1. OMISSIONS: Common Law Duty to Act
   1. **(FORK): Moral duty or legal duty? Moral duty does necessarily mean legal duty**
   2. *Jones*: common law legal duty to act if:
      1. Status Relationship (i.e. parents/minor children, married couples, master/servant)
      2. Contractual Obligation
      3. Omission Following an Act
         1. Creation of a Risk
         2. Voluntary Assistance (assumption and seclusion—*i.e. take sick person into home*)
      4. Statutory Duty
         1. But Court may read statute narrowly to avoid finding a duty, if worried about punishing Good Samaritan (*Pope—woman who took in mother/child after church not w/in statute*)

**MENS REA**

* 1. 2.02(2): Four MPC mental states
     1. **Purposefully**: A person acts purposefully w/ respect to a material element of the offense when:
        1. Conduct/Result: It was his “*conscious object* to engage in conduct of that nature or to cause such a result”
        2. AC: he is “aware” of their existence OR “he believes or hopes that they exist”
     2. **Knowingly**: a person acts knowingly w/ respect to a material element of the offense when:
        1. Conduct/AC: Acts knowingly if he is “aware that his conduct is of that nature, or that such AC exist”
        2. A result is knowingly caused if he is “aware that it is *practically certain* that his conduct will cause such a result”
     3. **Recklessly**: a person acts “recklessly” if he “consciously disregards a substantial AND unjustifiable risk that the material element exists or will result from his conduct”
     4. **Negligently**: a person’s conduct is “negligent” if the actor “should be aware of a substantial AND unjustifiable risk that the material element exists or will result from his conduct”
  2. Framework
     1. Divide the crime into its material elements (elements are acts, results, or attendant circumstances)
        + 1. 1.13: Material elements do NOT relate “exclusively to the SOL, jurisdiction, or venue,” etc.
     2. Assign mens rea to remaining elements; see if a contrary legislative purpose appears
        1. If single culpability term lies in the middle of the statute, this may suggest a contrary purpose
        2. Look at the punishment clause for guidance
        3. Does this capture all people the statute intends to capture? Does it capture too many?
     3. If contrary legislative purpose exists:
        1. Does contrary purpose point to a mental state? (May vary mens rea according to statute’s purpose)
     4. If silent mental state, MPC default or strict liability
        1. Presumption against strict liability in criminal law
        2. Plain textualist approach will not suffice (*X-Citement Video*)
     5. Recklessness is the default mens rea if definition of criminal offense is silent on mens rea as to a material
     6. Policy Considerations
        1. Punish negligence?
           1. Negligent actor fails to perceive risks of his conduct, so cannot be deterred (no specific deterrence)

But punishment of negligent actor may send useful message to others (general deterrence)

But punishment may cause negligent actor to act more carefully next time (specific deterrence)

**STRICT LIABILITY**

1. Crimes for which NO mens rea is required for one or more elements
   1. Usually limited to statutory rape and public welfare offenses
2. Presumption of subjective culpability; textualist reading may not suffice (*X-Citement Video*: *textualist judge*)
   1. But sometimes AC meaningless (immaterial)
3. Presume mens rea for traditionally common law crimes (versus new offenses).

Public Welfare: *Morisette/Staples* Factors:

* + 1. Possibility of wide distribution of harm resulting from single violation
    2. Regulatory offense, hard to police (maybe SL)
    3. If small penalty and little stigma, then maybe SL
    4. Defendant should be in a position to prevent the crime from occurring
    5. Conduct should provide notice of possible SL, since easier to convict (*Staples*: “*long tradition of widespread lawful gun ownership*” *so NO SL for possession of automatic weapon*)

1. Justifications for Strict liability
   1. Puts responsibility on actor who’s in best position to avoid the harm
   2. Strict liability if want easier prosecution of otherwise hard-to-prove offenses that may harm the public

**CAUSATION**

1. **Must prove it with result crimes** (i.e. homicide—result is death of a human being)
2. MPC 2.03:
3. Common Law
   * 1. Defendant’s conduct does NOT need to be the sole but-for cause of the harm (*Arzon*: *two fires*)
        1. Defendant liable if his conduct is a sufficiently direct cause of the harm; ultimate harm must be something he should have foreseen as being reasonable related to his acts (*Arzon*)
           1. *Arzon: foreseeable that firemen would respond to fire Arzon started, exposing them to danger*; *fireman falls from picker*
           2. *Kibbe*: *foreseeable that drunk robbery victim left by side of road at night might be hit by car*)

But maybe NOT satisfied if triggering cause is unknown and defendant is engaged in socially-productive behavior (*Warner Lambert*: *gum factory, trigger of explosion unknown*)

But an intervening cause may cut off the chain of causation, even if defendant’s act is a contributory cause and death is foreseeable (*Root*: *independent autonomy*)

*Root*: victim was an equally willing and foolhardy participant in the bad conduct that caused his death

But court may still find proximate cause if victim responding to danger created by D (*Kern*: *man runs from bat-wielding teenagers, hit by car*)

Proximate Cause

* + 1. Foreseeability test: foreseeability of result determines proximate cause; foreseeability means “exclude extraordinary results” (*Acosta*: *helicopter crash is foreseeable b/c one result of emotional police pursuit that might’ve “reasonably…been contemplated*”)
       1. Subsequent negligent medical treatment is usually reasonably foreseeable and will not cut off chain
          1. But gross negligence may cut off proximate causation

But court may refuse to cut of causation if gross negligence is NOT the sole cause of death, but only a contributing cause (*Shabazz*: *many stab wounds followed by gross negligence*)

* + 1. Defendant usually takes his victim as he finds him

**Homicide**

**Intentional Homicide**

**1. Premeditation/Deliberation**

Doctrine

* MPC §210.2(a) (above)
* May infer specific intent to kill from words, conduct, or intentional use of a deadly weapon on a vital part of body (*Carroll*)

