* ***Introduction***
  + “actus non facit reum, nisi mens sit rea” or an unwarrantable act without a vicious will is no crime at all
  + Mens rea in the broad sense is the body of qualification and exceptions to liability for criminal acts referring to the blameworthiness entailed in choosing to commit a criminal wrong
  + Mens rea in its narrow sense is a formal/technical requirement that refers to the awareness or intention that must accompany a prohibited act
  + *Material Elements of an Offense* are those which do not relate exclusively to the statute of limitations, jurisdiction, venue, or any other matter similarly unconnected with (i) the harm or evil sought to be prevented or (
  + I.e. elements involving (1) action (2) attendant circumstances and (3) results
* ***General Requirements of Culpability (2.02)***
  + **Purposely (2a)**
    - If conduct/result element 🡪 conscious object to engage in conduct of that nature / to cause such a result
    - If attendant circumstance 🡪 aware that they exist or believe or hope that they exist
    - *Conditional Purpose (2.02(6))*
      * Purpose may be established although conditional unless the condition negates the harm or evil sought to be prevented -- i.e. “I will use force if necessary”
  + **Knowingly(2b)**
    - If conduct/attendant circumstances 🡪 aware of his conduct or the attendant circumstances
    - If result element 🡪 aware that it is practically certain his conduct will cause such a result
    - *High Probability / Willful Blindness (2.02(7))*
      * If knowledge of a particular fact is an element 🡪 aware of a high probability of its existence unless true belief that it does not exist
    - Willfulness = Knowing (8)
      * If requirement of willfulness 🡪 satisfied if one acts knowingly with respect to the material elements of the offense unless further purpose is imposed by statute
  + **Recklessly(2c)**
    - If material element 🡪 Conscious disregard of a substantial and unjustifiable risk that the element exist or will result from his conduct
    - Disregarding the risk must involve a gross deviation from reasonable standard of conduct
  + **Negligently(2d)**
    - If material element 🡪 Should have been aware of substantial and unjustifiable risk that the element exist or will result from his conduct
    - Failure to perceive the risk must involve a gross deviation from reasonable standard of care
  + **Minimum Requirements (1,3,4,5)** 
    - (1) Mens rea applies to all material elements of the offense and (3) when not proscribed by law the default is purposely, knowingly, or recklessly
    - (4) Any proscribed culpability applies to all material elements unless distinguished or a contrary purpose plainly stated
    - (5) Higher mens rea may substitute for lower proscribed mens rea and (10) the degree of an offense is established by the lowest culpability proven with respect to any material element of the offense
  + **Common Law Mental States**
    - Malice 🡪 Recklessness
    - Negligence 🡪 Criminal Negligence or Civil Negligence (argue for one based on moral condemnation
    - Willfully / Wantonly 🡪 Knowingly
  + **Mandatory Presumptions / Permissive Inferences**
    - *Mandatory presumptions* are used to facilitate proving awareness or intent when such is an element -- Presumptions dilute the requirement of proof beyond a reasonable doubt so the Supreme Court has placed strict limits on their use
      * A person is presumed to intend the natural and probable consequences of his acts
      * Constitutional only when we can have confidence that over all criminal cases in general, the presumed fact will always be present when the fact using to trigger that presumption is present
    - Due to limits, *permissive inferences* are generally used -- the judge informs the jury about a factual conclusion that may be drawn but is not required to be drawn
      * I.e. the inference that “possession of recently stolen property, if not satisfactorily explained, is ordinarily a circumstance from which the jury may infer knowledge that the property is stolen
      * Allowed when the conclusion is more likely than not to be true under the circumstances of the case
  + **Cases**
    - *Regina v. Cunningham*
      * Facts: Δ stole gas meter; gas leaks into house next door and poisons old lady; convicted on instruction whether he “caused to be taken by unlawful and malicious action”
      * Issue: Malice as to conduct or result?
      * Held: Malice requires recklessness as to whether such harm could occur, not just conduct that is reckless in itself
    - *Regina v. Faulkner*
      * Facts: Δ sailor went to steal run from ship’s hold; lit match and started a fire burning the whole ship down -- instruction that mens rea was not required if engaged in committing a separate felony
      * Issue: Can intent be transferred between felonies?
      * Held: Even while engaged in commission of one felony, one is not responsible for results not reasonably foreseen; the acts consisting the second offense bust be “in fact intentional and willful”
    - *State v. Hazelwood*
      * Facts: Criminal prosecution of Exxon Valdez oil spill; Jury convicts under a civil negligence standard
      * Issue: Is criminal negligence required?
      * Held: Criminal Negligence required but conviction upheld under “gross deviation” standard
      * Dissent: Argues imprisonment is sufficiently severe that it should not be imposed for conduct representing only a deviation from reasonableness
* ***Mistake of Fact / Mistake of Law***
  + **Ignorance or Mistake (2.04)**
    - (1) Ignorance/Mistake to as to fact or law is a defense if 🡪 the mistake negates mens rea of a material element **or** the law provides a defense for ignorance/mistake (Strongest under knowingly)
    - (2) The defense is not available if Δ would be guilty of another offense had the situation been as he supposed -- in such case the mistake shall reduce the grade and degree to that offense which he would be guilty had the situation been as he supposed (MPC Lesser Crime Principle)
    - (3) A belief that conduct is legal is a defense when (a) the statute is not known / reasonably made available or (b) acts in reasonable reliance on an official statement of law determined afterward to be invalid or erroneous if contained in
      * (i) an statute (ii) a judicial decision/opinion (iii) an administrative order or grant of permission or (iv) an official interpretation by one charged with responsibility for interpretation, administration, or enforcement of the law defining the offense
    - (4) Preponderance of the evidence standard
  + **Moral-Wrong Principle (Common Law)**
    - Reflects the view that we learn our duties not by studying the statute book but by living in a community -- as such a defense of mistake rest ultimately on proving Δ has observed the community ethic (*Prince/ Olson*)
    - Note: Imposing strict liability for offenses such as Statutory Rape under the Moral-Wrong principle is beginning to erode -- England abandoned *Prince* in *B(A Minor)*
  + **Lesser-Crime Principle (Common Law**
    - If you believe you are committing a lesser crime but in reality are committing a more serious crime, you are culpable for the larger crime even though there is a mistake of fact (*Olson*)
    - Moral Wrong / Lesser Crime remain critical in offenses involving minors, drugs, and sex
  + **Framework**
    - [MPC] (1) Determine Material Elements (2) Determine the applicable mens rea (3) Try to find a mistake which disputes one of the material elements
    - [Common Law] (1) Break the statute into material elements (2) Look at the remaining elements (3) decide if these elements make the crime a moral wrong or a legal wrong (4) Argue that Δ was not aware of the moral/legal wrong (4) Throw in legislative intent / public policy arguments
  + **Cases**
    - Regina v. Prince
      * Facts:Δ convicted of taking an unmarried girl of 16 out of father’s possession; claimed she told him she was 18 and he had no reason to know
      * Issue: Does Mens Rea have to be implied where not given?
      * Held: The forbidden act is wrong in itself; if anyone commits this moral wrong they do so at risk the girl is under 16 -- Basis of Strict Liability in statutory rape cases
    - People v. Olsen
      * Facts: Δ convicted of lewd or lascivious conduct with a child under 14 -- girl was Δ’s GF, claimed she was over 16, and reasonable appeared as such
      * Issue: Can a reasonable good-faith belief be a defense?
      * Held: Strict Liability to protect children of tender age reflect a strong public policy; even at 16 the act is criminal so mistaken age simply yields greater punishment
      * Dissent: Strict Liability crimes should be confined to “regulatory” or “public-welfare” offenses where penalties are relatively small and conviction does no grave damage to reputation -- not where Δ is engaged in otherwise legal conduct
    - B (minor) v. Director of Public Prosecutions
      * Facts: 15 yr old repeatedly ask 13 yr old for oral sex -- charged which inciting a child under 14 to commit an act of gross indecency -- accepted at trial Δ honestly believed the girl as older but no defense allowed
      * Issue: Is the lack of mens rea still designed to protect children?
      * Held: There is no general agreement that strict liability is necessary for enforcement of age related crimes and the legislator made no exception to the common law presumption of implied mens rea -- Introduces *Honest Belief Defense*
      * Concurrence: Prince is out of step with the modern trend of criminal law; Δ should be judged on the facts as he thought them to be\
    - Garnett v. State
      * Facts: 20 yr old retard with brain of 11 yr old is tricked by 13yr old and her friends into having sex with her under belief she is 16
      * Issue: Damn that’s fucked up (5 year suspended sentence)
      * Held: Although Moral Wrong / Lesser Crime have their problems, the statute clearly precludes a defense -- Δ must rely on the tempering discretion of the judge at sentencing
* ***Mistake of Law***
  + **Culpability as to Illegality of Conduct (2.02(9))**
    - Unless knowledge of illegality is provided as an element of an offense, the absence of such knowledge, nor recklessness/negligence with regard to such knowledge, does not excuse the illegal conduct
    - Note: Courts have generally construed federal criminal laws to require knowledge of legality -- In some “awareness of the specific statute at issue” (*Cheek*) -- in some cases a more general “awareness that the acts committed are unlawful” (*Liparota*) -- lowest being ” awareness of the facts constituting the offense” (*International Mineral*) (Drug Offenses)
  + **Ignorance or Mistake (2.04)** 
    - See Mistake of Fact
  + **Cultural Defense**
    - There is no substantive “Cultural Defense” in terms of law -- but such may effect DA/Judicial discretion or a jury decision to convict
    - Generally used by recent immigrants to dispute conduct which is not criminal in their home country
  + **Policy Rationales** 
    - Mistake of Law doctrine presumes everyone knows the law, not to guarantee the law is adequately communicated but limited uncertainty about the law can deter harmful behavior by promoting caution and restraint
    - Reinforces a view that individuals should be aware of society’s moral perceptions and such is a better guide to action than the law itself
    - Without this rule, willful blindness to the law would be rampant
  + **Framework**
    - (1) Explicit mens rea demonstrating awareness (knowing/purposively) (2) Implicit awareness required (mostly federal offenses) (3) “Official Statement” reliance or (4) Constitutional DPC concerns
    - Argument: If conduct falls into “otherwise legal conduct” then you have a stronger argument for higher awareness i.e. aware that conduct is unlawful
  + **Cases**
    - People v. Marrero
      * Facts: Correction officer convicted of caring unlicensed .38 caliber in the strip club despite statutory exemption for “peace officers” because he was a federal officer not a state officer
      * Issue: Is Δ’s literal reading of the statute fall under “official statement” exception for mistake of law?
