

- I. Introduction
  - a. Due process: the minimum standards of fairness in a free society
  - b. Theories of punishment: deterrence (general and special); rehabilitation; restraint; retribution.
  - c. The ultimate purpose of punishing criminal behavior is to reduce harm to society.
- II. Sources and Limits of Criminal Law
  - a. The common law: if the legislature sets out a common law crime without setting out a definition, it is implied that the legislature meant what the common law meant.
  - b. Principle of legality: Before there can be criminal liability, there must be laws that set out in reasonably clear fashion what behavior is prohibited and what punishments are possible if one engages in that behavior. People must have fair warning.
  - c. Void for vagueness: If a statute is so unclear that a person of reasonable intelligence would have to guess at its meaning, it is unconstitutional, unless tradition provides the meaning. Similarly, if a court interprets a statute in a way no one could have predicted, the court's interpretation should be overturned. Courts will usually give ambiguous statutes the narrower interpretation.
- III. Mental State
  - a. Under traditional law, if the statute gives a mental state but the crime has more than one element, the court must determine to what elements that mental state attaches. Under the Model Penal Code (MPC), unless otherwise indicated, the stated mental state attaches to every element of the crime.
  - b. Mental states under the MPC:
    - i. Purposely: a person acts purposely with respect to a material element of an offense when: (i) if the element involves the nature of his conduct as a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and (ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.
    - ii. Knowingly: A person acts knowingly with respect to a material element of an offense when: (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.
    - iii. Recklessly: A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law abiding person would observe in the actor's situation.

- iv. Negligently: A person acts negligently with respect to a material element of the offense when he should be aware of substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.
- c. Presumptions are constitutional if (1) in charging the jury, the judge makes it clear that if the jury finds that fact X has been established, they may, but are not required to, conclude that fact Y has been established, and (2) there is a logical common sense relationship between fact X and Y. Presumptions are rare, as most legislatures change the required mental state when seeking to ease the burden on the prosecution.
- d. Mental state at traditional law
  - i. General intent: Defendant did not have to actually intend the offense; he only had to be reckless.
  - ii. A specific intent crime is one in which an actual intent on the part of the defendant is required in order for the defendant to be found guilty and that's the only mental state that will result in criminal liability. If the word "intent" appears in the statute, courts will generally rule that a specific intent is required.
  - iii. Knowingly: the defendant knew, believed, or was substantially certain that a particular fact existed. Some jurisdictions said the defendant had to have knowledge while others implemented a reasonable person test. Jurisdictions were split as to whether willful blindness satisfied the knowledge requirement and whether crimes requiring this mental state were general or specific intent crimes.
  - iv. Recklessness required a gross deviation from normal behavior. The majority of courts held that a gross deviation from normal behavior was required for negligence, though not as great a deviation as recklessness required, though some held that a simple lack of reasonable care would satisfy the negligence requirement.
- e. Strict liability crimes
  - i. Under traditional law, when the statute did not include a required mental state, traditional law required the court to determine what, if any mental state, the statute requires. If the court determined that a mental state was required, recklessness would usually satisfy the requirement. Courts would generally consider the potential punishment and statement of purpose found in the statute when determining whether or not it was a strict liability crime. Under the MPC, unless expressly indicated otherwise, a mental state of recklessness is required.
  - ii. Reasons for strict liability crimes: (1) For this particular offense, a culpable mental state would be almost impossible to prove; (2) This is an area where the legislature wants to make everyone very careful; (3) It is a behavior that could potentially cause great harm to a lot of people.

- f. Mistake of fact
  - i. Rules for mistake of fact defense at traditional law:
    1. If the crime required a specific intent, a mistake as to a critical element of the crime was a defense, whether the mistake was reasonable or not.
    2. If the crime required malice or recklessness, a mistake to a critical fact was a defense only if it were reasonable.
    3. Mistake of fact was no defense to a strict liability crime.
  - ii. Under MPC, mistake of fact plays a role in determining whether the required mental state has been satisfied. It does not stand alone as a defense.
- g. Mistake of law is not a defense, with two/three exceptions:
  - i. Where the criminal statute requires by its very terms knowledge of the law.
  - ii. The defendant makes a mistake of law which results in the defendant's making a mistake of fact as to a critical element of the crime.
  - iii. Under the MPC only, if the defendant *reasonably* relied on an official interpretation of the law made by a public official charged with the responsibility for interpreting or enforcing the law.