Cases

* Carroll: *Carroll arguing violently w/ his wife and became angry. He remembered the loaded gun on the window sill, deliberately took it down, and deliberately fired two shots in the back of her head while she slept. He argues this was an impulsive killing, not a premeditated one.* 
  + Court: No time is too short for necessary premeditation to occur; only need to show that the killing is intentional to show premeditation
    - *Conviction upheld for 1st degree murder*; *murder was willful, deliberate, premeditated*
  + Criticism: every intentional killing becomes premeditated; conflates 1st and 2nd degree murders contrary to legislative intent; confuses juries (unsure what’s the difference)
* Guthrie: *Co-worker towel mocks psychologically-disturbed Guthrie then flicks him on nose.* 
  + Court: Premeditation requires that there must be evidence that D considered and weighed his decision to kill before taking action
  + But NO set period of time is required for premeditation
  + Proving premeditation via *Anderson* Factors
    - Prior relations b/w the parties (friendship or animosity)
    - Whether plan or preparation to kill existed (i.e. type of weapon, place of killing)
    - Presence of any reason/motive to take life
    - Manner of killing (whether it indicates a deliberate intention to kill according to a preconceived plan)
  + Criticism
    - *Guthrie* rule may allow for explosions of violence (*Anderson*) receiving a lower grade of offense than a mercy killing (*Forrest*)
      * Anderson: *Man butchered 10-year-old girl; over 60 knife wounds over he entire body; blood in every room in the house; no evidence that he planned the killing and no apparent motive for killing her*
        + Court: No evidence of premeditation; 2nd degree murder conviction b/c explosion of violence rather than intent to kill
      * Forrest: *Man took pistol w/ him on visit to his terminally ill father in hospital; shot him in mercy killing w/ one shot to the head, while sobbing*
        + Court: 1st degree murder conviction b/c premeditation

**2. Provocation/Voluntary Manslaughter**

Rationale

* Provoker deserves to be harmed, but homicide was an over-response; also, defense is a concession to normal frailty (actor is less culpable)
  + But rewards defendants who respond violently to non-violent provocations (anti-utilitarian)
  + But abolish it b/c it brutally discriminates against women

Doctrine

* **Common Law**
  + Must act under subjective influence of passion
  + Passion must have been the result of adequate provocation (*Girourard* or *Maher*)
  + Defendant must act immediately; killing must be the result of the temporary excitement
    - (Traditional) **No “cooling off” period** (too long of time b/w provocation and killing makes provocation inadequate)
    - But some modern courts allow **rekindling** (event immediately preceding homicide rekindles earlier provocation) and **simmering** (long-smoldering course of prior provocative conduct; time angers the blood, like w/ battered women)

(FORK):

* Girouard: *Husband stabbed wife 19 times after she taunted him verbally and insulted him. He argues eh sufficiently provoked him to mitigate murder to manslaughter. State counters that victim’s words, no matter how abusive or taunting, should not be recognized by society as adequate provocation*.
  + Court: Words insufficient for provocation under common law(*conviction for murder upheld*)
    - Domestic arguments easily escalate into fights; deter homicides b/w married couples
  + Adequate provocation limited to these fixed categories:(1) extreme assault or battery, (2) mutual combat, (3) defendant’s illegal arrest, (4) injury of a close relative of the defendant’s, (5) sudden discovery of spouse’s adultery
    - Some jurisdictions no longer accept learning of adultery as reasonable provocation
* Maher: *Maher observed wife and man walking into the woods then leaving. Right before he walks into saloon, friend tells Maher that the wife and the man had sex in the woods one day earlier. Maher enters into saloon, angry, and shoots the man.* *Issue is whether that’s enough to mitigate it to manslaughter.* 
  + Court: Adequate provocation includes anything that would cause a reasonable person to become inflamed, so as to act in passion and not in reason (*orders new trial; evidence enough to downgrade to manslaughter equiv.*)
  + Dissent: The provocation itself must occur in the defendant’s presence.
    - Law should not permit chance of death of innocent victims (who never provoked D)
* **MPC** §210.3(b) (above)
  + Requires “extreme mental/emotional disturbance”
  + Purpose is to allow defendants to show that their actions were caused by a mental infirmity not rising to the level of insanity, but still substantial enough to reduce their culpability
    - Could be caused by provocation or otherwise (i.e. triggering event NOT necessary)
    - Allows for “cooling off” period
  + Test
    - D must act “under the influence of extreme emotional disturbance” – Subjective (not contrived or sham)
    - Must be a reasonable explanation or excuse for D’s EMED; determined from viewpoint of reasonable person in D’s situation under circumstances as D believed them to be – Objective/Subjective
  + “Actor’s situation” includes blindness, extreme grief; but NOT idiosyncratic moral values
    - More characteristics if goal is to punish subjectively culpable actor/avoid injustice; but one standard works best for deterrence
      * *Cassasa: his mental disabilities* *NOT included in reasonable person standard*
  + Note: MPC has no immediacy requirement; words alone may warrant manslaughter instruction; and may still claim defense if he kills an innocent bystander; purpose is to broaden the common-law provocation defense (so if it meets CL standard, likely meets MPC)

**3. Unintentional Killing**

* MPC §210.2 (1)(b): **Depraved-heart murder**:
  + Reckless manslaughter, but committed under “circumstances manifesting extreme indifference to the value of human life” (this is presumed if actor is engaged in/attempting/fleeing from a felony)
  + (Actor’s conscious disregard of the risk manifests an extreme indifference to the value of human life)
* MPC §210.3(1)(a): **Reckless manslaughter** – A homicide committed recklessly (lesser offense of depraved-heart murder)
  + Must prove that defendant (1) consciously disregarded (2) a substantial and unjustifiable risk that his conduct would cause the death of another and (3) its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor’s situation
    - A risk of death that has less than a fifty-percent chance of occurring can still be a substantial risk (*Hall*)
    - Enjoyment alone does NOT justify a substantial risk of death (*Hall—skiing’s only for enjoyment*)
    - Expertise may suggest awareness of risky behavior (*yes in Hall: experienced skier*)
    - Extreme violation of a statutory duty may be evidence that conduct is a “gross deviation” from the standard of care that a law-abiding person would observe in the actor’s situation (*Hall: yes*)
* MPC §210.4: **Negligent Homicide** – A homicide committed negligently (3rd degree felony)
  + Must prove that defendant (1) should have been aware (2) of a substantial and unjustifiable risk that his conduct would cause the death of another and (3) his failure to perceive it involves a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation

**Common Law**

* **Depraved-Heart Murder** (*involves callousness, indifference*)
* Common law standard is same as MPC standard (malice is implied)
  + Malice towards the victim in particular is NOT necessary (*Malone: friend shoots friend in store*)
  + Subjective awareness of the risk is NOT necessary when lack of awareness is attributable solely to voluntary drunkenness (i.e. cannot claim lack of mens rea due to intoxication) (*Fleming*) [same in MPC]
* May fall under “all other murder”; usually 2nd degree murder
* Punish b/c of incapacitation (does dangerous things); retribution (so indifferent to value of human life); deterrence

