: "just desserts." you should not punish someone who is morally innocent Question Tree 1. MPC or common law? a. What statute are you being asked to apply? 2. Mistake of fact or law? --- what must D show to prevail under mistake defense? b. MPC 2.04: No distinction b/w mistake of fact and law i. Mistake of fact: must negate mens rea of the statute ii. Mistake of law: no defense unless provided in the statute iii. When D raises mistake claim, P must prove that notwithstanding the mistake, D possessed requisite mens rea c. Common law: iv. Mistake of fact: 1. Specific intent: honest but unreasonable mistake is a defense 2. General intent: defense only if both honest and reasonable v. Mistake of law: 3. No excuse, but three exceptions: relied on official interp. of law, knowledge of illegality

is an element of the crime, or no fair notice

Common Law: Cases — Mistake of Fact

1. People v Navarro: D took lumber, thinking it was abandoned.
 - a. Larceny is a specific intent statute, so mistake of fact is a defense, if honest
2. Bell v State: MINORITY VIEW: no exculpation for mistake where, had the mistake of fact not been made, the conduct would still be illegal or immoral.
 - b. Moral wrong test: there is no violation of the culpability principle if the conduct is criminally punished without regard to mens rea- mistake of fact not a defense if the conduct is morally wrong.
 - i. Ask if reasonable
 - ii. If reasonable, look at factual panorama. “ what is it that you (reasonably) thought you were doing? ” Insert candid response.
 - iii. Evaluate morality of actor’s conduct. If morally wrong, it is sufficient to convict.
 - c. Legal wrong test: even if D can assert a reasonable mistake of fact, mistake of fact isn’t a defense if, had the facts been as she thought, she would still be guilty of some other crime.
 - d. Punishes D for the crime he was mistaken about committing (and so never did actually commit) instead of for a lesser crime he did actually commit.

Cases- Mistake of Law

Ignorance of the law is not a defense against criminal liability UNLESS:

1. Reasonably relied on an official interpretation of the law (Marrero)
2. Where knowledge that the conduct is prohibited is an element of the crime. Ignorance or mistake negates the mens rea.
 - a. Cheek v US: When statute requires willfulness, Subjective standard is to be used and shall be determined by the factfinder. Need not be reasonable.
 - b. Bryan v US: (Gun Trafficker) Knowingly requires proof of knowledge of the facts that constitute the crime. Willfully requires knowledge of the specific rule they are breaking. However, ignorance of the law is no excuse; knowledge that the conduct is unlawful is all that is required.
3. The

prosecution of person lacking fair notice can violate due process c. Lambert-
no fair notice. In order to be punished, there must be a probability that D had
actual knowledge of the law before committing the crime. MPC * Does not
allow mistake as a defense where D would be guilty of another offense had
the situation been as he supposed; but if that punishment is lesser, it will be
imposed instead. * Mistake of fact under MPC is a defense if it negates the
mental state required for commission of the offense. * Mistake of law under
MPC is a defense if the law provides that the state of mind established by
such ignorance or mistake constitutes a defense * Relationship between
various mistakes of fact and required mens rea levels: Required Mens Rea |
Defense / D is not guilty if: | Purposely or knowingly | Any actual belief to the
contrary (even if reckless) | Recklessly | Any non-reckless mistake of fact
(even if negligent) | Negligently | Any non-negligent “ reasonable” mistake |
Strict Liability | Even a very reasonable, non-negligent mistake is no defense
| * We applied MPC in RRH book burning example. Mistake can be a defense,
but it has to be less than conscious disregard in all circumstances. RRH’s
mistake was negligent at the very worst, not even reckless. Causation
Question Tree 1. Actual cause? a. But for D's act, would the harm have
occurred? i. No: actual cause. (proceed to proximate cause analysis) ii. Yes:
not actual cause. 1. Proximate cause? a. Is D the direct cause, such that it
would be fair and just to hold him liable? i. Yes: Then D has complete liability.
ii. No: proceed to intervening cause analysis a. Was there an intervening
cause? If Dependent, D typically is proximate cause unless bizarre i. Yes: 1.
Was it dependent on D's voluntary act? a. Yes: next question: i. Was it a
bizarre situation? 1. No: D has liability. 1. Yes: D is absolved. 1. Was it