#### IV. The Act Requirement

- a. A voluntary act is required.
- b. If defendant claims no voluntary act, most jurisdictions will require the defendant only to raise a reasonable doubt.
- c. Most courts say that an involuntary element negates the act requirement, though in theory it could negate the mental state as well.
- d. Act of Omission are generally not criminal, with two exceptions:
  - i. When the statute particularly prohibits not acting.
  - ii. Where the criminal statute prohibits bringing about a particular result, but does not indicate any particular behavior which the actor must engage in, and the defendant's failure to act substantially contributes to that result and the court finds that the defendant had a legal duty to act.
    1. There is no affirmative duty to prevent harm or to help someone who is in distress, with four exceptions:
      - a. There's a close personal relationship between the parties.
      - b. There's a contract between the parties that requires assistance.
      - c. There is a non-criminal statute in the jurisdiction that provides that the party has a legal duty to the other party.
      - d. If the actor begins to give aid, he is under legal duty to reasonably try to complete the task.

#### V. Homicide

- a. Common law
  - i. Murder is the killing of a human being with malice aforethought.
    1. The elements of murder are the death of a human being, the necessary mental state, and an act.

2. Malice aforethought can be established by an intent to kill, an intent to cause serious bodily harm, the depraved indifference to human life, and the felony murder rule.
- ii. Manslaughter is the unlawful killing of a human being without malice aforethought.
    1. Voluntary manslaughter: an intentional killing taking place during the heat of passion after legal provocation.
    2. Involuntary manslaughter: the reckless killing of a human being.
    3. Misdemeanor manslaughter rule: killing during the commission of a misdemeanor.
- b. Statutory regulations
- i. First degree murder is committed by (1) the premeditated and deliberate killing of a human being and (2) the killing of a person during the commission of a dangerous felony.
    1. Jurisdictions are divided over whether premeditation and deliberation requires intent to kill and forethought or just intent to kill.
    2. Jurisdictions are divided over whether a dangerous felony must be dangerous by definition or can be any felony committed in a dangerous way.
  - ii. Second degree murder is the intent to cause serious bodily harm and the depraved indifference to the value of human life.
  - iii. What constitutes a legal provoking event is usually determined by the trier of fact. Provocation heat of passion is now called an extreme emotional disturbance for which there is a reasonable excuse.
  - iv. Most jurisdictions have replaced the manslaughter misdemeanor rule with negligent homicide.
  - v. In manslaughter cases, the jury should be instructed to consider all the factors and circumstances surrounding the event when determining whether or not there was a gross deviation from reasonable behavior.
- c. Arkansas
- i. Capital murder: A person commits or attempts to commit terrorism, rape, kidnapping, vehicular piracy, robbery, aggravated robbery, residential burglary, commercial burglary, a felony violation of the Uniformed Controlled Substances Act involving actual delivery of a controlled substance, first degree escape, and in the course of and in furtherance of the felony or in immediate flight from the felony, the person or an accomplice causes the death of any person under circumstances manifesting extreme indifference to the value of human life, or the person commits arson and causes the death of any person. Or the person purposely fires a gun from a vehicle at a person or a vehicle or occupied structure that he or she knows or has good reason to believe to be occupied by a person and so causes the death of another manifesting extreme indifference to the value of human life. Or the person with the premeditated and deliberate purpose of causing the death of another person causes the death of any person.