**Reckless Manslaughter**

* (FORK): Person who kills someone in either a criminally negligent manner or a civilly negligent manner
* No malice aforethought
  + **Criminal Negligence** Standard (i.e. gross negligence)
    - *Welansky* suggests no need to prove subjective awareness of risk; still satisfied if an ordinary man under the same circumstances would have realized the gravity of the danger (*Welansky*)
      * + But that is negligent homicide; Court redefined recklessness to capture the defendant

But maybe if risk is so substantial enough, Court will impute knowledge of risk (*Welansky*: *owner of nightclub, should be aware of conditions*)

* + **Civil Negligence** Standard
    - Standard is caution exercised by reasonable man under the same circumstances (*Williams*)
    - If negligence causes the death, simple negligence may support a conviction of involuntary manslaughter (*Williams: reasonable man standard does not include fact that defendants are Native American*)
    - Policy: Liability for negligence incentivizes people to take care (promotes awareness)
      * But maybe awareness or unawareness of a risk is not a reliable indicator of culpability
      * But objective standard set so that D cannot actually comply w/ it (i.e. if not subjective enough)

**4. Felony Murder**

* 1st degree murder for deaths during some enumerated felonies (i.e. rape); 2nd degree for the rest (“all other murder”)

Doctrine & Cases:

* (FORK):
  + (*Stamp:* Broad): A felon is strictly liable for all killings committed by him or his accomplices in the course of a felony (*Stamp: requires Honeyman to lie on floor until he flees; then dies*)
    - But inherently dangerous felony limitations
* (FORK): Felony murder requires causation (felonious nature of the conduct must cause the death)
  + If felony is but-for cause of the homicide, defendant is liable for felony murder; felony murder is NOT limited to foreseeable deaths (*Stamp*) [eliminates proximate cause requirement; unlikely]
    - As long as life is shortened as a result of the felony, it does NOT matter that the victim might have died soon anyway; the defendant takes his victim as he finds him
  + Proximate cause still required for felony murder, but diluted; death must be foreseeable result of the felony (*King*)
* EXCEPTION: Some states require felony to be inherently dangerous for felony-murder rule to apply:
  + **As Committed (Majority):** Felony murder rule applies only to inherently dangerous felonies; if felony’s committed in a way that’s inherently dangerous to human life, then felony murder rule applies (*Stewart*)
  + **Abstract (Minority**): To determine if a felony is inherently dangerous, ignore the facts of the specific case and instead, consider the elements of the felony in the abstract (i.e. as it’s defined by statute); felony-murder rule does NOT apply if crime can be committed in many ways NOT inherently dangerous (*Phillips*)
    - Introducing factual elements leads to way too broad of an application; unfair to the defendant (*Phillips*)
      * But abstract approach undermines purpose of felony murder rule: to deter dangerous conduct by punishing as murder a homicide resulting from dangerous conduct in the commission of a felony (*Stewart*)
        1. (FORK): Felony murder or misdemeanor manslaughter?

Accidental homicide that occurs during the commission of an unlawful act NOT amounting to a felony (or, not amounting to a felony that triggers the felony-murder rule) constitutes involuntary manslaughter

In abstract or as applied jurisdictions, killing that occurs during commission of an excluded felony may constitute involuntary manslaughter

B. DEFENSE TO HOMICIDE: **SELF-DEFENSE** (see below)

**RAPE**

* **Mens Rea**: Strict liability or negligence or recklessness regarding her non-consent
* **Actus Reus**: Non-Consent, Force, and Resistance (or lack of resistance due to fear)
  + Force without resistance and without non-consent is NOT rape; consent is the essence of the act of rape
  + *Rusk*: Presumes consent in the absence of evidence of non-consent (act of penetration is NOT force)
  + *MTS*: Presume non-consent in absence of affirmative form of non-consent (act of sex suffices as force)
* **Harm**:
  + (NARROW): Harm is violence; akin to result of a severe beating; rape as a crime of violence offense
  + (BROAD): Harm is unwanted sexual intrusion; rape as a privacy/autonomy offense
* Policy: worry about chilling desirable sexual encounters, transforming desirable sexual encounters into contractual ones, normative power of the law (push people’s behavior towards a new standard); but harm of rape is great

1. Traditional Rape (Pre-Reform, *Rusk*)
   1. Common law marital EXCEPTION to rape (husband immune for raping his wife)
      * Marital contract gives consent to husband of free sexual access
      * Wife is husband’s property; cannot refuse him
        + But women no longer seen as property; also inconsistent w/ criminal law
      * Protect against gov’t intrusion into marital privacy; promote reconciliation b/w partners
        + But if husband guilty of ongoing physical abuse, little chance of reconciliation
   2. Marital exemption is unconstitutional; husband liable for raping his wife (*Liberta*)
      * Rape is a violent act that violates bodily integrity of victim and causes long-term harm
2. **Actus Reus**: Non-Consent, Force, and Resistance (or lack of resistance due to fear) [resistance often read into statute]
   1. EXCEPTION: Statutory rape (no force or nonconsent needed; sex w/ underage suffices; deters pregnancies)
   2. If male uses OR threatens to use force likely to cause death or serious bodily injury, woman is NOT required to resist; victim fails to resist b/c of subjective, objectively reasonable fear establishes non-consent
      * (FORK): Objective fear standard
        + Victim’s fear must be objectively reasonable (*Rusk*)
          - Ensures defendant realizes woman is submitting out of fear, and not desire
        + Even if victim’s fear is objectively reasonable, she must resist unless defendant’s acts are calculated to create fear in her (*Rusk* Dissent; *lets jogger w/ strange idea of sex free*)
          - Men normally aggressive and forceful in seducing women
   3. If male uses moderate force or no force, female is required to resist and male must overcome her resistance
      * Resistance to the utmost, or earnest resistance, or reasonable resistance (how far a reasonable person would resist); some states do NOT require resistance, but use it as evidence of consent/non-consent
        + But verbal resistance is NOT resistance (*Rusk*)
        + Criticism: resistance to utmost puts male gloss on resistance requirement (not all women capable of resisting, some freeze), and resisting is dangerous; but law should encourage women to physically resist
      * Resistance establishes lack of consent
   4. EXCEPTIONS/REFORMS
      * (Minority): Any act of sexual penetration without the affirmative and freely given permission of the victim to the specific act of penetration is rape (permission via words or conduct; what reasonable person would believe to be permission) (*MTS*: *she consented to sexual petting, but not to sex act itself*)
        + Presume non-consent in absence of affirmative form of non-consent; force is the act itself
          - Victim NOT required to resist; force is act of penetration
          - Permission must be freely given; not freely given if tainted (i.e. employer threatens)
        + Pros/Criticism:
          - Harm is invasion of bodily integrity