independent of D's voluntary act? a. Yes: was it foreseeable? If yes, liable. If no, not liable a. No: does anything above fit? i. No: if there is no intervening cause and was proximate cause, D is liable. Cases 1. Commonwealth v Rementer: woman runs from boyfriend into street, hit by car, killed a. Actual cause? YES. But for their fight, she would not have been in the street. b. Proximate cause? First, was there an intervening cause? YES. ii. Was the intervening cause dependent or independent? 1. Dependent- he fought with her, and she ran. 2. In cases of intervening dependent cause, he is liable unless it was a bizarre situation. They were fighting in front of a road, so no. c. D is liable. Actual cause, and proximate cause, the latter through dep. Intervening 2. State v. Govan: D shot the V in the neck, she became a quadriplegic d. Actual cause? YES. But for... e. Proximate cause? Was there an intervening cause? Yes- pneumonia killed her. iii. Dependent or independent intervening cause? 3. Dependent- you don't die from TB unless you're a quadriplegic 4. Dependent intervening cause, not bizarre- D liable. iv. An intervening cause that was a coincidence will be a superseding cause when it was unforeseeable. Intervening causes that are a response will be superseding when it was abnormal and unforeseeable 3. Henderson v Kibbe: drunk guy robbed and left on snowy highway w/o glasses f. actual cause? YES. But for being left there... g. Proximate cause? Was there an intervening cause? Yes. Indep or dep? v. Independent: they weren't driving the truck that hit him 5. If Indep, it was foreseeable, so D is liable. vi. Dependent: but he wouldn't have been there without their robbing him 6. If Dep, truck wasn't bizarre, so D is liable. Concurrence Temporal and Motivational 1. Temporal concurrence: D must possess the requisite mens rea at the same moment

that her voluntary conduct (or omission) causes the social harm (or actus reus) 2. Motivational concurrence: the mens rea must be the motivating force behind the act Sexual Offenses MPC Rape: 213. 1: Rape if: * Compel to submit by force of threats of death, extreme pain, etc OR * You give V GHB, etc OR * V is unconscious OR * V is younger than age 10. Felony 2nd degree * NO MISTAKE OF AGE DEFENSE UNDER AGE 10 * There is a mistake of age defense between 10 and age of consent Rape Traditional: no rape unless force was used to overcome the victim's resistance (No resistance, then no force, then no rape) rape determination based on victim's actions. 1) Heterosexual vaginal intercourse NO MENS REA 2) of a woman, not the man's wife 3) by force and 4) without her consent — consent is an element; that she did not consent has to be shown beyond a reasonable doubt by the prosecution in order to convict (hard to prove) a. FORCE: Whether D's acts used sufficient force to overcome P's resistance, or whether his threats created in her mind a reasonable fear of harm. b. Rusk v State: she didn't actively resist or attempt to run when she had the chance, so under the traditional view she could not have been raped. i. She said she was fearful, but unless D objectively manifested his intent to use physical force to accomplish his purpose, her submission will be read as consent because it couldn't have been reasonable without an objective manifestation. ii. DISSENT: (now majority rule): this view requires too much resistance from the victim- and resisting victims get hurt more often. Modern: force requirement met by nonconsensual penetration- no need for resistance that requires force to overcome. Rape determination based on D's actions, not V's actions or character. * Modern rape law is built around meaningful

consent. * It is gender neutral, includes the word “ coercion”, includes more than vaginal intercourse, uses the term “ sexual assault” instead of rape *

Consent is an affirmative defense, not an element 1) Physical force or coercion 2) NO EXPLICIT CONSENT ELEMENT — consent is an affirmative defense; a question that she may have consented has to be raised by a preponderance of the evidence a. State of New Jersey v MTS: force requirement met by nonconsensual penetration. Physical force in excess of that inherent in the act of sexual penetration is not required for such penetration to be unlawful i. There is an inherent wrong in forced sexual intimacy- crime against a person’s right to control her body. Rape is violating the sphere of privacy. 3) WHAT COUNTS AS CONSENT? Permission can be inferred either from acts or statements reasonably viewed in light of the surrounding circumstances b. In re John Z: Woman participated in sexual acts for a while; after penetration told him to stop. ii. Forcible rape is still committed when V consents initially, then withdraws consent, but D continues having sex with her iii. Her consent can be debated- she consented through acts, then lightly verbally said no, but physically continued... Statutory Rape * Common law: Sex with a female under the age of consent. * Assumes male D, female V * Heterosexual, vaginal intercourse * No force required * No non-consent required (so if she consented it’s still statutory rape) * MPC 213. 4: Sexual assault. Sex with child under age 10 is a strict liability crime, no mistake of age defense. Between age 10 and age of consent, there is a mistake of age defense. * Garnett: even a mentally handicapped person can be convicted of statutory rape with a person his mental equivalent- we don’t care about mindset, only about the act. *

Scholars think strict liability crimes don't serve a deterrent purpose because they punish without regard to the actors' state of mind. * But I think this sort of liability is a good thing overall because people are aware that if they have sex with someone who looks young, they could be in trouble- forces people to be a bit more responsible- but then, people probably don't think of the punishments ahead of time, either.