      * Held: The statute must be “invalid or erroneous” -- Δ’s wrong interpretation does not invalidate the statute
      * Dissent: No need for categorical preclusion; doctrine had more force in ancient times when most crimes were by their nature evil and not legislation making otherwise lawful conduct criminal
    - Cheek v. United States
      * Facts: Δ considered the tax code unconstitutional and refused to pay taxes; instruction required the mistake of law to be objectively reasonable
      * Issue: Must a good faith belief be objectively reasonable?
      * Held: By making the laws so complicated, Congress required specific intent where the jury must find whether Δ was aware of the specific provision; however Δ shows full knowledge of provisions and must run the risk of his wrong conclusion
    - U.S. v. International Minerals & Chemical Corp
      * Held: Court held that “knowingly violate” meant only that the actions Δ knowingly committed violated the regulation -- not knowledge of the illegality of such action
    - Liparota v. United States
      * Facts: Dealt with Food Stamp fraud; statutory language was “knowingly uses”
      * Held: Court held the prosecution must prove Δ knew of the existence and the meaning of the relevant regulation; otherwise a broad range of apparently innocent conduct would be criminalized
    - Lambert v. California
      * Facts: LA County felon registration law applied to visitor arrested on suspicion of another offense
      * Issue: Does this act penalizing otherwise lawful conduct applied to someone with no knowledge violate the DPC?
      * Held: Legislation violates DPC as applied to one who had no knowledge or probability of knowledge; the requirement of notice is violated when one is charged for wholly passive conduct
* ***Strict Liability***
  + **Strict Liability (2.05)**
    - (1) Mens rea does not apply to (a) violations or (b) statutory offenses clearly imposing strict liability
    - (2) Any strict liability offense constitutes a violation [offenses that cannot result in imprisonment or probation but may result in fines (1.04(5))]
    - Default (2.02(3)) When a statute is silent, you read in recklessness
  + **Public Welfare Offenses v. Common Law Incorporation**
    - In general, the common law allows strict liability for public welfare offenses (create no direct or immediate injury but merely create the danger or probability of danger the law seeks to minimize). (Morissette)
      * Criminal wrongs incorporated into statute from the common law maintain such protection as mens rea affords
    - Meaning -- most federal offenses do not have mens rea since they are violations of a regulatory scheme
  + **Moral Wrong-Principle (Strict Liability)**
    - Basis for strict liability in statutory rape -- since the crime is morally wrong in itself, there is no required mens rea
  + **Reasonable Care Defense** 
    - Δ may avoid strict liability though an affirmative defense showing he was not negligent -- based off an assumption that Δ could have avoided the prima facial offense through the exercise of reasonable care
      * Upheld as “absence of blameworthy conduct” by 9th Cir.
  + **Otherwise Innocent Conduct**
    - SCOTUS presumes an implied mens rea in each statutory element which criminalizes otherwise innocent conduct (*X-Citement*)
    - Criminal penalties imposed through vicarious liability for strict liability offenses violate the DPC, only civil penalties are allowed (*Guminga*)
  + **Cases**
    - Regina v. Prince
      * Facts:Δ convicted of taking an unmarried girl of 16 out of father’s possession; claimed she told him she was 18 and he had no reason to know
      * Issue: Does Mens Rea have to be implied where not given?
      * Held: The forbidden act is wrong in itself; if anyone commits this moral wrong they do so at risk the girl is under 16 -- Basis of Strict Liability in statutory rape cases
    - Morissette v. United States
      * Facts: Δ charged with “knowingly converting” government property -- rusted bomb castings from desert which Δ thought had been abandoned
      * Held: Congressional silence in an act adopting a well defined concept of crime from the common law into federal statute is different than creating a new offense to general law -- mens rea is not implied in public welfare offenses but is in those incorporated
    - Regina v. City of Sault Ste. Marie
      * Held: Establishes affirmative defense; exercise of reasonable care by preponderance of the evidence -- such is the middle ground between full mens rea and strict liability
    - Staples v. United States
      * Facts: Conviction overturned for Δ possessing semi-automatic with worn down file, making weapon automatic and a violation of the National Firearms Act
      * Issue: Can a felony offense be considered a public welfare offense?
      * Held: Statutes must be construed in light of firmly embedded common law principles such as mens rea in any felony offense -- public welfare rational cannot dispense with mens rea in felonies
    - United States v. X-Citement Video
      * Facts: Child Porn charge for video reseller
      * Held: There is a presumption in favor of mens rea for each statutory element that criminalizes otherwise innocent conduct even where “knowingly” is not present
    - United States v. Balint
      * Facts: Δ convicted under 1914 Narcotic act for selling opium products without order form required by statute
      * Issue: Can one not aware his conduct was prohibited be charged?
      * Held: Regulation with an emphasis on social betterment and not punishment would otherwise be obstructed by implying mens rea -- Legislator preferred innocent purchasers to innocent sellers
    - United States v. Dotterweich
      * Facts: Drug repackager convicted under the FDA Act for shipping misbranded products -- Jury acquitted the company but convicted the CEO for the offense
      * Issue: Is Mens Rea required for statutory penalty to be assessed?
      * Held: Legislation whereby penalties serve as effective means of regulation dispense with the conventional requirement of Mens Rea (civil) -- this legislation serves those who are otherwise largely beyond self-protection
    - State v. Guminga
      * Facts: Δ, off-duty bar owner, convicted for waitress who served a minor alcohol
      * Issue: Does criminal prosecution for vicarious liability offend the DPC?
      * Held: No one can be convicted of a criminal offense for an act he did not commit, have knowledge of, or give express or implied to the commission thereof
* ***Legality*** 
  + Generally
    - Legality requires conduct is (1) criminal as defined by statute (2) contain sufficient notice (3) cant be applied retroactively (4) cant be vague
  + **The Legality Principle** 
    - “*NULLA POENA SINE LEGE*” -- No punishment without law -- this is an ancient doctrine of criminal law and stems from the need to give fair warning as to conduct that is illegal -- also controls the discretion of police, prosecutors, and juries
    - This principle bars both retroactivity and vagueness -- requiring reasonably clear terms such that the average person can understand
  + **The Principle of Lenity**
    - Lenity is applied to favor the Δ in cases of “grievous ambiguity or uncertainty in a statute
    - Considered a doctrine of lase resort, reserved for situations where reasonable doubt priest after resort to language, history, and purpose
    - Applies only in Criminal Cases
    - MPC gives lenity no consideration at all
  + **Cases**
    - Commonwealth v. Mochan ( No longer applied generally)
      * Facts: Δ convicted of making numerous calls to married woman attempting to get her to cheat -- Δ appealed arguing his actions did not constitute a misdemeanor at common law
      * Issue: Can new common law charges be added?
      * Held: Allows brand new common law charge to stand -- “common law is sufficiently broad to punish, by misdemeanor, any act which directly injures or tends to injure the public to an extent deserving of punishment (openly outrages decency/injurious to morals)
    - McBoyle v. United States
      * Facts: Δ convicted of knowingly transportation a stolen airplane under the National Motor Vehicle Theft Act -- statute contained general term “any other self-propelled vehicle”
      * Issue: Can the general be construed to include airplanes?
      * Held: No, although a criminal is not likely to consult the statutory text before acting, principles of fair warning require the general be limited by the everyday usage of the terms which apply to a thing moving on land
    - United States v. Dauray
      * Held: Applies the rule of lenity to favor Δ convicted of possession 13 unbound photos of minors when the same possession in a bound notebook would not be illegal -- ambiguity not resolved after resort to traditional methods of interpretation
    - Keeler v. Superior Court
      * Held: Unforeseeable judicial enlargement of a criminal statute applied retroactively operates precisely like an ex post facto law and is forbidden by CA constitution
    - Rogers v. Tennessee
      * Facts: Butcher knife stabbing, coma over one year before death -- year + one day rule from common law abandoned retroactively
      * Issue: Does abandoning common law doctrine operate as an ex post facto law
      * Held: The Ex pose facto prohibition does not apply to courts by its own terms -- judges have substantial leeway to reevaluate common law doctrines as necessary to conform the doctrine with common sense provided such is not “unexpected and indefensible”
* ***Voluntary Action (2.01)***
  + **Voluntary Action / Omission / Possession** 
    - (1) A person is not guilty unless liability is based on conduct which includes (a) a voluntary act or (b) the omission of an act he is physically capable of perform
    - (2) The following are not voluntary acts: (a) a reflex or convulsion (b) bodily movement while unconscious/sleep (c) conduct during hypnosis or (d) movement otherwise not a product of the effort or determination of the actor, either conscious or habitual
    - (3) Liability may not be based upon omission unaccompanied by action unless (a) the omission is expressly sufficient by the law defining the offense or (b) the duty to act is otherwise imposed by law
    - (4) Possession is an act if the actor (a) knowingly procured or received the thing or (b) was aware of his control for a sufficient period to have been able to terminate his possession
  + **Note**
    - Involuntary action is not a defense -- the presence of voluntary action must be established beyond a reasonable doubt
* ***Omissions***
  + **MPC Formulation** 
    - (2.01(3)) [Above]
  + **Common Law Affirmative Duties**
    - (1) Imposed by statute (2) special relationship (3) one has assumed contractual duty (4) one voluntarily assumed the care of another so as to seclude the person and prevent others from rendering aid (5) created the risk/peril
  + **Good Samaritanism / Duties of a Bystander**
    - A total of six statutes have good Samaritan laws on the books -- 3/6 are limited to situations where the person in peril is the victim of a crime; some being only the victim of sexual assault
  + **Omission as Causation** 
    - Courts and MPC alike are uniformly willing to treat omission of a duty as the legal cause of injuries -- i.e. babysitter doesn’t rescue drowning child
    - Note: Most criminal liability for omissions is imposed through involuntary manslaughter -- murder can be charged if Δ refused aid with the intention of killing or w/ full knowledge of high risk of death
  + **Cases**
    - Jones v. United States
      * Facts: Δ convicted of involuntary manslaughter for failure to provide for 10 month old baby
      * Issue: Must the jury find a legal duty in order to prosecute a crime of omission?