But non-consensual forcible sex is worse than nonconsensual non-forcible sex; the two should not be punished equally

* + - * + But women should NOT be over-protected; law should NOT set norm of women as weak, subordinate creatures unable to resist
        + Reads force out of statute; surplusage

But strong legislative intent and idea of personal autonomy may override this concern (*MTS*: *feminist group helped form statute; based it off battery*)

* + - * + Easier to prosecute rape, but prosecutorial discretion and jury may nullify, and normative law always results in some people suffering (inevitable result of normative reform)
        + MPC deadly self defense for rape (now, under *MTS*)
    - Some states allow broad view of force (beyond physical force): non-physical threats (moral, intellectual, etc.)
      * This gives too much discretion to jurors, prosecutors; creates opportunity for fraud; ignores sexual autonomy (law should let people enter sexual relationships not grounded in love)
        + But non-physical force prevents freedom of sexual choice just as physical force does
  1. What counts as consent
     + Consent is state of mind, or an action, or both (i.e. subjective unwillingness and external non-consent)
     + If rape is harm against autonomy, then only affirmative verbal permission of consent counts
       - But *MTS*: only affirmative permission by words OR conduct is consent
         * But men misinterpret women’s nonverbal conduct / verbal

1. **Mens Rea vis-à-vis Non-Consent (AFFRIMATIVE DEFENSE of MISTAKE OF FACT if NO CONSENT)**
   1. Strict liability: Defendants strictly liable for existence of non-consent
   2. Negligence: Defendant must act negligently regarding victim’s lack of consent
      * Genuine and objectively reasonable belief that victim voluntarily consented is a defense
   3. Recklessness: Defense must act recklessly regarding the victim’s lack of consent
      * Genuine and subjective belief that person is consenting is a defense (i.e. mistake of fact)
2. If state broadens the force requirement beyond physical force, it may need to make mens rea recklessness/etc.
   1. Maybe allow it if unlike traditional force cases or if force diluted; lack of consent ambiguous – risk of increased conviction if defense not allowed (i.e. date rape, mentioned in *Fischer*)
      * But non-consent should NOT be based on subjective view of more aggressive actor (*Sherry*)
3. Gender gap problem w/ reasonable mistake on consent. Reasonable to women? But men’s understandings differ
4. Should deceit negate consent?
   1. Maybe if rape protects women’s sexual autonomy
      * But over-criminalizes; men become rapists for falsely claiming love or marriage to induce sex
      * But proof problems; let more serious forms of deception be resolved via civil lawsuits
   2. Or maybe only let in “bad trades” (rapist if making bad bargain-job for sex; society has interest in preventing certain kinds of exchanges)

**ATTEMPT**

* Attempt is a SEPARATE CRIME; he is guilty of EACH attempt (i.e. 40 attempts, then he committed 40 crimes)

1. **Mens Rea** 
   1. **MPC**:
      1. **Conduct Crime:** Purpose to commit target offense
      2. **Result Crime:** Purpose that conduct cause the result BUT MPC: A person is guilty of an attempt to cause a criminal result if he believes that the result will occur, even if it was NOT conscious objective to cause it
      3. **Attendant Circumstances:** only needs mens rea required in the target offense
   2. **Common Law:** (same as MPC)
      * 1. But some courts allow knowledge w/r/t result if offense is serious (i.e. homicide) (*airplane example*)
      1. If target offense’s mental state is recklessness or negligence:
         1. (Strict): No liability for attempt; cannot purposefully engage in an involuntary act (MPC)
            1. But attempted voluntary manslaughter exists (i.e. *under provocation, shoots at his provoker*)
         2. (Broad): Liability for attempt; purpose to engage in conduct suffices (i.e. shooting in crowd); but restrict liability to harm coming *close* to materializing (i.e. or else every drunk driver guilty of manslaughter)
2. **Actus Reus**: Is this mere preparation, or an attempt?
   1. **MPC**: Substantial step test [focus is on subjective culpability of actor; broader liability]
      * 1. Must be a “substantial step in a course of conduct planned to culminate in his commission of the crime”
        2. Substantial step must be “strongly corroborative” of the actor’s criminal purpose
   2. **Common Law** [focus is on harm]
      1. Dangerous Proximity Test: There must be dangerous proximity to success; the act must come so close to the commission of the crime that there is a reasonable likelihood of the crime’s accomplishment but for the interference (*Rizzio*)
         1. *Rizzio*: *No attempted ROBBERY, because caught while searching for victim (could not find him)*
      2. Equivocality Test: Once mens rea’s proven, only guilty if conduct alone demonstrate the criminal purpose; conduct must NOT be equivocal (*Miller*: *NO attempted murder: loads rifle, but disarmed before he aims*)
         1. *As if viewing conduct on video, with sound muted*
   3. Policy:
      1. Closer to actual commission of crime (define attempt narrowly)
         1. Danger of arresting and convicting innocent persons
         2. Want to give attempter an opportunity to repent
         3. Punishing attempts too early incentivizes criminals to do the crime, especially if punishments identical
         4. Acknowledge that criminals have free will; may repent (less opportunity’s given unless narrow)
      2. Farther from actual commission of crime (define attempt broadly)
         1. Want police to prevent real criminal conduct before it occurs
         2. More serious the offense, sooner an attempt should be found (distinguish *Rizzio*)
      3. Where the line’s drawn matters; defendant guilty of EVERY attempt

* **MPC: DEFENSE TO ATTEMPT: RENUNCIATION** 
  + A person is NOT guilty of attempt if:
    - (1) He abandons his effort to commit the crime or prevents it from being committed, AND
    - (2) His conduct manifests a complete and voluntary renunciation of his criminal purpose 
      * Not voluntary if it is partially or wholly motivated by “circumstances, not present or apparent at the inception of the actor’s course of conduct, that increase the probability of detection or apprehension or that make more difficult the accomplishment of the criminal purpose”
      * Not complete if it is “wholly or partly motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim”

**COMPLICITY/ACCOMPLICE LIABILITY**

* **Complicity is NOT a separate crime; liability is derivative (i.e. derives from party the aider assisted)**
* For accomplice liability, principal must complete a crime: *either a completed offense of attempt (which is a crime) or another crime* (i.e. accomplice can aid or abet a completed attempt, since it’s an offense)