Homicide Common law: 4 primary kinds of homicide. (** minority rule) Murder, 1st degree Murder, 2nd degree Voluntary Manslaughter Involuntary Manslaughter Murder: The unlawful killing of a human being with malice aforethought Manslaughter: The unlawful killing of another human being without malice aforethought CL: 4 conditions when malice aforethought is present 1. An intent to kill 2. Intent to commit serious bodily harm 3. An abandoned and malignant heart or depraved heart 4. The felony murder rule applies If D intends to kill, he acts with express malice. If malice aforethought is shown in any other way, it is implied malice. Acceptable Evidence when proof of murder depends on malice aforethought 1. Inferred from circumstantial evidence 2. Deadly weapon rule: Can infer intent to kill when D uses deadly weapon and aims it @ vital part of body 3. Natural and probable consequences rule Murder, 1st degree: Murder involved * Premeditation and Deliberation * Premeditated intent to kill. Killer reflected upon and thought about the killing in advance * Deliberation. Refers to the quality of the accused's thought process * Statutory felony murder. * Lying in wait, poison, torture, etc. Murder, 2nd degree: * Unpremeditated intent to kill * Intent to cause great bodily harm** * Depraved heart/extreme recklessness * All other felony murders Murder Cases * State v Brown: Death of 4 y. o. resulting from beating from father.

charged with M1 * To be guilty of first degree murder, one must act with premeditation and deliberation in addition to malice aforethought * Although premeditation can be formed in an instant, it must be done deliberately- with coolness and reflection * State v Bingham: Raped and strangled on highway * To allow a finding of premeditation only because the act takes an appreciable amount of time obliterates the distinction b/w 1st and 2nd degree murder. Having the opportunity to deliberate is not evidence of deliberation. Otherwise, any form of killing which took more than a moment could result in a finding of premeditation, without some form add'l evidence showing reflection * Gilbert v State: 75 y. o. man killed dementia wife by shooting her * good faith is not a legal defense to first degree murder Voluntary manslaughter * Intent to kill plus reasonable provocation (always has to be reasonable provocation for charge of voluntary manslaughter- something akin to heat of passion. But for provocation, this person wouldn't be a killer) * Provocation: One who kills in response to legally adequate provocation is treated as having acted without malice aforethought, the mens rea required for murder * Intent to kill plus imperfect self defense** (D might have over-defended themselves) * Diminished Capacity 3 ways to determine if D is entitled to provocation defense * Common law categorical defense. If kill in response to * Aggravated Assault or battery * The observation of a serious crime against a close relative * Illegal arrest * Mutual combat * Catching one's wife in the act of adultery * Mere Words Rule: Mere words are never enough to constitute legally adequate provocation * People v Ambro: H stabbed wife after verbal goading and revealing that she was in an affair * Mere words are usually not enough.

Exception to which is when there is a series of provoking statements and circumstances. * Modern Reasonable Man. Jury must find * D actually acted in the heat of passion * The heat of passion was provoked by an act or event that would have also provoked a reasonable person in the D's shoes to lose self-control * D did not have sufficient time to "cool off" b/w provocative event and the killing * A reasonable person in D's shoes would not have had sufficient time to cool * There must be a causal connection b/w the provocation, the passion, and the killing * People v Barry: Husband strangled wife with phone cord after hearing that she was leaving him * Court considers the whole course of provocation over time, not just in the moments leading up to the murder * MPC Extreme mental or Emotional Disturbance test * MPC 210. 3(b): A homicide that would otherwise be murder may be considered manslaughter when it is committed "under the influence of extreme mental or emotional disturbance for which there is reasonable explanation and excuse." * "the reasonableness of such excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be." subjective * State v Dumlao: Husband shoots mother in law after thinking that family members were trying to cheat on him with his wife. Was a very insecure individual * Intense mental or emotional disturbance is distinguished from insanity in that it is to be understood in relative terms as referring to a loss of self control due to intense feelings * 3 part test for EMED Will be found in a person who has * No mental disease or defect * Is exposed to an extremely unusual and overwhelming stress * Has extreme emotional reaction to it, as a result of which there is a loss self control in reason is overborn by intense

feelings, such as passion, anger distress, grief excessive agitation or similar emotion * Whether there is a reasonable explanation should be made by viewing the subjective internal situation in which the D found himself and the external circumstances as he perceived them to be at the time, no matter how inaccurate that perception may have been, and assessing from that standpoint whether the explanation for his emotional disturbance was reasonable

Involuntary manslaughter -- Cause death with criminal negligence * Can secure IM conviction through Criminal negligence (" gross" negligence or even " recklessness") or Misdemeanor manslaughter (felony murder, junior) * MPC Equivalent 210. 3(1)(a): " criminal homicide constitutes manslaughter when it is committed recklessly" * Commonwealth v Welanski: Night club burned down and killed hundreds * Not required to prove that he caused the fire by some wanton or reckless conduct. Enough to prove that the deaths resulted from his wanton or reckless disregard of the safety of the patrons in the event of fire form any case. Depraved Heart Murder * What: When there is a killing but no proof of an intent to kill, the law may " imply" malice. One of these situations is when the individual who kills acts with an abandoned and malignant heart * Homicide involving " depraved heart" can be punished as a second-degree murder; gross negligence or simple recklessness can only be punished as involuntary manslaughter * Rule: Malice will be implied in a homicide case if it can be shown that the D acted with gross negligence and an extreme indifference to human life. D realized that his actions created a substantial and unjustified risk of death and yet went ahead and committed the actions anyways *

People v Knoller (Supreme Ct. CA 2007): Dog mauled woman to death. D

charged with Murder 2 * Abandoned and malignant heart is equated with D's awareness of the risk created by his/her own behavior. Must act with conscious disregard of the danger to human life * Phillips test: Malice is implied when the killing is proximately caused by an act, the natural consequences of which are dangerous to human life, which act was deliberately performed by a person with conscious disregard for life. Conscious disregard of human life is required, but is not subjective standard.