- ii. First degree murder: the person commits or attempts to commit a felony, and in the course of and in the furtherance of the felony or in the immediate flight from the felony, the person or an accomplice causes the death of any person under circumstances manifesting extreme indifference to the value of human life. Also, with the purpose of causing the death of another person, the person causes the death of another person.
      - iii. Second degree murder: The person knowingly causes the death of another person under circumstances manifesting extreme indifference to the value of human life; or with the purpose of causing serious physical injury to another person, the person causes the death of any person.
      - iv. Manslaughter: In the course of and in furtherance of the felony or in the immediate flight from the felony, the person or an accomplice negligently causes the death of any person or another person who is resisting the felony or flight causes the death of any person.
- d. The “Heat of Passion” Test
  - i. The Supreme Court found in *Mullaney v. Wilbur* that the defendant only had to raise a reasonable doubt as to his assertion that his killing was a heat of passion killing. The Court clarified its decision in *Patterson v. New York* where it found that when heat of passion does not negate an element of the crime but is rather an affirmative defense, the state can put the burden of proof on the defendant should it so desire. The Constitution does not require the state to prove each critical issue beyond a reasonable doubt. Rather, (1) the state must prove each element of the crime beyond a reasonable doubt; (2) the state can place the burden of affirmative defenses to other critical issues on whomever it wants; and (3) if what the state labels as an affirmative defense is nothing more than saying one of the elements of the crime is missing, then the defendant only has to raise a reasonable doubt.
  - ii. Under traditional law, most jurisdictions allowed the jury to take only the unique physical characteristics of the defendant into account, though the law is evolving to allow more unique characteristics to be taken into consideration.
  - iii. MPC: Whether there was an extreme emotion disturbance and whether there was a reasonable excuse must be decided by the jury, which can take into consideration the unique characteristics of the defendant in deciding these issues.
- e. Limitations of the felony murder rule: (1) It is only applied to dangerous felonies; (2) There must be an independent felony; (3) The modern trend holds that if a third person takes a life attempting to stop a felony from being committed, the rule does not apply.
- f. A defendant can only be convicted of a crime with which he was charged, unless the judge allows the jury to find the defendant guilty of a lesser included offense.
- g. The Death penalty: Prior to the Supreme Court decisions of the 1960s and 1970s, two-thirds of the states administered the death penalty through the single

verdict method with the jury receiving no guidelines when determining whether to give the defendant life or death. In *Ferman v. Georgia*, the Court declared this method unconstitutional. The bifurcated method is now the only method constitutionally approved by the court.

## VI. Causation

- a. Under traditional law, to establish causation, the state must establish cause in fact (actual cause) and proximate cause (legal cause).
  - i. If the exact same result would not have occurred in the exact same way but for the action of the defendant, then there is cause in fact
  - ii. An act is the proximate cause of all of the natural and probable consequences of the act. Clues used to determine the presence of proximate cause include the defendant's intent, the foreseeability of the event, how substantial a bearing the defendant's action had on the result, and the distance in time, space, and chain of events.
  - iii. The MPC still requires cause in fact and proximate cause, though it eliminates the term "proximate cause" and sets the criteria of proximate cause as asking the jury to do justice.

## VII. Mental disease and defect

- a. Incompetence to stand trial: No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as such incapacity endures. (MPC in agreement with traditional law.)
- b. Test for Insanity Defense
  - i. Under traditional law, the right-wrong test: If the defendant can't tell the difference between right and wrong or can't appreciate the criminality of his conduct, and there is an underpinning mental illness, he may be found not guilty by reason of insanity. Some jurisdictions have added the irresistible impulse defense. There is a debate over whether the right-wrong test should be applied to moral or legal right and wrong. The jury makes the decision based on evidence presented at the trial. States can place the burden on whomever they want, and most choose to place the burden upon the defendant.
  - ii. MPC: (1) a person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to either appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. (2) As used in this Article, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social behavior.
  - iii. MPC generally allows for more expert testimony.
- c. Results of a successful defense:
  - i. Automatic commitment. State hospital determines when to release the defendant.
  - ii. Trial judge has discretion whether to release or commit the defendant.
  - iii. A hearing is set to determine defendant's fate.

- iv. Defendant is released, though civil proceedings are usually initiated.
- d. Diminished capacity (partial or temporary insanity): Defendant does not qualify for the full defense of mental illness, but he was so mentally ill at the time of the crime that he couldn't form the necessary mental state. If successful, defendant will usually be found guilty of a lesser offense requiring a lesser mental state. Some courts as well as the MPC allow this defense in any set of circumstances, some allow it only for specific intent crimes, and others, out of practicality, do not allow it at all.

#### VIII. Intoxication

- a. Under traditional law, voluntary intoxication is a defense only to specific intent crimes. Defendant must show that he was so drunk that he did not know what he was doing. Jurisdictions were split on whether to allow the defense of voluntary intoxication by illegal drugs.
- b. Under the MPC, this is a defense if the crime requires a mental state or purposely or knowingly. MPC allows for the defense of voluntary intoxication by illegal drugs the same as voluntary intoxication by alcohol.
- c. This defense is never available in Arkansas.