1. **Mens Rea** 
   * 1. (1) Purpose to promote or facilitate the commission of the crime AND
     2. (2) Purpose to commit the crime (if it is a conduct crime) [if it is a result crime, mens rea = mens rea of offense]
        1. If COMMON LAW, purpose to AID may drop down to knowledge to aid if
           1. (1) It is a serious crime (homicide/rape) OR
           2. (2) The aid given is substantial
     3. Result: Same as for principal according to substantive crime (i.e. allows for recklessness, etc.: MPC/*McVay*)
     4. Attendant Circumstances: silent (policy): LEGAL QUESTION (NOT fact specific—decided for all accomplices)
2. **Actus Reus**
   * 1. More evidence of mental state, thinner the actus reus requirement becomes (*Wilcox*: *lots of evidence of purpose*)
   1. **Common Law**: must be preconcert (encourage, etc.) OR if no preconcert, just need to aid in fact (*Tally*) (i.e. principal not subjectively aware of aid, but aid must aid in fact)
3. **Common Law: *Liparello* Theory:**
   1. (*Liparello*/Broad): Accomplice also guilty of any reasonably foreseeable offense committed by the person he aids
   2. (*Roy*/Narrow): Accomplice is guilty only of the natural and probable offenses committed by the person he aids
      1. Minority rule under common law; MPC REJECTS this
      2. **Maybe still reasonably foreseeable *if* “known risk” ala Chucky**
   3. Once the prosecutor proves that A was an accomplice of P in the commission of Crime 1, A is also responsible for any other offense committed by P that was the natural ad probable consequence of Crime 1
   4. Criticism: Mens rea of accomplice becomes mens rea of principal; may punish involuntary manslaughter via negligence as intentional murder; punishment becomes disproportional to mens rea

**MPC: DEFENSE OF ABANDONMENT** (withdraws aid)

* + - * A person is NOT an accomplice in the commission of a crime if he terminates his participation before the crime is committed AND if he:
        + Wholly deprives his assistance of effectiveness in the commission of the offense, OR
        + Gives timely warning to the police, OR
        + In some other way tries to prevent the commission of the crime

1. **Common Law**
   1. Actus Reus
      1. Aider does NOT need to be physically present at the commission of a crime (*Gladstone*: *draw map*, *drug sale*)
      2. Mere presence alone is NOT enough
      3. Assistance does NOT need to be but for the assistance the result would NOT have ensued; still liable for trivial aid if he acts with the required mens rea (*Tally*)
   2. If a perpetrator is justified in his actions (self defense), then maybe NO liability for the accomplice; no crime occurred, so no wrong imputable to accomplice

**CONSPIRACY**

1. **Actus Reus:** an agreement (same in MPC/CL)
   1. But also overt act in some non-MPC states
2. **Mens Rea**
   1. Purpose that the object of the agreement be achieved
      1. Infer purpose from knowledge sometimes (*Lauria*)
      2. If non-MPC, actor who supplies equipment that he knows will be used to commit a serious crime has requisite mens rea, but NOT if the crime is a misdemeanor rather than serious crime (*Lauria*)
   2. **Result**: MPC—purpose, BUT some common law courts allow for conspiring to commit reckless manslaughter, etc. (conspire to commit conduct, reckless w/r/t the death – *conspire to yell fire in theater*)
   3. **Attendant Circumstances:** silent; maybe no SL if mala-in-se; maybe yes if mala prohibitum or immaterial
3. MPC rejects *Pinkerton*; but some states still follow it

* **Conspiracy usually punishable separately and in addition to the completed offense (but see MPC below)** 
  + I.e. Conspiracy (Count 1); Murder (Count 2 under *Pinkerton*)

**MPC: Criminal Conspiracy**

* A defendant CANNOT be convicted of a conspiracy to commit a misdemeanor or a felony of the third degree unless he or a fellow conspirator performs an OVERT ACT in the furtherance of the conspiracy

* MPC DEFENSES TO CONSPIRACY
  + RENUNCIATION
    - It is an affirmative defense if the actor, after conspiring to commit the crime (1) thwarts the success of the conspiracy (2) under circumstances manifesting a complete AND voluntary renunciation of his criminal purpose
      * Some CL jx allow for substantial steps; not as high as “thwarting”
  + WITHDRAWAL
    - If he advises his co-conspirators of his abandonment OR he informs the police of the existence of the conspiracy and his participation in it
      * Still liable for original act of conspiring; still liable under *Pinkerton* (non-MPC) for everything that happened until withdrawal (but NOT liable for anything after withdrawal)
  + ABANDONMENT
    - ALL co-conspirators abandon the agreement; abandonment presumed if no conspirator does any overt act in pursuance of the conspiracy for the SOL

Rationale

* + Eases prosecution of criminal group; allows for procedural advantages
  + Targets special dangers of group activity (more efficient, can commit more crimes, more likely crimes will occur)