Felony Murder * Killing during the commission of a felony is considered murder in the second degree. In some states, killing during the commission of certain statutorily proscribed crimes can elevate the murder to Murder 1 * Level of intent to perform a felonious act is evidence of malice which can be transferred to murder * People v Stamp (Ct. Appeal CA 1969): Man dies of heart attack following the robbery of his store. * A killing committed in either the perpetration of or an attempt to perpetrate robbery is murder of the first degree. Malice aforethought is presumed on the basis of the commission of a felony inherently dangerous to human life. No intentional act is necessary other than the attempt to or the actual commission of the robbery itself. * Not limited to deaths which are foreseeable. As long as the homicide is the direct causal result of the robbery, FM applies * Inherently Dangerous Felony Limitation: For the FM Rule to apply, some jurisdictions require that the underlying felony is inherently dangerous * Hines v State (GA 2003): While hunting, D mistook friend for a turkey and shot him. convicted of FM based on the underlying crime of possession of a firearm by a convicted felon. * Felony is "inherently dangerous" when it is "dangerous per se" or "by its circumstances creates a foreseeable risk of death." foreseeable risk of death

when person was drinking, hunting * The Res Gestae Requirement: The felony and the homicide be close in time and distance (temporal and geographic proximity). There must be a causal connection between the felony and the homicide * People v Bodely (Ct of Appeal CA 1995): Escape from a robbery. Got in car, ran over victim. * The test used in FM cases to determine whether a killing is so closely related to an underlying felony as to justify an enhanced punishment for the killing is that the crime continues until the criminal has reached a place of temporary safety * the homicide is committed in the perpetration of a felony if the killing and the felony are parts of one continuous transaction. This escape rule serves public policy considerations of deterrence * King v Commonwealth (Ct of appeals of VA 1988): accidental death of co-felon during commission of a felony. D charged with FM 2nd Murder after crashing plane that had marijuana in it. * death must be a consequence of the felony and not just a coincidence * Only acts causing death which are committed by those involved in the felony can be the basis for a conviction * The act causing death must result from some effort to further the felony before malice can be imputed to the act * There must be some act attributable to the felons which causes death * The Merger Doctrine: In some states FM does not apply if the underlying felony is an integral part of and included in the fact of the homicide * People v Smith (CA 1984): Beating of a child which resulted in death. Claims FM should not apply * The ostensible purpose of the FM rule is not to deter the underlying felony, but instead to deter the accidental or negligent killings that may occur in the course of committing that felony * The Agency Rule: FM rule does not apply to killings by third parties * State v Canola (Supreme Ct. of NJ 1977): During

robbery of jewelry store, co-felon shot and killed by owner of store. Other felon charged with FM. * Felon is not liable for the death of a co-felon. For D to be guilty of murder under FM rule the act of killing must be committed by D or his accomplice acting in furtherance of their common design. * Lethal acts of 3rd persons not in furtherance of the felonious scheme do not count towards FM rule Attempts, Complicity, Conspiracy See chart Attempts

Inchoate Conduct: conduct which occurs after the mens rea has been formed but is shy of the completed act

1. Common Law Approach * Attempt to commit felonies = felonies; attempt to commit misdemeanors = misdemeanors * generally punished less severely than completed offenses
2. MPC Approach * Generally punishes crimes at the same level as the completed offense, except when the target crime is a capital offense or a felony of the first degree (then treated as second degree felony)

Mens Rea of Attempts * Common law * Requires specific intent to commit the targeted offense. True even when the target crime does not require specific intent *

MPC 5. 01 * D must 'purposely' engage in conduct ("substantial step") which would constitute crime if the attendant circumstances were believed as D perceived them to be.

3. People v Harris (IL 1978): D charged with murder even though he did not intend murder * Attempted murder is not proved by showing that D intended to do great bodily harm or that he acted in reckless disregard for human life- Intent is needed. Attempted murder requires intent to bring about that result described by the crime of murder
4. State v Hinkhouse (OR 1996): D had HIV, slept with multiple partners. Charged with attempted murder * A person is guilty of attempting to commit a crime when the person intentionally engages in conduct which constitutes

a substantial step toward the commission of the crime * A person commits attempted murder when he or she attempts, without justification or excuse, intentionally to cause the death of another human being. To act intentionally is to act with a conscious objective to cause the result or to engage in the conduct so described. Actus Reus of Attempts * Common Law * No single test for determining when "mere preparation" for an offense becomes an attempt * Focus is on how much, or how little, is needed to be done to complete the target offense * MPC * Conduct must amount to a substantial step toward culmination of the commission of the targeted offense * Focus is on what D has already done and whether the acts are corroborative of criminal purpose