      * Held: Yes, finding of a legal duty is a critical element of a crime of omission; failure to instruct as such is plain error
    - Pope v. State
      * Facts: Δ, churchgoer, allowed random mother to stay at her home -- mother has insanity episode and kills child; Δ did not protect child, call authorities, or seek medical attention
      * Issue: Can one assume the affirmative duty of childcare simply by offering room & board? (No contract as in case of babysitter)
      * Held: There is no basis for imposing a duty where one “believes a parent is incapable of caring for their child” -- such a subjective judgment cannot divest parents of their rights & obligations
    - Barber v. Superior Court
      * Facts: Doctor charged for removing life support from surgery patient who suffered a heart-attack resulting in a coma
      * Held: The removal of life support is not an affirmative act but omitting further treatment -- a physician has no duty to continue treatment once it has proven ineffective
      * Note: Although there may be a duty to provide support in the immediate aftermath, there is no duty to continue futile medication
    - Airedale NHS Trust v. Bland
      * Facts: House of Lords faces the “life support” question
      * Held: The law draws the distinction between omitting further treatment that could prolong life -- an situations where the doctor actively brings his patients life to an end through some drug or medicine
* ***Significance of the Resulting Harm (Causation)***
  + **Relationship Between Conduct & Result (2.03)**
    - (1) Conduct is the cause when (a) there is but-for causation and (b) any additional requirements imposed are met
    - (2) When purposely or knowingly is required under the result element, the element is not established if the actual result is not within the purpose or contemplation of the actor unless
      * (a) transferred intent or (2) more serious injury was contemplated
      * (b) The actual result involves the same kind of injury as was intended/contemplated and is not too remote/accidental
    - (3) When recklessly or negligence is required under the result element, the element is not established if the actual result is not within the risk of which the actor is aware (reckless) or should have been aware of (neg.) unless
      * (a) transferred intent or (2) more serious injury was contemplated
      * (b) The actual result involves the same type of injury as the probable result and is not too remote/accidental
    - (4) Under strict liability, the element is not established unless the actual result is a probable consequence of the actor’s conduct
  + **Factual Cause / But-For Causation**
    - Factual cause is generally treated as an invariable prerequisite to criminal liability -- courts continue to insist “but-for” causation be shown even where Δ deprives the victim of a chance of survival
  + **Specific Triggering Cause**
    - NY Courts have a doctrine requiring proof of the “specific triggering cause” of an injury resulting from a generally foreseeable risk -- limited to context involving “a commercial or manufacturing process” and held inapplicable where fires to fatalities in residential or other settings
  + **Superseding Cause**
    - In general, to absolve liability Δ must prove the superseding cause was the sole cause of the injury (Arzon / Shabazz) -- any superseding cause should atleast be submitted to the jury (Main)
    - In general, you can also be convicted if Δ’s conduct could be a proximate cause (McFadden)
  + **Subsequent Action**
    - Be aware of (1) subsequent action intended to produce the results and (2) subsequent action which recklessly risk the results
      * Essentially must show that in the initial action, there was probable cause to believe the injury was a direct and natural consequence
    - Assisted Suicide
      * Generally, one who successfully urges or assist another to commit suicide if not guilty of murder as long as the deceased was mentally responsible and not forced, deceived, or subject to pressures rendering his action partly involuntary (MPC 210.5(1))
  + **Cases**
    - People v. Acosta
      * Facts: Two helicopters crash while pursuing Δ in police chase -- Δ suggested suspicious pilot maneuvering as superseding cause
      * Issue: Can Δ evasion be held a proximate cause of the crash?
      * Held: When evidence shows an injury is a possible consequence which reasonably might have been contemplated -- it could reasonably be a proximate cause (Reversed for insufficient evidence of malice)
    - State v. Montoya
      * Facts: Man shot by private body guard, driven by Δ to the woods -- testimony established only immediate medical attention “could have” saved the victim’s life
      * Held: Δ acquitted because prosecution unable to show beyond a reasonable doubt that “but for” Δ’s actions the victim have would survived
    - State v. Muro
      * Facts: Father beat daughter fracturing her skull; upon arrival mom waits hours before seeking medical attention; daughter passed that night
      * Issue: Can the Mom be held as an accomplice to murder?
      * Held: Conviction reversed -- because the state proved only a possibility of survival with earlier treatment, it failed to prove “but-for” causation beyond a reasonable doubt
    - People v. Arzon
      * Facts: Δ starts fire on 5th floor; subsequent fire on 2nd combines to cause death of a fireman
      * Issue: Does the inability to establish sole responsibility preclude murder charges?
      * Held: It is not necessary that the ultimate harm be intended by the actor, the ultimate harm must be something which should have been foreseen as reasonably related to Δ’s conduct -- Δ’s conduct need not be the sole factor but an indispensable link in the chain
    - People v. Warner-Lambert Co
      * Facts: Δ, corporation and officers, indicted for 2nd degree manslaughter for plant explosion -- Δ’s had prior warning of two potentially explosive substances in manufacturing process
      * Issue: Can negligence (foreseeable risk, failure to remove) establish proximate cause to the explosion
      * Held: It is not enough that death occurred as a result of Δ’s inaction; the ***specific triggering cause*** must be reasonably foreseeable at the time of commission (i.e. warning before the moment of explosion)
    - State v. Shabazz
      * Facts: Δ stabbed victim, victim died the following morning due to heavy bleeding resulting in part from gross negligence on the hospital’s part
      * Held: Gross negligence may permit Δ to escape liability only when such negligence was the sole cause of death -- at bar the hospital was not the sole cause so conviction affirmed
    - United States v. Main
      * Facts: Δ veered off road while fleeing a traffic stop, collides with an obstacle trapping the victim inside who suffocated after an officer decided not to move for fear of aggravation
      * Issue: Is refusal to instruct the jury that it could find Δ’s actions were not the probable cause of death wrong?
      * Held: It may be that failure to receive prompt medical attention is not an unlikely hazard and thus reasonable foreseeable, but that judgment remains one for the jury -- Conviction reversed
    - People v. Campbell
      * Facts: Angry with victim for having sex with his wife, Δ left drunk victim with a gun and encouraged him to commit suicide
      * Issue: Can action intended to product the result be the basis for one who subsequently completes the action?
      * Held: Δ has no present intention to kill although he may have provided the weapon and hoped V would kill himself -- unless Δ takes action intended
    - People v. Kevorikan
      * Facts: Δ charged with 2 counts of murder for assisting in suicide through a homemade suicide machine
      * Held: Murder dismissal remanded; where there is probable cause to believe death was the direct and natural result of Δ’s actions, murder may be sustained
    - State v. McFadden
      * Facts: Victim lost control of car while drag-racing Δ and crossed lanes hitting another car and killing another third party
      * Issue: Can the tort concept of “proximate cause” be used to convict Δ based on his reckless action
      * Held: Conviction allowed; the acts of two or more may work concurrently as the proximate cause of an injury -- requirements of foreseeability and recklessness will prevent the possibility of harsh/unjust results from this lowered standard
    - Commonwealth v. Atencio
      * Facts: Drunk Russian roulette, one dies
      * Issue: Can Δs be charged although the victim undertook voluntarily
      * Held: There may have been no duty to prevent V from playing, but there was a duty not to cooperate or join in the game -- the state has an interest in prohibiting wanton or reckless conduct found by the cooperation -- as opposed to civil bar for voluntary action
* ***Attempt***
  + **Introduction** 
    - At common law, attempts were misdemeanors -- today attempt is generally a reduced factor of the punishment for the completed crime
    - A substantial minority of states follow the MPC and punish attempt the same as the completed crime
  + **Inchoate Crimes / Criminal Attempt (5.01)** 
    - (1) One is guilty of attempt if, acting with the requisite culpability, he
      * (a) purposely engages in conduct constituting the crime if the facts were as Δ believes
      * (b) when causing a particular result is an element, he does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part (hitman)
      * (c) purposely does or omits to do anything constitutions a substantial step if a course of conduct planned to culminate in commission of the crime
    - (2) Conduct shall not constitute a substantial step under (1)(c) unless it is strongly corroborative of the actor’s criminal purpose; the following, if strongly corroborative, shall not be held insufficient as a matter of law (List on PG 1210)
    - (3) A person who engages in conduct designed to aid another to commit a crime, which would establish complicity if committed, is guilty of an attempt to commit the crime although the crime is not committed or attempted by such other person \*\*\*\*\* Look for on test\*\*\*\*\*\*
    - (4) Abandonment is an affirmative defense; must abandon his effort to commit the crime or otherwise prevent its commission under circumstances manifesting a complete and voluntary renunciation of his criminal purpose -- such does not affect the liability of an accomplice
      * Renunciation is not voluntary if it is motivated, in whole or part, by increased probability of detection or by a decision to postpone the criminal conduct or to transfer it to another objective/victim
  + **Grading of Attempt and Solicitation (5.05)**
    - (1) Grading. Attempt, Solicitation and conspiracy are crimes of the same grade as the completed offense except for capital/first degree felonies, which are second degree felonies
    - (2) Mitigation. If the conduct is so inherently unlikely to result in commission of a crime that such conduct nor the actor present a public danger warranting the above grading, a court may impose a lower grade or in extreme cases dismiss the charge
    - (3) Multiple Convictions. One cannot be convicted of more than one offense for conduct designed for commission of the same crime
  + **Specific Intent Requirement** 
    - Attempt requires showing of specific intent to produce the result element of the crime -- i.e. intent to commit the crime -- recklessness suffices only for conviction of the completed offense, not an attempt
    - Except for Arkansas, states reject the concept of “attempted felony-murder” or “attempted involuntary manslaughter”
  + **Preparation vs. Attempt** 
    - Generally
      * Common law conception of attempt focused on the gap left to commission i.e. “how close are you / proximity test” -- MPC focuses on the steps taken toward commissions as long as criminal intent is manifested i.e. “substantial step” test
    - Eagleton Rule
      * In order to constitute attempt, Δ must take the final step (i.e. fire the gun but miss) -- virtually no gap until commission
    - Rizzo Rule
      * Attempt requires a dangerous proximity to success -- the gap between and act and commission must be small
    - McQuirter Rule
      * Attempt requires conduct showing criminal intent on its face; Δ would have succeeded but for timely intervention
    - MPC / Church
      * Substantial step
  + **Cases**
    - Smallwood v. State
      * Facts: HIV positive Δ rapes victims without condom; charged with assault with intent to murder
      * Issue: Can specific intent to murder be inferred?