1. Actus Reus
   1. Sole actus reus requirement = an agreement [traditional common law] (not merely parallel action)
      1. Conspirator does NOT need to know all the details of the agreement; just needs to know its essential nature
      2. An agreement can exist if there is no communication and no express agreement, as long as there is a tacit agreement reached without communication (*Interstate Circuit*)
         1. *Interstate Circuit*: *mailed* *letter w/ names of conspirators to each conspirator; each knew that cooperation was essential, and then agreed*
   2. Overt act: some courts also require conspirator to commit an overt act in furtherance of the agreement
      1. Any act suffices (no need for it to be criminal); but in these states, no conspiracy unless overt act occurs
      2. If statute is silent, NO overt act requirement (assume Congress intends traditional common law)
2. **Mens Rea**
   1. Purpose that the object of the agreement be achieved (i.e. the crime) (same as MPC)
      1. Infer purpose from knowledge:
         1. If the seller of legal goods for illegal use has acquired a stake in the venture
            1. But maybe discount, continuing stake
         2. If no legitimate use of the goods or services exist
         3. If volume of business grossly disproportionate to any, or when sales for illegal use high %
      2. But if NON-MPC, a supplier who furnishes equipment that he knows will be used to commit a serious crime has requisite mens rea, but NOT if the crime is a misdemeanor rather than serious crime (*Lauria*)
         1. Criticism: do NOT broaden criminal law to punish people whose primary motive is to conduct a lawful business in a profitable way
   2. **Attendant Circumstances:** silent
3. ***Pinkerton*** 
   1. Every co-conspirator is liable for every substantive offense committed by other conspirators if it (1) falls within the scope of the conspiracy and (2) is done in the furtherance of the conspiracy (i.e. no need for accomplice liability)
      * 1. EXCEPTION: If defendant plays only a minor role in the conspiracy (in some courts)
        2. Criticism: Retributively unjust
           1. But deters people from engaging in conspiracies; forces criminal groups, allows prosecutors
      1. MPC rejects *Pinkerton, Bridges*
4. ***Bridges***
   1. Party to a conspiracy is responsible for any criminal act committed by an associate if it is a foreseeable consequence of the unlawful agreement (i.e. NO NEED for it to fall w/in scope)
      * 1. *Bridges*: *conspiracy was to bring loaded guns to restrain partygoers, not to kill; but objectively foreseeable*
      1. **Maybe still reasonably foreseeable *if* “known risk” ala Chucky**
5. **Scope of the Agreement**: one, big conspiracy or multiple, little conspiracies?
   1. **Wheel** (or only hub and spokes): Independent conspiracies if one central actor who has independent relationship w/ other actors, and other actors are purely independent
   2. **Link and chain**: unlawful plans that cannot succeed unless each link successfully performs his responsibilities in the agreement
      1. Single conspiracy if conspirators at one end of a chain know that the unlawful business would not stop w/ the next rung, and those at the end of the chain knew it had not begun w/ that rung (*yes in Bruno*)
   3. Prosecutor argues for one conspiracy: allows more evidence, more venues

**THEFT**

**Theft**

1. **Actus Reus:**
   1. Common Law: (1) trespassory taking AND (2) carrying away of the personal property of another
   2. MPC: unlawfully takes or exercises unlawful control over
2. **Mens Rea**: purpose to deprive
   1. Deprive is to (1) withhold property of another permanently, or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation, or (2) to dispose of the property so as to make it unlikely that the owner will find it
3. **MPC DEFENSE: Claim of Right**
   1. It is an affirmative defense if:
      1. He was unaware that the property or service was another’s, OR
      2. He acted under an honest claim of right to the property or service, OR
      3. He took the property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented
4. **Actus Reus** 
   1. Sellers who refuse or fail to deliver goods sold to their buyers are NOT guilty of larceny (*Tluchak*: *sold farm*)
      1. Someone in lawful possession of the goods or money of another CANNOT commit larceny (no trespass)
   2. If defendant takes the property w/ the owner’s consent, then no larceny (no trespass) (*Topolewsky: company told employee to feign cooperation w/ defendant*)
   3. Require carrying away b/c manifests mens rea; but even if carrying away, maybe issue w/ mens rea
5. **Mens Rea**
   1. Purpose to take the property permanently (*Brown*: *took bike to get even w/ boy, but did NOT intend to keep it*)
      1. EXCEPTIONS:
         1. If defendant abandons taken property or recklessly exposes it to loss
         2. If defendant takes property for an extended period sufficient to deprive owner of most of its value
            1. *Avery*: *steals season pass to baseball games*, *returns it after season is over—no defense*
            2. But not in *Jennings* (*agrees to count money and deliver it to bank w/in 3 days; counts it in one, then use remaining 2 days to obtain interest on the money; scheme involved little risk*)
6. **Defense**
   1. **Common Law**
      1. Claim of right is a defense if defendant uses force to reclaim a specific chattel (*Reid*: *robbery*)
         1. But claim of right is NOT a defense if defendant uses force to obtain cash as repayment for a debt
            1. Property belongs to owner; but cash is fungible (i.e. robbery = taking property from owner)
            2. Discourage self-help; force involves risk of physical or mental injury to victim
            3. *Reid*: *armed robbery of money from victim; claim victim owed them the money; no defense*
         2. But recall: claim of right is NOT a defense to blackmail (see below)
            1. Also involves threat of actual or potential force
   2. **But MPC**: claim of right is always a defense to all forms of theft
7. **Property subject to theft**
   1. (Traditional)” Property must be chattel/movable goods (*Miller*)
      1. Credit is not property; no theft for obtaining the benefit of an oral guaranty (*Miller*)
   2. **MPC**: “Anything of value…including tangible and intangible personal property”
   3. But confidential information can be subject to theft
      1. Confidential information is government property subject to theft (*Girard*: *statute includes “thing of value”*)
         1. Government has a property interest in its private records (*Girard*: *defendant sells names of DEA informants; converted DEA’s confidential computerized records*)
      2. Not limited to government (*Bottone*: *defendants buy copied docs from former employees of private company describing secret information on how to manufacture antibiotics*)
   4. But NOT all confidential information should be subject to theft (*Stewart*: *Stewart obtains confidential name/contact information of hotel employees for union; overturns conviction*)
      * 1. Theft of info gives subjects many employees to criminal prosecution
        2. Gov’t-property theory of info akin to Official Secrets Act that stifles press and public knowledge
        3. But just b/c something’s property under civil law doesn’t’ mean it’s property under criminal law (*Stewart*)
           1. Criminal law designed to protect wrongs against society as a whole; society maybe best served by free flow of information and greater access (i.e. disclose confidential cure for cancer) (*Stewart*)

*Sneaking into a concert may be stealing from an artist*

Recap

(1) Need permanent intent to deprive (but recall exceptions)

(2) Intent to restore is not a defense

(3) Claim of right to non-violent is not a claim of right to violent; exception is MPC

**Blackmail**

**Actus Reus:** obtaining property by threat

Mens Rea: purpose to obtain (defendant’s property/money) [given consensually – different b/w this and robbery]

1. **Actus Reus (Threats)**
   1. Threats of personal injury, threats of property injury, or threats to accuse of crime are always enough
   2. Threat of a public exposure of incriminating conduct may count (*Harrington: adultery, tax evasion*)
      1. Criticism: Overcrimanalizes; threat to bring any action involving embarrassing behavior becomes extortionate
         1. *Harrington*: *lawyer on contingent fee writes letter accusing client’s husband of adultery, plus incriminating photograph; demands 175K divorce settlement in return for all photos/recordings and wife’s promise not to reveal husband’s tax evasion to IRS; if not, he will begin divorce proceedings; attorney guilty of blackmail*
2. **Defenses**
   1. Claim of right may NOT be a defense; law does NOT authorize the collection of just debts by threatening to accuse the debtor of the time, even if the debtor is in fact guilty of the crime (*Fichtner*: *store employees*)
      1. Recognizing a claim of right defense results in concealment and compounding of a felony, to the injury of the state; extortion statutes are intended to prevent this (*Fichtner*)
      2. **But MPC**: Affirmative defense that property obtained was honestly claimed as restitution or indemnification for harm done in the circumstances to which the threat, exposure, etc. relates, or as compensation for property or lawful services
      3. *Fichtner*: *victim steals from store; defendant store manager threatens to accuse him of larceny unless he pays them money and signs a paper admitting that he had stolen goods of that value; he signs paper and gives them the money. Defendants argue that he admitted to stealing that amount and they only demanded what he owed them*)
3. Rationale
   1. Blackmail: requesting something in return for suppressing interest of another (state’s interest, etc.)
      1. But maybe no way to distinguish blackmail from a regular commercial transaction