Cases 5. People v Rizzo (NY 1927): D was riding around looking for a person to rob. Arrested and charged with attempted robbery * Line is drawn between acts which are remote and which are proximate and near to consummation. * Felonious intent alone is not enough. There must be an overt act shown to establish an attempt. * Proximity approach: A crime is attempted if D did an act tending to the commission of this robbery. Because they had not found or reached the presence of the person they intended to rob, not guilty

6. People v Staples (CA 1970): Attempted burglary of a bank vault. * Acts beyond mere preparation is enough to convict of attempted robbery * Preparation consists of devising or arranging the means or measures necessary for the commission of the offense; the attempt is the direct movement toward the commission of the crime after preparations are made * The act must reach far enough toward the accomplishment of the desired result to amount to commencement * Where intent to commit the substantive offense is clearly established, acts done toward the commission

of the crime may constitute an attempt where the same acts would be held insufficient to constitute an attempt if the intent with which they were done is equivocal and not clearly proved. Defenses to Attempt * Common Law * No abandonment. Majority of CL states do not recognize the defense of abandonment. once D crosses line from preparation to attempt there is no turning back * Impossibility * Legal Impossibility- when no law makes the conduct a crime is a defense * No factual impossibility . * MPC * Renunciation: MPC 5. 01(4) allows a D to introduce evidence of renunciation in circumstances where * renunciation is voluntary and complete * No Impossibility Defense of Impossibility * You cannot commit a crime which is impossible to commit * US v Thomas- cannot rape a corpse. Group Criminality Complicity One who intentionally assists another in the commission of a crime can be convicted of that offense as an accomplice Mental State necessary to render one an accomplice * Common Law: Act with the same mens rea as the principle AND the intent to aid * MPC: act with the same mens rea as principle AND the purpose of promoting or facilitating the commission of an offense Types of acts necessary to render on as an accomplice * CL: any form of aid to the principle is sufficient, but a failed attempt to aid is not * MPC 2. 06: both aiding and attempting to aid are sufficient Cases Pace v State (IN 1967): man picks up hitch hiker; he robs man in back seat at knife point and driver is held as an accomplice * Negative acquiescence is not enough to constitute a person guilty of aiding and abetting the commission of a crime. Must have affirmative conduct State v Parker (MN 1969): Law student beaten in the back seat of his car by others; he escapes, claims robbery and stolen car. person in front seat held as

accomplice * Aid by inaction is possible. If proof shows that a person is present at commission of a crime without disapproving or opposing it, jury may infer accomplice liability in connection with the attendant circumstances and thereby reach the conclusion that he assented to commission of the crime * Evidence of subsequent acts may also prove participation in the criminal acts- running from police

Conspiracy An agreement between two or more persons to commit a crime

CL Elements of conspiracy Actus Reus 1. An agreement between two or more persons to commit an unlawful act AND an overt act * State v Pacheco (WA 1994): PI and employee who was a cop. PI goes to FBI w/ info on employee about illegalities. Set up a sting where cop agreed to kill someone. Charged with conspiracy to commit Murder 1 * There must be an actual agreement between two or more conspirators. Unilateral agreements do not satisfy actus reus. * As it takes two to conspire, there can be no indictable conspiracy with a gov't informer who secretly intends to frustrate the conspiracy. Mens Rea 1. Specific intent to agree AND 2. specific intent that the object of agreement shall be achieved * D cannot be charged of conspiracy alone. Must be " conspiracy to commit crime X" * No Merger. Can be charged and convicted of both conspiracy and the crime itself * No abandonment defense unless the intent to abandon was communicated expressly to co-cons

Case People v Swain (CA 1996): drive-by shooting resulted in the death of a boy. Man charged in conspiracy to commit 2nd degree implied malice murder * To sustain a conviction for conspiracy to commit a particular offense, the prosecution must show not only that the conspirators intended to agree but also that they intended to commit the elements of that offense * A conviction of conspiracy to commit murder

requires a finding of intent to kill, and cannot be based on a theory of implied malice MPC 5. 03 Elements of conspiracy Main concern is about a " firm commitment to criminality" Actus Reus 1. an agreement or agreement to aid in the commission of a crime AND sometimes an overt act Mens Rea 1. Purpose of promoting or facilitating the agreement AND the result MPC Characteristics 1. D cannot be charged with conspiracy alone; must be conspiracy to commit crime X 2. Conspiracy merges with the target offense. D cannot be charged with both conspiracy and crime 3. For abandonment to apply, D must thwart the success of the conspiracy and must manifest " complete and voluntary renunciation" of his criminal purpose Case 1. Pinkerton Doctrine: Co-Conspirators can be held liable for ancillary crimes committed in promotion of their agreement if they are (1) reasonably foreseeable and (2) are committed in furtherance of the conspiracy 2. US v Mothersill (FL 1996): Cop blown up by pipe bomb that was intended for someone else * Each party to a continuing conspiracy may be vicariously liable for substantive criminal offenses committed by a co-conspirator during the course and in the furtherance of the conspiracy * Liability will not lie where the crime did not fall within the scope of the unlawful project or which was not reasonably foreseen as a necessary or natural consequence of the unlawful agreement * Deadly force and violence are more than peripheral possibilities so Pinkerton applies Criminal Law Defenses 1) Case-in-chief defenses v. Affirmative defenses: 1. Case-in-chief negates one of the elements i. Ex: mistake, which negates the mens rea 2. Affirmative defenses apply even when there is clear proof of all the elements of the crime; D gets off for some other reason. ii. Ex: justification, excuse, necessity, duress 2)

Burdens of Proof: 3. D has the burden of proof for affirmative defenses.