#### IX. Justification and Excuse

- a. Defense of choice of evils/necessity: some jurisdictions, including the MPC, allow this defense, some allow it except for murder, and so do not allow it.
- b. Defense of Self and Others
  - i. Majority rule: If the defendant reasonably believed he was under an unlawful attack, he could use a reasonable amount of force to defend himself. State can place the burden wherever it likes, though most only require the defendant to raise a reasonable doubt.
    - 1. Under traditional law, if the defendant claimed self-defense, and the jury concluded that the defendant believed he was under the attack but that belief wasn't reasonable, or the defendant believed the amount of force used was reasonably necessary but it wasn't, some jurisdictions denied the defendant the defense of self-defense while others labeled it imperfect self-defense and convicted the defendant of a lesser crime, such as manslaughter. Jurisdictions disagreed as to whether the jury should take into consideration the unique characteristics of the defendant in deciding whether he reasonably believed he was under attack and reasonable in the amount of force used, or whether a reasonable man test should be used.
    - 2. Under the MPC, if the actor believed he was under an unlawful attack and the amount of force used was necessary to protect himself, he is justified, unless he was reckless or negligent in forming that belief.
  - ii. Limitations
    - 1. The original aggressor rule: if the defendant was the original aggressor in the encounter that led to his taking someone else's life he could not use the defense of self-defense. Some jurisdictions said the defendant was the original aggressor when

he had the intent to cause death or bodily harm, while others said he was the original aggressor when he had the intent to commit any felony. Under traditional law, the defendant regained his right to self-defense when he gave up the attack and communicated either directly or indirectly to the other party that he was giving up the attack. Under the MPC, the right to self-defense is recovered when the encounter comes to an end.

2. The retreat rule: a person cannot use deadly force in self-defense if he can retreat safely from the unlawful attack. Does not apply to a person in his home or to a law enforcement officer. MPC and about half the states, including Arkansas, adhere to this rule.
- c. Defense of property: reasonable non-lethal force can always be used to defend property. Some states and the MPC allow for lethal force only to protect a home.
  - d. Law Enforcement
    - i. At common law, the officer could use all force necessary to prevent a felony or to effectuate the arrest of a fleeing felon. The officer could also use all necessary non-lethal force in the case of a misdemeanor.
    - ii. The Supreme Court has held that statutes allowing the police to use deadly force on any fleeing felon are unconstitutional. Deadly force may only be used if the officer believes the fleeing felon poses a serious risk to others, an approach adopted by the MPC.
    - iii. At common law, a citizen had the right to resist an unlawful arrest, which was an arrest that occurred when there was no probable cause or when the officer used excessive force to effectuate the arrest. Most jurisdictions have implemented no soc rules (no right to resist unlawful arrest), though some still allow for the resistance of an arrest where excessive force is used.
  - e. Duress
    - i. At common law, it was a defense to any crime except murder that the actor was in reasonable fear from another of immediate death or serious bodily harm to himself or a close family member.
    - ii. MPC: If the threat to the defendant was a threat that a reasonable person of reasonable firmness would be unable to resist, then the defendant has a defense to a criminal charge. Does not require that the threat be immediate or one of death or physical injury, nor does it preclude the defense in homicide cases.

#### X. Common law crimes

- a. Rape: forced sexual intercourse, by a man on a woman not his spouse. The majority of jurisdictions ascribe the mental state of reckless.
  - i. Modern statutory model: sexual intercourse or deviant sexual activity is criminal; no general requirements; mental state is reckless; half of jurisdictions allow for spousal rape, half, including the MPC, do not.
- b. Battery: the intentional or reckless application of force to the person of another that results in physical harm or an offensive touching.