      * Held: No evidence to infer the intent to murder; recklessness is not acting with specific intent
    - People v. Rizzo
      * Facts: Δs arrested while searching for target to rob; charged with attempted robbery although victim had not been found
      * Issue: At what point does criminal preparation become an attempt?
      * Held: Attempt requires a dangerous proximity to success such that in all reasonable probability the crime would have been committed but for timely interference
    - McQuirter v. State
      * Facts: Black Δ in 1953 Alabama accused and convicted of attempt to commit an assault with intent to rape for allegedly following a white woman; Δ denied allegations
      * Issue: At what point can attempt be charged?
      * Held: For attempt, the jury must be satisfied beyond a reasonable doubt that Δ intended to commit the act, and would have but for some intervention
* ***Solicitation***
  + **Criminal Solicitation (5.02)**
    - (1) Definition. One is guilty of solicitation if with purpose or promoting or facilitating its commission, he commands, encourages, or request another person to engage in specific conduct which would constitute such crime, attempt of that crime, or complicity in its commission
    - (2) Uncommunicated Solicitation. IT is immaterial that a person fails to communicate with the intended recipient if his conduct was designed to effect such communication
    - (3)Abandonment. It is an affirmative defense that, after soliciting one to commit a crime, the actor persuaded him to abort or otherwise prevented commission under circumstances manifesting a complete and voluntary renunciation of his criminal purpose
  + **Common Law**
    - Generally, the common law barred undercover officers sting operations charging attempt because the officer lacked the requisite mens rea -- the MPC changed this by adding the “facts as believed to be” wording
  + **Cases**
    - State v. Davis (Doesn’t really allow for solicitation)
      * Facts: Δ hired undercover hitman who never intended to complete the crime; Δ charged with attempted murder
      * Held: Solicitation fails to lead directly/proximately to commission of the crime -- undercover officer did not have the requisite mens rea
    - United States v. Church
      * Facts: Similar to Davis; Δ hires hitman to kill his wife and once approved once falsely notified of the crimes commission
      * Issue: Can Δ be charged with attempt although the undercover officer lacked the requisite mens rea?
      * Held: Δ conduct constitutes a substantial step toward commission of a crime -- Δ aimed a missile and fired it, intended it to directly hit his ex-wife
* ***Impossibility***
  + **Generally**
    - At common law; there was distinction between factual impossibility and legal impossibility -- crimes legally impossible could not be attempted
      * *Factual impossibility* -- facts unknown Δ render complete commission of the crime itself impossible
      * *Legal Impossibility* -- If the act was completed; the conduct itself would not have been criminal (i.e. receiving property not stolen)
    - MPC adds language “if circumstances where as he believes them to be” meaning that officers may fabricate the circumstances of a crime as long as Δ manifest the criminal intent
      * MPC does allow for impossibility to be considered in mitigation under (5.05(2))
  + **Cases**
    - People v. Jaffe
      * Facts: Δ convicted of attempt to receive stolen property for property that had been restored to the owner but used in sting operation
      * Issue: Can the state create facts which do not exist?
      * Held: It was legally impossible to complete this crime because the property was not in fact stolen -- you may withhold facts but not create those that do not exist
    - People v. Dlugash
      * Held: Adopts the MPC “if facts as person believed them to be” reasoning the basis premise is that an actors own mind should determine his dangerousness to society and thus his punishment
    - United States v. Oviedo
      * Facts: Δ knowingly sells fake heroin to undercover cop; convicted of attempted trafficking
      * Issue: Can Δ be convicted for noncriminal action done with criminal intent?
      * Held: You cannot eliminate the objective element i.e. the acts preformed must actually be criminal; reliance on the inferred mens rea risk mistaken conclusions -- jury determination of intent cannot form the sole basis of liability
* ***Accomplice Liability***
  + **Introduction**
    - Complicity is how the law reaches those whose conduct makes it appropriate to punish for the criminal actions of others
    - There are also *Substantive Crimes of Facilitation*, which are an alternative to accomplice liability and do not require intent to further the underlying criminal conduct (i.e. providing a juvenile with a gun or money laundering)
  + **Complicity (2.06)**
    - (1) A person is guilty of an offense if its is committed by his conduct or by conduct of another person he is legally accountable for, or both
    - (2) A person is legally accountable for the conduct of another when
      * (a) acting with the requisite culpability, he causes an innocent agent to engage in criminal conduct
      * (b) he is made accountable by the code or statute
      * (c) he is an accomplice in commission of the crime
    - (3) A person is an accomplice if
      * (a) *with the purpose of promoting or facilitating commission*, he (i) solicits another to commit the crime (ii) aids, agrees, or attempts to aid another in planning or commission or (iii) having a legal duty to prevent, fails to make proper effort to do so or
      * (b) his conduct is expressly declared by law to establish his complicity
    - (4) When causing a particular result is an element, an accomplice in the conduct causing such result is a complete accomplice, if he acts with the requisite culpability of the element
    - (5) A person legally incapable of committing a particular offense himself may be guilty if it is committed by the conduct of another he is legally accountable for, unless such liability is inconsistent with the purpose of the provision establishing his incapacity
    - (6) Unless otherwise provided, a person is not an accomplice if
      * (a) he is the victim
      * (b) the offense is so defined that his conduct is inevitably incident to its commission or
      * (c) he terminates his complicity prior to commission and (i) wholly deprives it of its effectiveness or (ii) gives timely warning to law enforcement / otherwise makes proper effort to prevent it
    - (7) an accomplice may be convicted although the principal has not been prosecuted or convicted, has been convicted of a different offense/degree has immunity, or has been acquitted
  + **The Natural and Probable Consequences Theory (Liparello Test)**
    - The Liparello test holds *one is responsible for the harms they naturally, probably, and foreseeably put in motion* -- instead of requiring the specific intent to further criminal conduct and the statutorily proscribed mens rea
    - Finds accomplice culpability in the specific intent to put the risk into motion; i.e. actus reus and mens rea merge it seems
    - This test remains controversial and a majority of courts/MPC refuse to recognize it; yet a substantial number of courts do embrace it
    - *\*\*\*\*\* Use for a more expansive accomplice liability\*\*\*\*\**
  + **Common Law (Two types of Accessory)**
    - At common law, both the actor and those aiding/abetting were considered the principal -- after which there was accessory before the fact (to procure, counsel, or command another to commit a crime) and accessory after the fact (to receive, relieve, comfort, or assist the felon knowing the felony to have been committed)
    - In general, if one only provided counsel/words but did not him self partake in any conduct, he stood a better chance at acquittal or lesser penalty
    - Modern law has eliminated distinctions except for “accessory after the fact” which generally carries a lesser penalty
  + **Intent Requirement** 
    - *Specific v. General*
      * Complicity generally requires specific intent to further the criminal action of the principal -- as to results, Δ must meet the proscribed culpability to be convicted as an accomplice (2.06(4))
      * Some cases distinguish between the seriousness of the substantive offense; retaining purpose for lessor offenses but only requiring knowledge for accomplice liability of serious offenses

Policy: higher liability helps to deter more serious crimes (Posner in *United States v. Fountain*)

* + - *Willful Blindness*
      * Deliberately avoiding learning of illegal activity can be considered purpose to promote such activity under the doctrine of willful blindness (Campbell)
  + **Materiality of the Aid**
    - It does not matter that aid did not have its intended impact on commission of the crime -- at both the common law (Judge Tally) and the MPC (“attempt to aid”) materiality of the aid does not matter for conviction under accomplice liability although there must be some actus reus
  + **Alternative** (Germany)
    - German penal code distinguishes between (1) the perpetrator (2) the instigator and (3) the aider -- it allows for different punishments between the two and is rich in doctrine distinguishing the classes
    - Could be an alternative to over expanded accomplice liability
  + **Attempt**
    - Note: under 5.01(3), an accessory can be charged with attempting to commit the substantive offense although the principal never actually attempts the crime which an accessory encouraged/aided
  + **Cases**
    - Hicks v. United States
      * Facts: Δ charged with murder based on ambiguous language that could have been an encouragement to shoot; instruction allowed intent to be inferred from the effect on the principals conduct
      * Issue: Is de facto accomplice intent allowed?
      * Held: No, accomplice liability requires specific intent to further the underlying criminal conduct -- intentional use of words cant be confounded with intent to produce the effect
    - State v. Gladstone
      * Facts: Δ connected undercover narc with third party to purchase green--charged with aiding/abetting the unlawful sell of marijuana
      * Issue: Can Δ be charged where no nexus with the accused exist?
      * Held: There can be no accomplice liability unless one associate himself with the venture such that he wishes it to succeed; it would be a dangerous precedent to convict for mere communication that another might commit a criminal offense and no more
    - United States v. Campbell
      * Facts: Real estate agent convicted under accomplice liability for federal money laundering statute -- customer paid all cash all the time and seemed very secretive
      * Issue: Willful blindness?
      * Held: Δ sensed that his customer could be involved with illegal activity and deliberately took steps not to learn where his money was coming from although he paid cash and was very secretive
    - State v. McVay (Attendant Circumstances)
      * Facts: Steamer ship owned by Δ carries too much steam and explodes -- Δ charged with manslaughter as an accessory before the fact
      * Issue: Does Δ have the requisite intent?
      * Held: Reckless killing is the result element of manslaughter -- Δ, by having full knowledge of possible danger and advising the captain to take the chance, aided/abetting in bringing about the result and thus may be convicted as an accomplice
    - Commonwealth v. Roebuck (Attendant Circumstances)
      * Facts: Δ convicted of manslaughter for helping lure the victim to an apartment complex where he was ambushed and eventually shot
      * Issue: Must Δ intend the result to be charged as an accomplice to a crime?
      * Held: An accomplice need not intent the results essential to the completed crime; conduct bringing a certain result to fruition suffices if the requisite culpability is established; at bar it is only recklessness
    - People v. Russell
      * Facts: Public school principal killed during 3-way shootout while looking for an absent child -- all Δs charged with Murder-2 although the specific shooter could not be identified
      * Issue: Can all Δs be convicted although no one is convicted of the crime?
      * Held: The evidence was sufficient to find all three acted with the requisite culpability -- they shared the specific intent to aid the conduct of each other by setting out to have a gun fight regardless of who actually fired the fatal shot
    - Wilcox v. Jeffery
      * Facts: Δ, editor of London jazz magazine, convicted of art crime for illegally going to watch a foreign saxophonist / writing article
      * Issue: Is there a limit to
      * Held: If the aider/abettor knows the facts sufficiently well to understand they constitute an offense; it does not matter what act is committed to encourage/aid the principal
        + Δ’s presence was not accidental; Δ was there for the purpose of watching the show he knew to be illegal
    - Attorney General v. Judge Tally
      * Facts: R seduced Δ’s sister-in law; Δ kept telegraph from being delivered warning R of the pending danger
      * Issue: Can Δ be an accomplice without any preconcert / communication with the principal?