Standard varies: iii. Majority: D must prove by a preponderance of the evidence iv. Minority: some states require proof beyond a reasonable doubt

3) Justification v Excuse and why it matters: 4. Justification: this conduct is right and should be encouraged. v. The evidence for justification is equally available to both sides, but P has advantage of law enforcement resources.

vi. Third party liability: If D's acts are justified, third parties are not criminally liable for helping, and may be liable for interfering. 5. Excuse: this conduct is wrong and should be discouraged. vii. The evidence for excuse is within D's control because it is about him. viii. Third party liability: when D asserts an excuse, third parties ARE liable for helping D, and are NOT liable for

interfering (if they stopped an insane person from hurting someone else, for example.) Justification 6. D says, " I did no wrong. " Perhaps D did the right thing under the circumstances. 7. Ex: Self-defense ix. CL Self-defense: 1. D

must have an honest and reasonable belief that 2. He was threatened with an imminent threat of unlawful force 3. And that the force used was necessary to repel and proportional to the threat 4. Must be subjectively and objectively reasonable, whether right in belief or not 5. PROVIDED: if D's

defensive force caused death: a. The harm avoided must be death or serious bodily injury (proportionality requirement) b. In some juris, D must try to retreat (majority rule: no duty to retreat) c. If D is the initial aggressor, additional requirements apply d. NOTE: if D fails to meet all these

requirements he may have a partial defense x. MPC Self-defense 3. 04(1) 6.

D [reasonably?] believed 7. Defensive force was immediately necessary to protect D against 8. Unlawful force by V " on the present occasion" 9.

Provided: if D's defensive force= "deadly force": e. The harm avoided must be death, serious bodily injury, kidnapping, or sexual intercourse by force or threat f. D must try to "retreat" (except from his dwelling) if he knows that's completely safe way to avoid V's force g. D has no defense if he, with purpose to cause death or serious bodily injury, provoked V's force in same encounter 4) Reasonableness standards in context of self-defense: 8. Objective reasonableness: usually includes at least some of D's physical characteristics, plus D's knowledge of external circumstances and surroundings; also at least some of D's general knowledge and prior experiences. (Pure objectivity is no focus on D at all- hypothetical reasonable person) 9. Subjective reasonableness: can include unique physical, mental, psychological characteristics 10. Purely subjective standard: whatever D actually believed, even if it was completely unreasonable by any standard [actual belief is also a requirement under objective and subjective reasonableness standards] xi. Goetz: they call it an objective reasonableness standard but they take into account D's past experiences and perceptions- so not a purely objective standard. (And considering the proportionality requirement where D's acts in self-defense caused death, we must ask if being outnumbered and cornered justifies the first shot or two, but not after they retreated) xii. Simon: man paranoid that Asians will attack him. Defense must try to show that this is reasonable by making racial slurs, statistics. Simon would be convicted under pure objective standard as well as objective reasonableness standard, because even considering his experiences his paranoia is unreasonable, and we're not willing to go to the subjective standard. 11. Imperfect self-defense: When D's belief about the

circumstances permitting defensive force is unreasonable? Three competing rules: xiii. CL: if D kills based on an unreasonable belief in the necessity to kill, or in the existence of a deadly threat, or if D was the initial non-deadly force aggressor, D's liability is mitigated from murder down to manslaughter (a partial excuse) xiv. MPC 3. 09: If D's belief is reckless, he is guilty of a recklessness offense (manslaughter or assault); If D was negligent, it was negligent Homicide or assault. xv. The all-or-nothing rule: at common law, in MN, and in many states, if all self-defense requirements are not met there's no defense or mitigation at all- if D's belief is not reasonable, you cannot raise self-defense in MN. 5) Defense of another: 12. CL Act at Peril Rule: defender of another stands in the shoes of the person being defended; he/she therefore takes the risk that, despite all reasonable appearances, the person being defended was NOT justified (eg, the person was resisting lawful arrest) xvi. People v Young: act at peril. Undercover police officers arresting someone. 13. MPC 3. 05: defender may act on reasonable appearances. Moreover, even if D's belief is NOT reasonable, MPC only makes D liable for a crime of recklessness or negligence 6) Defense of habitation: 14. Trad CL: D could use any force necessary if he reasonably believed the force was necessary to prevent an imminent unlawful entry 15. Modern CL: Deadly force is permitted only when occupant reasonably believes such force is necessary to prevent imminent unlawful entry and the intruder intends to commit a felony or cause injury to the occupant or another occupant in the dwelling. xvii. Problem: you don't know what they intend to do. But if they have a weapon or are screaming that they will kill you, you're safe in defending yourself. 16. MPC 3. 06: Use of force is justified to prevent

trespass, theft, etc or to retake property, BUT must ask trespasser to desist (unless useless, dangerous), or harmful to property. Can use non-dangerous devices. 17. People v Brown: What constitutes a residence? xviii. Reasonable expectations test: whether the nature of a structure's composition is such that a reasonable person would expect some protection from unauthorized intrusions