- i. Modern statutory model: Most jurisdictions have divided battery into degrees determined by the statute of the victim, the result, the mental state, and whether or not a weapon was used.
- c. Assault: (1) an attempted battery; or (2) intentionally placing another in reasonable apprehension of bodily harm.
  - i. Merger: a defendant cannot be convicted of both assault and battery.
  - ii. Modern statutory model: most statutes define assault so that it covers both the attempted battery and the intent to cause apprehension; most jurisdictions have divided assault into degrees along the same lines as battery; MPC combines assault and battery into one offense.
- d. Larceny: the taking and carrying away of the personal property in the possession of another without consent with the intent to permanently deprive.
  - i. There is taking as soon as the actor gains control over the property. There is carrying away with the slightest movement of that property once the actor has gained possession. Possession is in the very general sense, not necessarily the physical sense.
  - ii. Modern statutory model: there were three theft offenses at common law: obtaining property by false pretenses, embezzlement, and larceny. Today, all three are often combined under theft.
- e. Burglary: the breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony or larceny inside.
  - i. Breaking is opening anything that's closed. Entering is crossing the plane of the house. Dwelling is any place customarily used for sleeping. Nighttime is whenever a person's features cannot be made out through natural light. If the intent to commit a felony or larceny is formed after breaking and entering, there is no burglary. If the target crime is not committed, however, there is still burglary. There is no merger between burglary and the target crime.
  - ii. Modern statutory model: Most jurisdictions extend burglary to businesses. Some jurisdictions have created degrees with the highest degree dealing with a dwelling. Most have done away with the nighttime requirement. There is a split of authority over whether there has to be an intent at the time of entry. Under the MPC, a person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter.
- f. Arson: the malicious burning of the dwelling house of another.
  - i. Recklessness satisfied the mental state requirement.
  - ii. Burning occurred if any part of the structure was burnt or charred. Smoke damage did not count.
  - iii. Modern statutory model: includes businesses and extends to one's own property if done for insurance fraud.
- g. Robbery: the taking and carrying away the personal property in the possession of another from the other's person or presence, by force or intimidation with the intent to permanently deprive.

- i. Robbery merges with larceny and assault.
- ii. Modern statutory model: Very similar to common law. Some jurisdictions have degrees based on whether or not the defendant used a weapon.

## XI. Attempts

- a. The attempt merges with the completed target crime.
- b. Mental state:
  - i. Traditional law: some jurisdictions require specific intent to commit the target offense regardless of the mental state of the target offense. If the target offense is a result crime, a specific intent to bring about that result is required. Others require whatever mental state is necessary for the target crime.
  - ii. MPC requirement: The introduction of 5.01 seems to require only the mental state required by the target crime, but 5.01(c), under which most attempt charges are filed, requires that the defendant “planned to culminate in the commission of the crime.”
- c. Acts:
  - i. Traditional law: close proximity, determined by the jury.
  - ii. MPC: a substantial step in the direction of the completed crime is required.
- d. Impossibility
  - i. Factual impossibility—it is impossible to complete the crime because of some facts unknown to the defendant—is not a defense to the crime of attempt. Legal impossibility is.
  - ii. Under traditional law, courts would determine whether the defendant was the type of person that should be punished for attempt and then use the appropriate title to legitimize their decision.
  - iii. MPC: The defendant can be found guilty of attempt for practically every situation in which it was impossible to complete the crime, except where there is no law on the books. However, the court has the discretion to dismiss the charges of attempt if the court finds both impossibility of the result and the defendant presents no danger to the public.
- e. Abandonment was unrecognized at common law but is recognized by the MPC.
- f. Punishment (2 approaches):
  - i. The exact same range of punishment as the target crime (MPC).
  - ii. A punishment scaled back from the punishment for the target crime, which is followed by most jurisdictions.

## XII. Conspiracy

- a. Under traditional American law, an agreement between two or more people to commit an unlawful act plus some overt act in furtherance of the agreement. Very little is required by the overt act requirement.
- b. Ramifications of a conspiracy charge:
  - i. Under traditional law, Perkins rule applies, that is, coconspirators are liable not only for conspiracy but also for all foreseeable crimes in furtherance of the conspiracy.
  - ii. Allows evidence that would otherwise be inadmissible.