      * Held: The assistance does not need to contribute to the crime in any but-for sense; if the aid can be shown to put the deceased at a disadvantage, one who furnishes such aid is an aider regardless if the decease would have/ could have availed himself
    - State v. Hayes
      * Held: Common law case which prohibits essential elements of the crime from being done by an undercover detective finding the intent/acts must combine such that all elements exist and are imputable -- No longer good law given “facts as believed to be”
    - People v. Liparello
      * Facts: Δ enlisted friends to force a third party to disclose the whereabouts of his ex -- friends ended up killing the man -- Δ charged with Murder 1 although he had no intent to murder
      * Issue: Does accomplice liability presume a shared mens rea?
      * Held: One is responsible for the harms they have naturally, probably, and foreseeably put in motion -- accomplice liability is premised on a different culpability found in intentionally encouraging, assisting, or influencing a crime; after that the accomplice is labile for the actual crime committed i.e. the harm put into motion
    - Roy v. United States
      * Facts: Δ sets up handgun buy for a narc (misdemeanor); the seller robbed the narc as revenge for an earlier robbery and Δ was convicted of armed robbery (punishable by life)
      * Issue: Can the “Natural and probable consequences” theory allow for conviction of armed robbery?
      * Held: The phrase must refer to what may conceivable ensue from the planned events; such presupposes an outcome within a reasonably predictable range -- this is way beyond that range
* ***Conspiracy Liability***
  + **Criminal Conspiracy (5.03)**
    - (1) *Definition*. A person is guilty of conspiracy to commit a crime if with the purpose of promoting or facilitating a crime’s commission he:
      * (a) agrees to engage in conduct which constitutes a crime, an attempt, or a solicitation of such crime with another
      * (b) agrees to aid such other person in the planning or commission of such crime, or of an attempt or solicitation to commit such crime
    - (2) *Scope*. If a person guilty of conspiracy under (1) knows that a person he conspired with has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such persons whether or not he knows their identity
    - (3) *Multiple Objectives*. If one conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous relationship
    - (4) *Joinder and Venue in Conspiracy provisions*
      * Pg 1221
    - (5) *Overt Act*. No person may be convicted of conspiracy, other than a felony of the first or second degree, unless an overt act in pursuance of such conspiracy is alleged and proven to have been done by him or by a co-conspirator
    - (6) *Renunciation*. It is an affirmative defense that an actor, after having conspired, thwarted the success of the conspiracy under circumstances manifesting a complete and voluntary renunciation of his criminal purpose
    - (7) *Duration*. For purposes of the statute of limitations (1.06(4))
      * (a) conspiracy is a continuing course of conduct terminating when the object crime is committed or the agreement is abandoned by the Δ and those he conspired with
      * (b) Abandonment is presumed if no co-conspirator does any overt act in pursuance of the conspiracy during the applicable period of limitation
      * (c) If an individual abandons an agreement, the conspiracy is terminated as to him only if and when (1) he advises those with whom he conspired or (2) he informs law enforcement of the existence of the conspiracy and his participation therein
  + **Substantive crime v. Accessory Liability** 
    - Generally
      * There are two forms of conspiracy -- *a stand alone crime* aimed at preparatory conduct and *a form of accessory liability* in which individuals who agree to commit one crime are held liable for the actions of co-conspirators
        + Accessory liability under Pinkerton OR under MPC
      * Conspiracy may be punished separately and does not merge as “attempt or solicitation” does under 5.05(3)
  + **The Pinkerton Doctrine (SCOTUS)**
    - Co-conspirators can be held liable for crimes committed in furtherance of the common objective and are reasonably foreseeable as necessary or natural or natural consequences of the conspiracy
      * One can avoid liability if (1) the substantive offense was not in fact done in furtherance of the conspiracy (2) the crime did not fall within the scope of the unlawful conspiracy or (3) it was a crime not reasonably foreseen as a necessary or nature consequence of the unlawful agreement
    - Rationale
      * Since the overt act of a conspiracy may be supplied by one person’s act; there is no reason other acts in furtherance of the conspiracy are likewise not attributable
      * In Favor of Pinkerton -- the need to counteract special advantages to criminal organizations especially the insulation of higher ups -- also a liberal conspiracy law has information forcing qualities
    - Limits
      * 7th Circuit refused to apply the felon status of one co-conspirator to another in order to obtain conviction (Wall)
      * *Alvarez* suggest that liability could be negated by a Δ’s minor role in a conspiracy or lack of knowledge about the unintended substantive offenses
    - NOTE: MPC rejects Pinkerton imposing accessory liability under conspiracy for separate substantive crimes only when the conditions for accomplice liability under 2.06(3) are met --- Only a minority of jurisdictions embrace Pinkerton but the federal criminal law does
  + **Intent Requirement for Accessory Liability under Conspiracy** 
    - As in Accomplice Liability, one must show specific intent to further the underlying criminal conduct (which is in essence specific intent to join the conspiracy) but only general (proscribed) intent with regard to the actual crimes committed by the conspiracy
    - Specific Intent may be inferred from knowledge of the illegal activity commercially when:
      * (1) the purveyor of legal goods for illegal use has acquired a stake in the venture (i.e. inflates charges for criminals)
      * (2) When no legitimate use for the goods exist (prostitute directory)
      * (3) When the volume of the illegal sale is grossly disproportionate to any legitimate demand
      * (4) when sales for illegal use amount to a high proportion of total business
  + **Actus Reus / Overt Act**
    - At common law, the actus reus of conspiracy is the agreement itself -- all that was necessary is that each know and understand the essential nature of the conspiracy-- allowed circumstantial proof
    - American conspiracy statutes have typically added an “overt-act” requirement; requiring conduct to effect the object of the conspiracy to be proven except for the most serious felonies (murder, etc)
      * However, where it is not present, SCOTUS has declined to imply it into Federal conspiracy Statutes (Whitfield)
  + **The Powell Doctrine (Alternative theory of Conspiracy)**
    - “To be criminal, a conspiracy must be animated by a corrupt motive or an intention to engage in conduct known to be wrongful”
      * The Doctrine has been rejected by the MPC and similar criminal codes -- As applied to statues such as money-laundering, it is criticized for in effect making mistake of law a defense in conspiracy prosecution
  + **Duration of a conspiracy** 
    - The basic rule is that once formed, a conspiracy remains in effect until its objectives have been achieved or abandoned
    - The statute of limitations begins to run not at formation but at termination; meaning members could remain subject to prosecution long after they cease active participation
    - In the absence of an express agreement, action in concert in order to “cover up” is not considered active action i.e. the SOL may run -- however members may engage in other activities beyond commission such as distribution of proceeds or fencing goods
  + **Abandonment / Renunciation** 
    - Affirmative *acts inconsistent with the object of the conspiracy* and *communicated in a manner reasonably calculated to reach co-conspirators* has generally been regarded as sufficient to establish abandonment
      * United States v. US Gypsum Co (SCOTUS 1978)
  + **Cases**
    - Interstate Circuit v. United States
      * Facts: Δ convicted of a conspiracy for letter sent out asking each movie distributer to comply with the same price increase and noting the others had been CC’d
      * Issue: Does the letter alone evidence a conspiracy?
      * Held: Conspiracy may be formed without simultaneous action or agreement; each was advised others were asked & cooperation was critical (single design single purpose )
    - Whitfield v. United States
      * Facts: Δ convicted of conspiracy to commit money laundering and agued an overt act had to be shown
      * Held: When a federal statute’s text is silent, no overt-act requirement should be implied -- it is a well settled principle of interpretation that absent contrary indications, congress intends to adopt the common law definition of statutory terms
    - People v. Lauria
      * Facts: Δ was charged under conspiracy for his telephone answering service where he knowingly allowed prostitutes to register and receive solicitations
      * Issue: Does knowledge imply specific intent to further underlying criminal conduct?
      * Held: Intent may be inferred from the existence of special interest which are absent at bar (listed above) or otherwise established by direct evidence or the aggravated nature of the crime itself
    - Pinkerton v. United States
      * Facts: Two brothers living on a farm, one indicted for violating the IRS code and the other was charged in a conspiracy although he was incarcerated part of the time
      * Issue: Can co-conspirators be held liable for separate substantive crimes without direct evidence of knowledge?
      * Held: Co-conspirators can be held liable for all acts of others in furtherance of the common objective -- there must be affirmative action to otherwise establish withdrawal from the conspiracy
        + The crime is the agreement; therefore as long as the agreement continues the crime itself continues
    - State v. Bridges
      * Facts: -- Δ convicted of murder and sentenced to life for recklessly starting a argument leading to his friend being punched and then shooting; killing one bystander at a child’s birthday party
      * Issue: Can Δ be convicted under conspiracy law for recklessness when murder-1’s result element requires specific intent?
      * Held: Upheld. It was understood the objective standard Pinkerton would be much broader than subjective standard in accomplice law -- the standard is less strict given special dangers of group activity
    - United States v. Wall
      * Held: The 7th Cir rejects an attempt to apply the felon statute of one co-conspirator to another in order to obtain conviction of “felon in possession of a gun” -- Court noted it would be a significant expansion and difficult to limit to this situation
    - United States v. Alvarez
      * Facts: 3 Δ co-conspirators charged with the death of an ATF officer during a drug sting although neither played a part in the shooting
      * Issue: Can those who took part in random murder be convicted on the basis of a drug conspiracy?