Necessity

1. Justification defense. Often used where people protested laws by breaking law, but not usually successful there; more likely to be successful where D acted in the interests of the general welfare. i. Schoon: there can be no necessity defense to indirect civil disobedience (fake blood on IRS walls). ii. Hutchins: necessity cannot justify cultivation of medical marijuana. Court says don't grow your own, wait for legislature to legalize it.

2. Generally: sometimes the greater good is better served by breaking the law than by obeying it. Applies where the harm caused by breaking the law is less than the harm avoided by the action. (CL determines this from objective perspective, MPC, subjective)

3. Common Law Elements: Objective standard

i. D reasonably (if D's belief was unreasonable there is not defense or mitigation) believed

ii. D's criminal act was necessary to prevent

iii. Imminent harm (the harm cannot have been created by the D) greater than the law which was charged was designed to prevent

iv. There was no express or implied legislative preclusion of the necessity defense here

10. In context of Dudley: Prosecutor would argue Dudley created the harm, and so couldn't use the defense

11. Defense would argue that murder was lesser than all four men dying- but would have to be MPC, not CL, b/c CL allows no justification for death of an innocent.

4. MPC 3.02(1) Approach to Necessity: Subjective standard

i. D believed

ii. D's criminal act was

necessary to prevent iii. Harm (this can include harm threatened by another person as well as nature, and the harm need not be “imminent”) greater than the charged criminal behavior the law was designed to prevent iv.

PROVIDED: The harm sought to be avoided is greater than greater than the harm incurred; there is not express or implied legislative preclusion of the necessity defense 1. Ask about the following: MPC provides some middle ground- recklessness or negligence. Applies throughout category of AD’s.

That is, if you believe but your belief is unfounded, it may be reckless, and you can be charged with a reckless act instead of the full blown crime that you thought you had a defense from. v. 3. 02(2): If D is reckless or negligent in creating the situation or in appraising the necessity, D is liable for any applicable crime of recklessness (e. g. manslaughter) or negligence 5.

Necessity in context of Dudley to make it more clear: i. No necessity defense because killing an innocent is never justified, applying CL. MPC might have allowed him that excuse. Even through the MPC, if we’re evaluating the recklessness or negligence of his subjective belief, we’re still moving towards objective, because under negligence we care about the reasonable person.

In recklessness, we care about the “law abiding” person. The difference is not obvious. 6. Similarities/Differences B/W CL and MPC i. Similar: Both use a balancing of the harms ii. Different: Under MPC there is no imminence requirement; CL suggests that necessity is not a defense to homicide b/c it can never constitute the greater good to kill an innocent person Excuse

Defenses: 1. D says, “I did wrong, but I should not be punished.” 2. D is not morally blameworthy, and/or not deterrable and/or not dangerous. 3. Ex: duress, insanity, some self-defense claims 3 Categories of excuse defenses

1. Involuntary Actions i. Actions caused by D's body, but which are not the product of her mind (sleep walking, involuntary intoxication) 2. Actions related to Cognitive Deficiencies ii. Actions which are caused by an actor who does not understand the nature of her conduct and whether it is right/wrong, legal/illegal 3. Actions relating to Volitional Deficiencies iii. Actions which are voluntary, but which are taken by an actor Duress 1. Trad. CL: i. D (without prior fault- there's a defense if D was at fault in getting into that situation) was coerced to commit the charged criminal act. ii. By an actual or reasonably (if D's belief was unreasonable there is no defense or mitigation) believed threat of imminent unlawful death or great bodily harm to D or a near relative if D did not commit the crime (this defense only excuses the specific criminal act demanded by the threatener, and never excuses homicide); and iii. D had no (legal) way to escape the threat. 2. MPC 2.09 Duress: i. D, without prior fault (there is no duress defense if D recklessly put himself in a position where such a threat was probable; if D was merely negligent in putting himself in that position, he is guilty of any applicable crime of negligence; if no such negligence crime applies, D has no liability), was coerced to commit the charged criminal act (this can include acts not demanded by threatener, + homicide) ii. By threat of unlawful force against his person or the person of another iii. That a person of reasonable firmness in D's position (PORF) would have been unable to resist. 1. Example of putting yourself in a situation where duress is likely is joining a gang 2. If you are under duress and you are told to commit one crime and you have to commit another crime to get there, duress can be a defense to that crime, too- assault on the way to a robbery iv. Distinct from CL in that duress is not