**DEFENSE**

**JUSTIFICATION: Self-Defense**

MPC §3.04: Use of Force in Self-Protection

* §3.04(1): Use of FORCE is justified if the defendant believes that such force is immediately necessary protect himself against use of unlawful force by the other person on the present occasion
* §3.04(2)(b): DEADLY FORCE is justifiable if the actor believes that deadly force is immediately necessary to protect himself on the present occasion against (1) death, (2) serious bodily harm,(3) kidnapping or (4) sexual intercourse compelled by force or threat
  + EXCEPTIONS: Actor CANNOT use DEADLY FORCE if:
    - (1) He provoked the use of force against himself in the same encounter for the purpose of causing death or serious bodily harm
      * *EXCEPTION: If deadly initial-aggressor withdraws from the conflict, so that it is no longer the “same encounter,” he regains his right of self-protection*
    - (2) The actor knows he can avoid the necessity of using deadly force with complete safety by:
      * (a) Retreating
        + EXCEPTIONS:

(a) No duty to retreat from his “dwelling”

But if he is the initial aggressor, and wants to regain his right to self-defense, he must retreat

(b) No duty to retreat from place of work

But if he is the initial aggressor and wants to regain his right to self-defense, he must retreat, or

Even if he was not the initial aggressor, if he was attacked at work by someone else who he “knows” works there too, he must retreat to regain his right to self defense

* + Issue of duty to retreat only arises if person claiming self-defense intends to use deadly force or resorted to it
    - No duty to retreat if self-defender never resorted to deadly force (i.e. he can hold his ground); this is true even if he is confronted w/ deadly force (*Abbott*)
  + 3.04(2)(b)(ii), but actor who’s wrongfully attacked does NOT need to risk injury by retreating, even if he can escape w/ non-serious bodily injuries (*Abbott*)
  + **MPC: Defensive display of a deadly weapon is non-deadly force**

1. Defense of another
   * Someone who comes to the aid of a person in peril can use deadly force to prevent the attack under the same circumstances that would justify the use of deadly force by the endangered person herself (MPC)

* **Common Law**

1. Objective standard (i.e. *Goetz*: *NY Code: “reasonably believes”* *that such force is necessary to defend himself*)
   1. *Goetz* says objective standard may include
      1. Any relevant knowledge the actor has about the attackers,
      2. Physical attributes of everyone involved (including the actor)
      3. Actor’s own prior experiences
   2. Reason for more subjective standard: more just; objective is retributively unjust (not subjectively, etc.)
   3. (FORK): Race may or may not be included
      1. Racial stereotypes are idiosyncratic beliefs of actor, not shared by others
         1. But maybe shared by others; law should reflect/describe society’s beliefs
            1. No; law should change society’s beliefs (law as a normative force)
         2. Jury may factor in race even without instructions on race
   4. Rationale for Objective Standard:
      1. Do NOT let people set their own standards for the permissible use of force
      2. Normative message of criminal law is lost
         1. Too subjective, and it defendant begins arguing that he should be excused
2. Imminence requirement
   * 1. Imminent threat means an immediate danger that must be instantly met; just b/c a threat is inevitable does NOT make it imminent (*Norman*: *battered wife shot violent, abusive husband while he slept*)
        1. A reasonable fear of future, inevitable harm does not make the harm imminent
3. **Possible EXCEPTIONS to Self-Defense**
   1. **If person has an honest but unreasonable belief that the use of force in self-defense is necessary:** 
      1. (Majority): Lose the defense (no imperfect defense recognized)
         1. But this permits conviction for a more serious offense than defendant’s culpability
      2. **(**Minority): Honest but unreasonable belief mitigates killing to a voluntary manslaughter claim
         1. Malice is missing; akin to a killing in the heat of passion
      3. (MPC): If defendant is reckless or negligent in regard to the facts relating to the justifiability of his conduct, he loses the defense for offenses for which recklessness or negligence establish culpability (i.e. negligent homicide, reckless manslaughter)
         1. *I.e. MPC: Defendant consciously disregards a substantial and unjustifiable risk that Alex is NOT an aggressor and kills Alex; he can be held guilty for reckless manslaughter*
   2. **If person is justified in his use of deadly force, but his defensive actions recklessly or negligently injure an INNOCENT person:**
      1. He still gets the defense, even if he acted recklessly (*Fowlin*: *fired 7x towards attackers in nightclub*)
         1. But this is too broad; inconsistent w/ modern society (i.e. lots of people own guns)
      2. (MPC): If he uses force in a reckless or negligent way in regards to the safety of an innocent bystander, he can use self defense in regard to the aggressor BUT he CANNOT use his self-defense to justify his recklessness/negligence towards the *bystander* 
         1. Prosecution must show defendant took an unjustifiable risk to others in protecting himself
            1. Recall that “unjustifiability” is an element of both recklessness and negligence
         2. *I.e. MPC: Defendant shoots at aggressor in a crowded subway, recklessly causing Alex’s death; defendant can claim self-defense against the aggressor but NOT against Alex*
      3. Policy
         1. Utilitarian: do NOT make right to self-defense absolute; if actor’s self-protective behavior creates an unjustifiable risk of death to others, it’s socially desirable for him to choose a less dangerous way to protect himself
         2. Retributive: death of an innocent bystander is unjustified b/c he never committed a crime
   3. **(FORK): Did the person who used self-defense have a duty to retreat? Only applies if he intended to use deadly force**
      1. No duty to retreat: non-aggressor permitted to use deadly force to repel an unlawful attack, even if he is aware of a place where he can retreat w/ complete safety
      2. Defendant has a duty to retreat before deadly force can be used (but recall complete safety)
         1. EXCEPTION: No duty to retreat if person is attacked in his own home by an intruder
         2. Retreat is to find shelter, and shelter is in the home
            1. May or may not apply if attacker is a guest; but most states find it still does
            2. May or may not apply one occupant attacks a co-occupant (i.e. man v. wife)