      * Held: Given the amount of drugs & money, the jury may infer (1) everyone was aware atleast someone would be carrying a weapon and (2) deadly force would be used to protect interest if necessary
* ***RICO*** 
  + **Generally**
    - In 1970 Congress passed the Racketeer Influenced and Corrupt Organizations Act to remedy a growing concern that traditional conspiracy law provided inadequate tools for sophisticated criminal enterprises
    - RICO allows you to charge all the spokes of the hubcap so long as they all connect to the center -- i.e. all the subsidiaries for connection to the parent company -- whereas in conspiracy law the subsidiary must have connections to each other as well
    - The result is an expansive and distinctive body of law used to prosecute everything from business fraud to street gangs, well beyond its target or organized crime
    - Congress instructed RICO should be given a broad reading or “liberally construed to effectuate its broad remedial purposes)
  + **Statute** 
    - *§1961 Definitions*
      * (1) Racketeering activity means… basically every federal criminal statute and every state crime punishable by more than one year prison
      * (4) enterprise includes any individual, partnership, corporation, association, or other legal entity and any union or group of individuals associated in fact although not a legal entity
      * (5) Pattern of racketeering activity requires atleast two acts of racketeering, one of which occurred after [Oct 15 1970] and the last of which occurred within ten years after the commission of a prior act of racketeering
    - *§1962 Prohibited Activities*
      * (a) For any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity to use or invest any such income in acquisition of any enterprise [the activities…]
      * (b) for any person , though a pattern of racketeering activity, to acquire or maintain any interest in any enterprise[the activities…]
      * (c) for any person employed by or associated with any enterprise [activities…] to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs though a pattern of racketeering activity
      * (d) for anyone to conspire to violate any above provision
      * **Note** -- Basically (1) You can’t use money derived from racketeering in the legit economy (2) you cant otherwise use racketeering to get into the legit economy (3) you cant conduct or participate an enterprise’s affairs through racketeering
    - *§1963 Criminal Penalties*
      * Whoever violates any provision shall be subject to not more than 20 years (or life if the violation is based on activity for which the max penalty includes life) and shall forfeit, irrespective of ny provision of state law, any interest the person has acquired or maintained and any proceeds obtained
    - *§1964 Civil Penalties*
      * Powerful and ongoing injunctions -- DOJ is typically the π
      * (c) allows a private right of action to any person injured in his business or property by a §1962 violation
  + **Enterprise Requirement**
    - Association in fact must have (1) a purpose (2) relationships among those associated with the enterprise and (3) longevity sufficient to permit these associates to pursue the enterprise’s purpose
      * Needs no hierarchical structure, fixed roles, meetings, rules, etc
      * Consider if this makes it criminal to be a criminal -- if you conspire to commit racketeering (death), you are guilty -- therefore are you punished just for thoughts?
      * Jacobs things this is wrong -- that the statute was aimed at protecting the legit economy from illegitimate takeover -- also makes a wide range of state crimes a federal offense
    - *United States v. Elliott* -- Court allows a wide ranging prosecution under the hubcap theory analogizing the cap to the chairman of the board overseeing the operations of different business branches
    - The two or more predicate crimes must be related to the affairs of the enterprise, but need not be otherwise related to each other
    - Originally held by SCOTUS to be only an organization engaged in some legal activities -- reversed in 1981 (US v. Turkette) allowing inclusion of exclusively criminal organizations
  + **Pattern Requirement**
    - SCOTUS has held proving a pattern requires showing that the two predicate offenses are (1) related and (2) pose a continued threat of criminal activity (H.J. v. Northwestern Bell Telephone Co)
    - Relatedness defined by a separate part of the US code specifying criminal conduct is related if “if it embraces acts that have the same or similar purposes, results, participants, victims, methods of commission or otherwise interrelated showing they are not isolated events
  + **Conduct & Participation Requirement** 
    - In order to “(c) conduct or participate directly or indirectly in the conduct of an enterprises affairs” -- an individual must have some role in directing or managing the enterprises affairs or the “Operation or Management Test” (Reves v. Ernst & Young [SCOTUS 1993])
      * Note: “direction” contains sufficient contradictory language to make the issue murky and the interpretation ambiguous
      * Courts have includes those who give direction and those who take direction, upholding liability for low-level employees who carried our instructions provided they had some degree of importance or autonomy
    - **Concern**
      * RICO has prompted much controversy between judges -- its all encompassing nature has the ability to devour traditional concepts of American criminal jurisprudence
      * 33 States have enacted similar statutes with similar interpretations
        + Some such as Ohio having much more expansive interpretations allowing prosecution based on conviction of several strict liability misdemeanor counts
        + Some (NY) are more cautions & place “reasonable limits on the law’s applicability” -- pattern = proof of three predicate felony offenses and direct participation by each Δ
* ***Corporate Criminality*** 
  + **Introduction (Two concepts / Two Main Approaches)** 
    - The traditional approach to corporate criminal liability was Respondeat Superior
    - The MPC attempted to reign in liability under the traditional approach by drawing lines between operatives who are the “hands” of the corporation and policy makers who constitute its “mind”
    - In actuality, DOJ rarely does a full-fledged indictment under Respondeat Superior and instead will agree to “Non-prosecution agreements” or “Deferred prosecution agreement”
      * NPAs: government doesn’t file charges but retains the right to prosecute if terms are not met
      * DPAs: Charges are filed but once the company fulfills the terms of the agreement, the government dismisses the charges
      * Both have quite invasive terms and impose serious structural changes, install a monitor, and change practices going forward
  + **Corporate Liability (2.07)**
    - *Criticism*. Some argue the MPC provides too much liability in the strict liability offenses of (1)(b) and too little liability in HMA standard of (1)(c)
  + **Respondeat Superior (Common Law / Federal Standard)**
    - This tort doctrine is one of the two main approaches to corporate criminal liability and is more liberal than the MPC
    - Imposes liability for the actions of any agent provided (1) the crime is committed (2) within the scope of that agent’s employment (3) with the intent to benefit the corporation (objective standard)
      * (2) includes an objective element; see *Hilton Hotels*
  + **Responsible Agent Doctrine (Common Law / Federal Standard)**
    - Liability may be imposed on all individual managerial agents who have a responsible share in the business process resulting in a violation -- such dispenses with the need to prove “consciousness of wrongdoing” (Park)
      * Must show that Δ, by reason of his position in the corporation and his responsibility/authority to prevent or correct the violation complained of and failed to do so
  + **Alternatives (Mix)**
    - Some states choose the “High Managerial Agent” standard but define the term more broadly. Some examples include:
      * Including persons who manage and supervise employees (*Community Alternatives*)
      * Allowing juries to infer corporate policy based on the authority of the agent in relation to the particular business in which the agent was engaged (*Beneficial Finance*)
    - Commentator Alternatives include:
      * Negligence-like standard where the government must establish that the corporation failed to have reasonably effective policies and procedures preventing the conduct
      * Creation of a “compliance insurance” market to incentive private risk minimization
      * A model based on the culpability of the corporate entity, not an agent’s liability -- based on corporate personality or “ethos”
    - *NOTE*: Conduct of an agent could convict a corporation, but conduct of an agent cannot be used to convict an individual HMA (A&P Trucking)
    - *Policy*: Flexibility within corporate laws of large multinationals could enable “branch managers” to exercise authority comparable to a corporate officer within their domain and with respect to subordinates
    - *Policy*: Most of these standards also recognize that the internal functioning of a corporation plays a significant role in promoting or preventing criminal behavior of individual corporate agents
    - *Policy*: Bureaucratic arrangement of corporate activities often makes it difficult to fasten liability upon the upper-echelon employees and officers under the prevailing standards of the MPC
  + **Powerless to Prevent / Impossibility Defense**
    - *Park* gives possible defense that one was “powerless to prevent/ correct” the violation (SCOTUS)
    - *New England Grocers* interpreted “powerless to prevent” as allowing an officer to prove he exercised “extraordinary care” and was still unable to prevent violations
      * Otherwise placement in the corporate structure is the only real defense; this the evidence serves only as rebuttal to the prima facie case
  + **Cases**
    - NY Central RR v. Untied States
      * Facts: Corporation and employee convicted for paying rebates to certain companies under violation of federal statute requiring fixed rates for common carriers
      * Issue: Does corporate criminal liability in reality punish innocent stockholders and deprive them the opportunity to be heard?
      * Held: Liability is imputed not because the corporation actually participates but because the act is done to its benefit, a corporation acts by its officers and agents -- their purposes, motives, and intent are as much the corporation’s as the things done
    - United States v. Hilton Hotels Corp
      * Facts: Oregon business association gives preferential treatment to food suppliers who paid dues -- manager expressly directly employee not to participate
      * Issue: Can an agent acting against express wishes subject the corporation to criminal sanctions?
      * Held: “Within the scope of employment” means work on the corporations behalf including that which has been authorized and business which outsiders could reasonable assume the agent has the authority to conduct even is against express instructions
    - Commonwealth v. Beneficial Finance Co
      * Facts: Δ corporation was convicted for the conduct of an agent employed by a wholly owned subsidiary -- Δ appealed arguing the statute should reflect the “high managerial agent” MPC standard
      * Issue: What is the extent of “high managerial agent”
      * Held: You can preserve the underlying “corporate policy” rationale of the HMA standard by allowing the jury to infer policy from the authority of the agent in relation to the particular business in which the agent was engaged
    - State v. Community Alternatives Missouri, Inc
      * Facts: Δ Corporation operating over 30 group homes convicted based on conduct of lead 2 facility general manager
      * Issue: Does the agent fit within the HMA standard?
      * Held: MO, like other states, has opted for a broader definition of HMA that includes persons who manage and supervise employees
    - United States v. Park
      * Facts:Δ CEO of ACME foods was charged individually with multiple violations of the FDA act for rodents in the plant -- received personal notification of issue and failed to take reasonable action
      * Issue: Is “wrongful action” or “consciousness of wrongdoing” required to convict a HMA personally?
      * Held: In providing sanctions to HMAs, the act imposes a not only a positive duty to seek out and remedy violations, but a duty to implement measures that insure violations will not occur
      * Dissent: The jury should atleast have to establish wrongful conduct amounting to common law negligence and be instructed such -- not a finding of “responsibility” in a formal / arbitrary sense
    - United States v. A&P Trucking
      * Held: Court holds the partnership of a firm as an entity liability for the “knowing and willful” violation of the Motor Carrier Act based on the conduct of an employee
    - United States v. Hanousek
      * Facts: Δ project manager of railroad construction in Alaska is convicted of Clean Air Act violation including jail time and $5K fine for oil pipeline that was hit while off duty and at home
      * Issue: Does an ordinary negligence standard for such a high penalty violate the DPC?