limited to situations involving threats of death or serious bodily harm; No explicit imminence requirement 7) Duress v Necessity: 18. Necessity: xix. Focuses on the consequences of the harming action and the concrete alternatives facing D xx. Assumes that D acts in a way that the law seems to approve and encourage (and is therefore “justified”) 19. Duress: xxi. Focuses on the way in which the choice is made and the extent to which it reflects the free will of the actor xxii. Assumes that D acts in a way that is regrettable and deserves to be discouraged, but that special circumstances makes the conviction inappropriate and unfair 12. Contento-Pachon: swallows cocaine, raises defense of duress. Court looks at the immediacy and escapability of the threat. D just has to meet preponderance standard- just needs to raise a question for the jury, no need to actually prove duress. 8) Intoxication: Voluntary and Involuntary 20. CL Voluntary Intoxication xxiii. Whether D can argue voluntary intoxication depends on whether or not the crime they are charged with is a general or specific intent crime 13. Inadmissible when general intent b/c it is only intent to do the actus reus 14. Admissible for specific intent crimes but D must still show that b/c intoxicated, she lacked the specific intent required for commission of the crime 21. CL Involuntary Intoxication xxiv. Some jurisdictions allow evidence of involuntary intoxication to be admitted to negate either specific or general intent xxv. Most jurisdictions allow involuntary intoxication to be the basis for temporary insanity Some jurisdiction only allow only this second use of involuntary intoxication defense to stand if it caused the D to become temporarily insane 22. MPC 2. 08(4-5) xxvi. Distinguishes 3 types of intoxication. Any form of intoxication is a defense if it negates an element of

the offense. Mens rea is broadly applied (except in the case of recklessness- a person acts recklessly as to an element of the crime if, as the result of the self-induced intoxication, he was not conscious of a risk of which he otherwise would have been aware had he not been intoxicated) 15.

Voluntary (“ Self Induced”) Intoxication 16. Pathological Intoxication 17.

Involuntary (“ Non self-induced”) Intoxication h. Pathological and involuntary are affirmative defenses if the intoxication causes D to suffer from a mental condition comparable to that which constitutes insanity under MPC 2. 08(4)

xxvii. Commonwealth v Smith: Intoxication produced by mixing of

prescription drugs and alcohol is not involuntary even if without knowledge of synergistic effects. 18. 4 situations which I. I. admissible i. Intoxication

caused by fault of another (force, duress, fraud, contrivance) j. Caused by

innocent mistake of D (taking LSD thinking its advil) k. D unknowingly suffers from physiological/psychological that renders him abnormally susceptible to legal intoxicant l. Unexpected results from medically prescribed drug 9)

Competence to Stand Trial: 23. In question is D’s ability to understand the legal proceedings as they are taking place, not about D’s competence at the

time of the crime. 10) Insanity Defense 24. In question is D’s ability to resist the impulse for crime, know right from wrong; questions D’s ability based on

the time of the incident itself. 25. Tests: xxviii. M’Naghten Rule: a

right/wrong test- looks at COGNITION; focus is on D’s mental state 19. A

person is legally insane if, at the time of committing the act, he was laboring under such a defect of reason, from disease of the mind, as:

m. Not to know the nature and quality of the act; OR n. If he did know it, that he didn’t know

it was wrong. 20. Criticisms: o. too narrow; looks only at cognition p. Does

wrong mean legally wrong? Morally wrong? Morally wrong according to D personally, or society? Courts split. xxix. Irresistible impulse test: focus is on volition, inability to control acts 21. A person is legally insane if, as the result of mental disease or defect, she " acted with the irresistible and uncontrollable impulse, " or " if she lost the power to choose between right and wrong, and to avoid doing the act in question, as her free agency was at the time destroyed. " 22. Criticisms: Too narrow- looks only at volition. xxx. Durham Test: focuses on testimony of psychiatrists 23. An accused is not criminally responsible if the unlawful act was the product of mental disease or defect. " Mental disease or defect" is " any abnormal condition of the kind which substantially affects mental or emotional process and substantially impairs behavior control. " 24. Criticisms: Focuses too much on expert testimony, to the point where the role of the jury is usurped- rubber-stamping an expert. xxxi. MPC 4. 01 — combination of M'Naughten and Durham- cognitive + volitional 25. A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to: q. Appreciate the criminality (wrongfulness) of his conduct (cognitive) r. Or to conform his conduct to the requirements of the law (volitional) 26. The terms " mental disease" or " defect" do not include an abnormality manifested only by repeated criminal or other anti-social conduct. 27. Appreciate: wrongfulness is a matter of degree, so that is an improvement on M'Naughten test. Appreciate is a higher threshold- you assume some level of knowledge, but it is to internalize that knowledge and determine whether that informs your conduct. 28. But still requires a good deal of expert testimony 29. Conform

his conduct: allows for a broader range of D's than the irr. Imp. Test- includes people who have had time to cool off, not just those who had a momentary impulse. 30. Options: you can choose wrongfulness or criminality- both terms are included. Another improvement. 31. Note that the volitional and cognitive prongs are both modified by "and"