Law should favor human life; discourage violence between co-occupants

But duty to retreat here is unfair for battered women

* + 1. (MPC): *Abbott* and MPC; expanded castle exception to place of work (see above)
    2. Policy
       1. No necessity to use force in self-defense if person could avoid it by retreating
          1. But society should not require cowardice; manly thing is to hold one’s ground
          2. But no-retreat rule sends positive, utilitarian message to criminals that the criminals threaten innocent persons at their own risk
          3. But duty to retreat rule confuses juries (hard to say he knew he can retreat w/ safety)

But better for person to retreat than to needlessly take a life

* 1. **(FORK): Was the user of self-defense the first-aggressor?**
     1. A first-aggressor loses his right to self-defense (*Peterson*: *non-deadly first-aggressor*)
        1. EXCEPTION: A first-aggressor that communicates his intent to withdraw and in good faith attempts to do so regains his right to self-defense (*Peterson*)
           1. *Victim maybe first-aggressor, but withdrew by getting in car and preparing to leave*
        2. (FORK): If a non-deadly first aggressor is met by deadly force:
           1. Initial aggressor still has NO self-defense claim

Self-defense only available to those free from fault; he is not free from fault

* + - * 1. (MPC: 3.04): If defendant began the unlawful conflict but did so *without* the purpose of provoking a deadly conflict, he can still use deadly force if his opponent escalates it into a lethal assault (but see 3.04(2) ~ retreat) [regains full SD when he escalates]

But under MPC, he is liable for his initial unlawful non-deadly aggression that started the conflict (i.e. assault or battery)

* + 1. (FORK): Two definitions of “first aggressor”:
       1. (Narrow): An affirmative unlawful act reasonably calculated to produce a conflict foreboding injurious or fatal consequences (*Peterson*)
          1. *Peterson*: *b/c he obtained gun, reentered yard, and threatened to shoot*
       2. (Broad): A person who, by provocative behavior, initiates a confrontation (act of first aggression for mere presence in a provocative place) (*Laney*)
          1. *Laney*: *man escapes from mob threatening to kill him*, *and safely escapes; but he adjusts his gun and re-confronts the mob (becomes first-aggressor)*

**EXCUSE: Insanity**

(FORK): Three Tests: (1) Cognitive, (2) Moral, (3) Volitional

* Choice of insanity defense law may NOT matter in practice (little evidence that tests yield different results in practice)
* Evidence of mere drug addiction, without any other physiological or psychological involvement, is NOT a mental defect or disease that supports an insanity defense (*Lyons*)
  + But actual physical damage to brain itself qualifies as a mental disease or defect (*Lyon*)

1. (MAJORITY): *M’Naughten* 
   1. A person is insane if, at the time of committing the act, he suffering from a mental disease, such that:
      1. (1) Cognitive: He did NOT know the nature and quality of the act he was doing OR
      2. (2) Moral: If he did know it, he did NOT know that what he was doing was wrong
         * Only depends on whether defendant knowingly violated *societal* standards of morality
           + If he’s conscious that the act is something that he should not do, he fails the moral prong (i.e. even if he personally thinks his conduct is morally proper)
   2. Mere passion, stupidity, lack of self-control, and impulsiveness are NOT a mental disease (*Porter*)
   3. Volitional (*Davis*): Same as *M’Naghten*, but can also plead insanity if the defendant’s will (governing power of his mind) has been otherwise than voluntarily so completely destroyed that his actions are not subject to it, but are beyond his control
      1. But almost impossible to prove that defendant’s ability to control himself is totally lacking
2. (MINORITY): MPC: moral/cognitive/volitional

* §4.01(1) – Person not responsible for criminal act if at the time of such conduct as a result of mental disease or defect:

1. Actor lacks substantial capacity to appreciate the (moral) wrongfulness of his conduct, OR
2. Actor lacks substantial capacity to conform his conduct to the requirements of the law
3. Federal Standard
   1. It is an affirmative defense that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a SEVERE mental disease or defect:
      1. He was unable to appreciate the nature and quality of his acts
      2. He was unable to appreciate the wrongfulness of his acts

|  |  |  |
| --- | --- | --- |
|  | Total Impairment | Substantial Impairment |
| **Cognitive/Moral** | M’Naghten, Davis, Federal | Blake/MPC |
| **Volitional** | Davis | Blake/MPC |

**Mistake of Law/Mistake of Fact**

(FORK): MPC or Lesser Crime?

MPC 2.04(2): If the actor would be guilty of another offense had the circumstances been as he supposed, then mistake of fact REDUCES the degree of the offense to that which he would’ve been guilty of had the situation been as he supposed

1. **Common Law**
   * 1. (FORK): Common law treats mistake of fact two ways:
        1. Moral Wrong: If reasonable mistake of fact, but if a person’s conduct would be *immoral* had the situation been as he supposed, then a reasonable mistake of fact is NOT a defense (*Prince*)
        2. Lesser Crime: A reasonable mistake of fact is NOT a defense if a person’s conduct would be *illegal* had the situation been as he supposed; guilty of greater crime (*Prince*, Dissent)

**Mistake of Law**

1. MPC 2.02(9): Ignorance of law is a defense if:
   * 1. 2.04(3)(a): Fair notice:
     2. 2.04 (3)(b) Reasonable reliance:
     3. 2.04(1) Ignorance that negates mens rea (recall MPC requirement in 2.02(1))
   1. Note that relying on a private attorney’s advice is NOT defense to a crime
2. Common Law
   1. (Traditional Common Law): Ignorance of law is not a defense
      1. No regulatory offenses; most crimes were mala in se
   2. (Modern): Ignorance of law is a defense if:
      1. Law builds in knowledge of the law as an element of the offense (*Cheek*: *tax laws*’ *requirement—read in by Courts—of an “intentional violation of a known legal duty*”)
         1. (FORK): Petty regulatory offense or regulatory offense warranting strict liability
            1. Infer mens rea for petty regulatory offenses (i.e. ignorance of law feels unjust here)

Court may be worried about criminalizing innocent conduct (*Liporata*: *food stamps*)

But knowledge of the law maybe NOT necessary if behavior’s inherently dangerous

Dangerous activity puts defendant on notice (*Ansaldi*: *drug distribution*)