      * Held: Since the CAA is public welfare legislation, liability may be imposed for ordinary as opposed to criminal (gross) negligence and absent direct personal involvement
* ***Intro***
  + **Justification / Excuse**
    - Defenses do not seek to refute any required element of the offense; rather they suggest further considerations that negate culpability even when all elements of the offense are clearly present
    - Justifications -- Δ admits to committing the crime, but shows it was not wrong i.e. it made more sense to violate the law than to follow the law
    - Excuse -- The act was wrong, but the Δ has a reason/excuse for their conduct
    - Pragmatically speaking, there is no difference between justification and excuse, they both end in acquittal -- the distinction speaks to the fundamental difference in why culpability is lacking
* ***Justification: Self-Defense***
  + **Use of Force in Self-Protection (3.04)**
    - (1)Justified. Self Defense is justified when the actor believes such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other persons on the present occasion
    - (2) Limitations.
      * (a) Use of force is not justified (i) to resist arrest even if unlawful or (ii) to resist force used to protect property under a claim of right
      * (b) Use of deadly force is not justified unless protecting against death, serious bodily harm, kidnapping, or sexual intercourse compelled by force or threat; nor if
        + (i) the actor, with the purpose of causing death/bodily injury, provoked the use of force against him or (ii) can avoid with complete safety by retreating or surrendering possession of a thing to a person asserting a claim of right

Except, (1) one is not required to retreat from his dwelling or place of work unless he was the initial aggressor or assailed by another with a right to be there or (2) public officer in official capacity

* + - * (c) Except for A&B, one may estimate the necessity of force under the circumstances as he believes them to be when the force is used without retreating, surrendering possession or doing any act…
    - (3) Confinement. Confinement is justified if the actor take all reasonable measures to terminate confinement as soon as he may do so safely unless the person confined has actually been arrested
  + **Imminence Requirement (Use of Deadly Force)**
    - Common law required the fear of imminent death or serious bodily harm to justify self-defense which use deadly force -- an overt act which may be reasonably seen as creating the imminence
    - Reasonable fear of future harm or “inevitable harm” does not meet the requirement (Ha v. State)
      * Battered Women’s Syndrome was not accepted as a justification at common law; see cases below
    - The MPC modestly relaxes the imminence requirement allowing self defense when the actor reasonably believes the use of defensive force was “immediately necessary” -- i.e. an subjective standard
  + **The Duty to Retreat / Stand Your Ground**
    - *Common Law*
      * At common law, there was a strict duty to retreat -- a person was allowed to use deadly force in self-defense only after exhausting every chance to flee i.e. when he had its back to the wall
    - *Recent Legislature*
      * Recent decisions affirming the duty to retreat have been trumped by legislation abolishing it in favor of “Stand Your Ground” laws -- permitting an actor to meet force with force, including deadly force, even when retreat is possible
    - *Castle Exception* 
      * In many jurisdictions requiring retreat, a Δ may use deadly force when he is attacked in his own home by an intruder -- many jurisdictions apply this rational to invited guest -- circuits split when applied to co-occupants
  + **Initial Aggressor / “Free from Fault”**
    - Generally, Acts of aggression which incite, encourage, or otherwise promote the occasion for needing self-defense nullify the right to the doctrine (Peterson)
      * Aggression = an affirmative unlawful act reasonably calculated to produce an altercation foreboding injurious or fatal consequences”
      * Affirmative defense that one signals his intent to withdraw and makes a good faith attempt; such restores the right of self-defense
    - In a few states, the nonlethal aggressor can regain his right to self-defense if he is met by excessive, life-threatening response -- most deny the initial aggressor any type of escape
    - Some states take the “free from fault” doctrine even further, holding that commission of any crime casually related will forfeit the privilege of self-defense, even when the crime does not provoke the victim’s life-threatening conduct (Mays)
  + **Protection of Others (3.05)**
    - (1) The use of force to protect a third party is justifiable when
      * (a) The actor would be justified under 3.04 to protect himself against the injury he believes to be threatened AND
      * (B) Under the circumstances as believed to be, the third party would be justified in using such protective force for himself AND
      * (c) The actor believes intervention is necessary
    - (2) Notwithstanding (1),
      * (a) an actor is not obliged to retreat unless he knows he can thereby secure the complete safety of the other person and
      * (b) If the third party would be required to retreat, the actor is obliged to try to cause him to do so before using force in his protection, if the actor knows he can obtain complete safety
      * (c) Neither the actor not the third person is obliged to retreat when in the other’s dwelling or place of work to any greater extend than in his own
  + **Cases**
    - People v. Gotez
      * Facts: Δ shot and killed four black youth on subway train he thought were “playing with him” -- lower court vacated grand jury incitements holding “reasonably believe” = subjective standard
      * Issue: Is Self-Defense an objective or subjective standard?
      * Held: Charges reinstated in favor of a objective standard -- holding “circumstances” is a broad concern encompassing more than the physical movement but all relevant knowledge in the head of Δ
    - State v. Norman
      * Facts: Δ fired three shots into husband of 25 head while sleeping -- judge allows instruction on battered women’s defense
      * Issue: Does “Imminence” of self defense encompass the battered women’s defense?
      * Held: The term “imminent” refers to those perceived threats which must be instantly met and cannot be guarded against by calling for help or by protection of the law
    - Commonwealth v. Sands
      * Facts: Unlawfully employed husband beats wife for two years, pushing her down the stairs and firing two shots the day Δ shot him 5 times while watching TV in bed
      * Issue: Does violence earlier in the day allow the battered women’s syndrome to meet the “imminent” requirement
      * Held: While Δ reasonably believed she was in danger of serious bodily injury, there is no evidence of an overt act indicating imminent danger
    - Ha v. State
      * Facts: Δ, Asian man, after failed attempt on his life hunts down the person (family arch enemy) and kills him
      * Issue: If Δ can prove V would not have stopped absent taking his life, does that sustain Self-Defense
      * Held: Court agrees that a reasonable person in Δ’s position would have feared death or serious injury, but nonetheless upheld conviction stressing “inevitable harm” is not the same as “imminent” harm -- reasonable fear of future harm does not authorize one to hunt down and kill an enemy
    - State v. Abbott
      * Facts: Δ who shares common driveway with neighbor is attacked by their son for not paving his side -- neighbors brought out hatchet when Δ ended up taking and using
      * Issue: Does one who is not the aggressor required to retreat?
      * Held: The issue of retreat arises only if Δ resorts to deadly force -- it is the nature of the force the accused employed in his defense, not the nature of the force defended against -- one wrongfully attacked need not risk injury by retreating although he could escape
    - State v. Smiley
      * Facts: Δ Cab driver convicted of Murder-1 after drunk customer whose fare was prepaid starts argument & pulls a knife --
      * Held: Δ could have stayed in his car with complete safety and drive away, instead he chose to attack -- NOTE: FL’s “Stand Your Ground” law was enacted soon after this case was decided
    - United States v. Peterson
      * Facts: Victim enters Δ’s property to steal windshield wipers, Δ pursues and threatens if V returns -- when V steps back onto property Δ shoots -- instruction denied defense to initial aggressor
      * Issue: Is Self-Defense within one’s property absolute?
      * Held: Self-defense is denied to those who incite, encourage, or otherwise promote the need for force, unless one communicates his intent to withdraw and makes a good-faith attempt
    - Allen v. State
      * Facts: Δ pursued her intimate partner after leaving a fight where she was cut with a rake -- upon reaching her partner, Δ shot and killed the victim when again presented with the rake
      * Issue: If one re-initiates a settled encounter, is self-defense allowed?
      * Held: Court affirms death sentence finding Δ re-initiated the encounter and thus created the occasion to need force
    - Mays v. State
      * Facts: During an argument, Δ claimed his GF went into her purse to pull a gun; he drew his weapon and shot her
      * Issue: Is self-defense allowed?
      * Held: Court denied self defense because Δ was carrying an unlicensed handgun; thus although not related he was still breaking the law therefore self-defense is denied
* ***Justification: Privileged Use of Force*** 
  + **General**
    - MPC attempts to limit the extreme breadth of the privilege found at common law by restricting its use to felonies with additional requirements
  + **Protection of Property (3.06)**
    - (1)Justified. Force is justifiable when the actor believes it immediately necessary to (a) prevent/terminate unlawful entry or (b) retake/reenter tangible property provided he was unlawfully dispossessed, force is used immediately (Hot pursuit), and the other has no legitimate claim
    - (3) Limitations.
      * (a) Request to Desist unless (i) useless (ii) dangerous or (iii) substantial harm would be done in the mean time --
      * (b) force not justified for mere trespass
      * (d) use of deadly force not justified unless
        + (i) attempted dispossession of dwelling AND
        + (ii) attempt to commit arson, burglary, robbery, or other felonious theft or property destruction AND EITHER

(1) used/threatened deadly force or (2) use of force other than deadly would expose the actor to substantial danger of serious bodily harm

* + - (4) Confinement. Confinement is justified if the actor take all reasonable measures to terminate confinement as soon as he may do so safely unless the person confined has actually been arrested
    - (5) Use of Device. Justification extends to a device only if (a) such is not designed to create a substantial risk of death or serious bodily injury, (b) is reasonable under the circumstances and (c) is customarily used for such a purpose or reasonable care is taken to make the device known
  + **Use of Force in Law Enforcement (3.07)**
    - (1) Force is justified when the actor believes such is immediately necessary to effect a lawful arrest
    - (2) Limitations.
      * (a) The use of force is not justifiable unless (i) notice of arrest and (ii) belief of a valid warrant
      * (b) Use of deadly force is not justifiable unless (i) arrest for a felony and (ii) authorized peace officer or assisting one (iii) no substantial risk of injury to innocents and (iv) the crime involved conduct threatening the use of deadly force or a substantial risk of death of serious bodily harm if apprehension is delayed
    - (3) Use of force to Prevent Escape -- justified only when such force could have been used to effect the arrest under which the person is in custody; if escaping from jail, prison, or institution, may use any force including deadly force
    - (4) Use of Force by Private Person Assisting an Unlawful Arrest
    - (5) Use of Force to Prevent Suicide or Commission of a Crime
  + **Cases**
    - People v. Ceballos
      * Facts: Δ installed loaded spring gun to catch repeat burglar -- teen broke in to steal music equipment -- Δ charged with assault with a deadly weapon
      * Issue: Under what circumstance can deadly force be used for protection of property?
      * Held: When the character & manner of the felony committed do not reasonable create a fear of great bodily harm, deadly force to protect property is not justified -- deadly force is not justified to prevent burglary of dwellings where no one is/reasonably believed to be home
    - Tennessee v. Gardner
      * Facts: Memphis police shot and killed a teen fleeing from a burglary -- shot to avoid evasion of capture, no fear of death
      * Issue: Under what circumstances may an officer resort to the use of deadly force
      * Held: Deadly Force is not constitutionally unreasonable when there is probable cause to believe the suspect poses a threat of serious physical harm to the officer or others
    - Sydnor v. State
      * Facts: Δ was robbed at gun point when he with the help of friends wrestled the gun away; Δ fired 5 shots into the fleeing robber who collapsed and died 40-50 yards away
      * Issue: Is robbery a “continuous transaction” not complete until there is temporary safety thus allowing self defense until a get-a-way has been made?