- iii. The government can bring the charges in any location in which any act done by any of the coconspirators took place.
  - c. The agreement
    - i. Case is usually circumstantial.
    - ii. MPC allows for only one guilty party. Traditional law does not.
  - d. Mental state
    - i. Under traditional law, specific intent is required to both enter into the agreement and to have an unlawful act take place as a result of that agreement, even if the target crime had a less culpable mental state. If the target crime had a more culpable mental state, then conspiracy required the more culpable mental state.
    - ii. If the defendant entered into an agreement knowing that a crime would take place, there is no conspiracy, unless the defendant would receive some benefit from that crime.
    - iii. If the target offense contained many elements and only one of the elements required a specific intent, some jurisdictions said that the government only had to prove a specific intent to commit the target offense while others said the government must prove specific intent to commit every element of the target offense. MPC dodges the issue, requiring that there be a purpose to promote or facilitate the crime, essentially the same requirement at traditional law.
  - e. At common law, it was only necessary for the object of the conspiracy to be an unlawful act, not a crime. The MPC and most jurisdictions now require the object of the conspiracy to be a crime, and some require it to be a felony.
  - f. Under traditional law and the MPC, if there is an agreement between the coconspirators to commit multiple crimes, there is only one conspiracy. If one party has separate conspiracies with separate individuals concerning the same criminal conduct, the circumstances determine the number of conspiracies. When each participant knows that others are necessary to commit the objective, then one conspiracy exists. This is rarely an issue under the MPC, because the Perkins rule does not apply.
  - g. Withdrawal
    - i. Under traditional law, defendant could not withdraw and escape liability for conspiracy once the requirements for conspiracy had taken place, though defendant could avoid liability for future crimes springing forth from the conspiracy. Withdrawal required the defendant to give up the conspiracy and communicate such to his coconspirators with enough time for them to give up their plans.
    - ii. Under the MPC, withdrawal erases liability for the conspiracy, but withdrawal requires thwarting the success of the conspiracy under circumstances that show a complete renunciation of criminal purpose.
  - h. Punishment
    - i. Every conspiracy is punished the same.
    - ii. There is a relationship between the conspiracy and the target offense.
    - iii. The same range of punishment as the target offense is given (MPC).

### XIII. Solicitation

- a. Asking another person to commit a crime with an intent to have the crime committed.
- b. Solicitation merges with attempt, conspiracy, and the target crime.
- c. Solicitation prosecutions are rare, except for the solicitation of murder and when the solicitation is made to a police officer under circumstances that suggest the police officer is telling the truth.
- d. Carries the same punishment possibilities as conspiracy.

#### XIV. Accomplice liability

- a. Under traditional law, the prosecution must prove that the defendant helped another person commit a crime with the necessary mental state.
- b. The act requirement: the defendant must help, which requires very little. Words of encouragement will suffice. While mere presence at the scene will not be enough to establish help, there is no threshold as to the amount of help necessary, nor must the prosecution prove that the crime took place as a result of the help. Practically, however, without significant help, the jury probably won't convict, and the prosecution won't be able to prove the required mental state.
- c. Mental state
  - i. Traditional law: one line of cases held that it must be established that the defendant intended to help and intended for the crime to take place, even if the crime required a lesser mental state, while another line of cases merely required the mental state required by the target crime.
  - ii. MPC: If the defendant is charged with a crime that is not a result crime, the state must prove a purpose for that crime to occur. If the defendant is charged with a result crime, then the state must prove the mental state required for that particular crime.
- d. Criminal facilitation: a number of jurisdictions following the first line of cases or having adopted the MPC have created the statutory crime of criminal facilitation. The seller of goods or the provider of services on the open market who knows that these goods or services are an essential ingredient of a crime and supplies those goods anyway is guilty of criminal facilitation, which is usually a misdemeanor. Typically, the target crime must be a dangerous felony.
- e. Extent of accomplice liability
  - i. If a defendant helps another person commit a crime and during the commission of that crime, that other person commits another crime, is the defendant guilty of that other crime under the theory of accomplice liability?
    - 1. Common law:
      - a. Yes, if it was foreseeable.
      - b. Yes, if the defendant intended the other person to commit that crime if necessary.
      - c. Yes, if the other crime was in furtherance of the original crime.
      - d. Yes, if the other crime was a result of the original crime.
    - 2. MPC says that the other crime will be handled in the same way as any other accomplice liability charge.

- f. Exceptions to the Accomplice liability charge
  - i. The victim rule: A person in the class of people that the statute was designed to protect cannot be found guilty of that crime under the theory of accomplice liability.
  - ii. The necessary party rule (MPC): If the crime by definition requires at least two participants and the statute only punishes one of them, the state cannot convict the other under the theory of accomplice liability.