      * Held: Common law “continuous transaction” principles do not trump the rule that limits the use of deadly force to the time and circumstance that such force is necessary to avoid imminent danger or death or serious bodily injury
    - Durham v. State
      * Facts: Officer making a misdemeanor arrest of a fisherman is hit in the head with an oar -- officer shoots fisherman in the arm
      * Held: If one physically resist, the officer may repel with such force as reasonably necessary short of taking life; “absolutely obliged” to take life in order to prevent his own death/serious injury
* ***Justification: Necessity / Choice of Evils***
  + **Choice of Evils (3.02)**
    - (1) Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable provided
      * (a) the harm sought to be avoided is greater than that sought to be prevented by the law defining the offense charged AND (b) neither the code nor the law provide exceptions for dealing with the specific situation involved AND (C) a legislative purpose to exclude justification does not otherwise plainly appear
    - (2) When the actor was reckless or negligent in brining about the situation requiring a choice or in apprising the necessity for his conduct; the justification is unavailable to defend against offenses which recklessness or negligence suffices to establish culpability
  + **Common Law Approaches**
    - *Generally*
      * One must be “deprived of their free will by the threat of imminent harm” (Unger)
      * The MPC formulation is similar to a “no-fault” necessiry defense, but it is somewhat less extreme
    - *Lovercamp Framework*
      * Requires 5 conditions to be met before a defense of necessity will be allowed (escaped convict case)
        + (1) Prisoner faced with specific threat of death, rape, substantial bodily injury within immediate future
        + (2) No time for complaint to the authorities or history of futility
        + (3) No time or opportunity to refer to courts
        + (4) No evidence of force or violence used in escape
        + (5) immediately reports to authorities when safe
      * Majority in Unger says the Lovercamp factors are relevant in accessing a claim -- the dissent says they should be requirements
    - *NY Approach* 
      * NY requires imminence of harm and no fault of the actor -- i.e. “Clean Hands”
      * Heavy emphasis on avoiding “imminent public or private injury”
  + **NOTES**
    - Medical Necessity has been denied to justify the growing or private cannabis for medical purposes -- although there was strong dissent advocating for the law to be changed in limited circumstances where the need for private compassion exceeds the public interest (*Commonwealth v. Hutchins*)
    - Economic Necessity is generally denied -- if you have to, make a argument based off Contracts
  + **Cases**
    - People v. Unger
      * Facts: Δ transferred to honor farm prison is rapped and eventually runs away after it continues to happen
      * Issue: Was the escape committed out of necessity?
      * Held: Δ has a legitimate right to the necessity claim when he has been deprived of his free will by the threat of imminent physical harm -- considered the Lovercamp Factors as relevant only
* ***Justification: Consent***
  + **MPC (2.11)**
    - (1) In General. Consent of the victim to the conduct charged is a defense if such consent (a) negates an element of the offense of (b) precluses the infliction of the harm sought to prevent by the law defining the offense
    - (2) Consent to bodily harm. Consent is a defense to criminal conduct when threatens or causes bodily harm if
      * (a) the harm consented to is not serious or (b) the conduct and harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest or sport or (3) consent established justification under Article 3
    - (3) Ineffective Consent. Assent does not constitute consent if
      * (a) it is given by a legal incompetent
      * (b) given by youth, mentally diseased, or intoxicated persons manifestly unable or known by the actor to be unable to make a reasonable judgment to the nature of the conduct (innocent agent)
      * (b) It is given by one whose thoughtless consent was sought to prevented
      * (c) It is induced by force, duress, or deception of a kind sought to be prevented
* ***Justification: Public Duty Defense***
  + **Execution of a Public Duty (3.03)**
    - (1) List 5 sources that may require or justify certain conduct
    - (2) The other sections of article 3 apply to (b) the use of deadly force
    - (3) Justification applies (a) honest belief his conduct is required or authorized and (b) honest belief his conduct is required or authorized to assist a public officer in performance of his duties
* ***Excuse: Duress***
  + **MPC: Duress (2.09)**
    - (1) An actor was coerced by the use/threat of unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist
    - (2) Unavailable if the actor recklessly place himself in a situation where it was probable he would be subject to duress -- also unavailable if he was negligence in placing himself in a situation whenever negligence suffices to establish culpability for the offense charged
    - (3) It is not a defense that a woman acted on the command of her husband unless she acted under such coercion as would establish a defense under this section [ends presumption of coercion for wives]
    - (4) When the conduct of an actor would otherwise be justifiable under 3.02 (necessity) this section does not preclude such a defense
  + **Imminence of the Threat** 
    - Many states reject the MPC “reasonable firmness” approach and require the threat to be immediate, imminent, or instant
    - Duress is only applicable when the alleged coercion is “present, imminent, and pending” and “of such a nature as to induce a reasonable apprehension of death or serious bodily harm”
  + **Nature of the Threat**
    - Common law requires the threat to be death or serious bodily injury -- the MPC requires the threat to be that of “unlawful force” seemingly expanding the available of the defense
    - Note that Duress is not available for any “naturally arising” peril -- there must be a threat made to person -- however it is available for Felony Murder in most jurisdictions
  + **Drugs & Duress**
    - Note that most cases involving drugs and duress will be barred by 2.09(2) or recklessly placing oneself in a situation probable to cause Duress -- when you join a gang, etc. then you do just that
  + **Cases**
    - State v. Tuscano
      * Facts: Δ, doctor agreed to insurance fraud because he owed serious gambling debts -- third party made threats to Δ and his wide
      * Issue: Under what standard should duress be evaluated?
      * Held: Allows duress under the new “reasonable firmness” standard; note under NJ law it is not a complete affirmative defense to murder but reduces Murder to Manslaughter
        + But for Murder, it is a complete defense
* ***Excuse: Intoxication***
  + **Intoxication (2.08)**
    - (1) Except as provided in [4], intoxication is not a defense unless it negates an element of the offense
    - (2) When recklessness establishes an element, if the actor is unaware of a risk of which he would have been aware sober due to self-induced intoxication, such unawareness is immaterial
    - (3) Intoxication does not, in itself, constitute a mental disease for 4.01
    - (4) Intoxication (a) not self-induced or (b) is pathological is an affirmative defense if by reason of such intoxication the actor, at the time of his conduct, lacks substantial capacity to appreciate its criminality or to conform his conduct to the requirements of the law
    - (5) Definitions on PG 1206
  + **Voluntary Intoxication (Competing Common Law Approaches)**
    - *Hood Approach (People v. Hood)* 
      * Intoxication evidence is inadmissible for crimes of general intent (i.e. those that can be charged under recklessness) but admissible to negate mens rea of specific intent crimes
    - *Stasio Approach (Stasio v. Stasio)*
      * Absent circumstances showing intoxication may be relevant to demonstrate mistake; intoxication may only be considered as a mitigating circumstance
        + Policy: The wrong to society is the same regardless -- plus the distinction between general & specific intent crimes lets to incongruous results allowing some to walk to do more harm to society
    - *Note*
      * Roughly 2/3 of the states follow the Hood Approach, but set a high threshold for admissibility of intoxication evidence -- not relevant unless it produces a complete “Prostration of the Faculties” defense
      * 14 States bar use of intoxication evidence on all mens rea issues
      * A few states follow the Stasio Approach and allowing intoxication evidence only in first-degree murder cases
      * MPC notes intoxication should be irrelevant to determining recklessness but it should be accorded a significance equal with its relevance to disproving knowledge / purpose when they are requisite mens rea elements
        + Note: Intent to inflict bodily harm = malice
  + **Involuntary Intoxication**
    - The common law approach is marginally more generous to Δ’s asserting involuntary intoxication as a defense -- it is allowed as “temporary legal insanity” but if the intoxication is insufficient to meet the legal standard, no defense is available
      * “Substantial incapacity either to appreciate the criminality of the conduct or to conform ones actions to the law
      * “Conform ones actions to the law” encompasses the idea of the *Irresistible Impulse*
  + **Recent Trends in Intoxication** 
    - A review of legal trends generally shows an increasing inhospitability to both voluntary and involuntary intoxication defense; in part due to narrowing legal standards and jury hostility -- rendering then “essentially unavailable”
    - Due to the different in consequences between involuntary intoxication and insanity; Δ’s usually prefer the former to avoid being committed for pleading insanity
* ***Excuse: Entrapment***
  + **MPC (2.13)**
    - (1) A law enforcement official or person acting in cooperation perpetrates an entrapment if for the purpose of obtaining evidence, he induces or encourages another person to engage in criminal conduct by either
      * (a) making knowingly false representations designed to induce belief that such conduct is not prohibited
      * (b) Employing methods of persuasion or inducement which create a substantial risk an offense will be committed by persons other than those who are ready [predisposed] to commit it
    - (2) Except for (3), a person shall be acquitted if he proves his conduct occurred in response to entrapment by preponderance of the evidence; tried by the court in absence of the jury
    - (3) Entrapment is unavailable when causing or threatening bodily injury is an element of the offense and the prosecution is based on conduct toward a person other than the person perpetrating the entrapment
* ***Excuse: Military Orders***
  + **MPC (2.10)**
    - It is an affirmative defense that the actor, in engaging in conduct constituting an offense, does no more than execute an order of his superior in the armed services which he does not know to be unlawful
* ***Excuse: Insanity***
* ***General Exception***
  + **Mistake (3.09)**
    - (1) The justifications in 3.04-3.07 are unavailable when
      * (a) the actors belief in the unlawfulness of the force against which he employs protective force or the lawfulness of an arrest which he endeavors to effect by force is erroneous AND
      * (b) the error is due to ignorance or mistake of the law
    - (2) When the actor believes the use of force would be justified under 3.03-3.08 but the actor is reckless or negligent in having such belief or in failing to acquire any knowledge which is material to his use of force -- the justifications afforded are unavailable to defend against charges of recklessness or negligence
    - (3) When the actor is justified under 3.03-3.08, but recklessly or negligently injures or creates a risk of injury to innocent persons, justification is unavailable with regard to such innocent persons