

- I. Limits of Criminal law
 - a. Due process
 - b. Principle of legality
 - c. Void for vagueness
- II. Mental State
 - a. Traditional law
 - i. 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.
 - ii. General intent
 - iii. Knowingly: the defendant knew, believed, or was substantially certain that a particular fact existed.
 - iv. Recklessness: a gross deviation from normal behavior.
 - b. 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 that 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. Reasons for strict liability crimes: (1) 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.

- d. Mistake of fact
- e. Mistake of law is not a defense except:
 - i. Where the criminal statute requires by its very terms knowledge of the law.
 - ii. The defendant makes a mistake of law which result in the defendant's making a mistake of fact as to a critical element of the crime.
 - iii. MPC: If the defendant reasonably relied on an official interpretation of the law made by a public official charged with responsibility for interpreting or enforcing the law.

III. The Act Requirement

- a. Acts of Omission are generally not criminal except:
 - 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 contributed to that result and the court finds that the defendant had a legal duty to act.
- b. There is no affirmative duty to help another, except when:
 - i. There's a close personal relationship between the parties.
 - ii. There's a contract between the parties that requires assistance.
 - iii. There is a non-criminal statute in the jurisdiction that provides that the party has a legal duty to the other party.
 - iv. If the actor begins to give aid, he is under legal duty to reasonably try to complete the task.

IV. Homicide

- a. Common law
 - i. Murder is the killing of a human being with malice aforethought.
 - 1. Malice aforethought: an intent to kill, an intent to cause serious bodily harm, the depraved indifference to the value of human life, the felony murder rule.
 - ii. Manslaughter is the unlawful killing of a human being without malice aforethought.
 - 1. Voluntary manslaughter: heat of passion provocation/extreme emotional disturbance for which there is a reasonable excuse
 - 2. Involuntary manslaughter
 - 3. Misdemeanor manslaughter rule
- b. State statutory model
 - i. First degree murder: (1) the premeditated and deliberate killing of a human being; (2) the killing of a person during the commission of a dangerous felony.
 - ii. Second degree murder: (1) the intent to cause serious bodily harm; (2) the depraved indifference to the value of human life.
- c. Arkansas
 - i. Capital murder: (1) 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 Substance Act involving actual delivery of a

controlled substance, first degree escape, and in the course of and 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; (2) A person commits arson and causes the death of any person.

- d. *Mullaney v. Wilbur, Patterson v. New York*: (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.
- e. Limitations of the felony murder rule: (1) it only applies to dangerous felonies; (2) there must be an independent felony; (3) the rule does not apply when a third person takes a life attempting to stop a felony from being committed.
- f. *Ferman v. Georgia*: the single verdict method of delivering the death penalty is unconstitutional.

V. Causation

- a. Cause in fact (actual cause): The exact same result would not have occurred in the exact same way but for the action of the defendant.
- b. Proximate cause (legal cause): An act is the proximate cause of all of the natural and probable consequences of the act. Consider: (1) defendant's intent; (2) the foreseeability of the event, (3) how substantial a bearing the defendant's action had on the result, and (4) the distance in time, space, and chain of events.

VI. Mental illness

- 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.
- b. Test for Insanity Defense
 - i. Traditional law: The defendant can't tell the difference between right and wrong or can't appreciate the criminality of his conduct.
 - ii. MPC: 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.
- c. Results of a successful defense:
 - i. Automatic commitment
 - ii. Discretion of the court
 - iii. A hearing
 - iv. Release
- d. Diminished capacity

VII. Intoxication

VIII. Justification and Excuse

- a. Defense of choice of evils/necessity
- b. Self-defense

- i. Traditional law: If the defendant reasonably believed he was under an unlawful attack, he could use a reasonable amount of force to defend himself.
 - ii. 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.
 - c. Limitations
 - i. The original aggressor rule
 - ii. The retreat rule
 - d. Defense of property
 - e. Law enforcement
 - i. Unlawful arrest: (1) no probable cause; (2) excessive force.
 - f. Duress
 - i. Traditional law: The actor was in reasonable fear from another of immediate death or serious bodily harm to himself or a close family member.
 - ii. MPC: The threat to the defendant was a threat that a reasonable person of reasonable firmness would be unable to resist.

IX. Common law crimes

- a. Rape: forced sexual intercourse by a man on a woman not his spouse.
- b. Battery: the intentional or reckless application of force to the person of another that results in physical harm or an offensive touching.
- c. Assault: (1) an attempted battery; or (2) intentionally placing another in reasonable apprehension of bodily harm.
 - i. Merger: battery
- d. Larceny: the taking and carrying away of the personal property in the possession of another without consent with the intent to permanently deprive.
- 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.
- f. Arson: the malicious burning of the dwelling house of another.
- 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. Merger: larceny and assault.

X. Attempt

- a. Mental State
 - i. Traditional law: (1) Specific intent to commit the target offense; or (2) whatever mental state is required by the target crime.
 - ii. MPC 5.01(c): The defendant "planned to culminate the commission of the crime."
- b. Acts
 - i. Traditional law: close proximity
 - ii. MPC: a substantial step
- c. Impossibility
- d. Abandonment
- e. Punishment

- i. Same as target crime (MPC).
- ii. Scaled back from target crime (majority).

XI. Conspiracy

- a. Traditional American law: an agreement between two or more people to commit an unlawful act plus some overt act in furtherance of the agreement.
- b. Ramifications
 - i. Pinkerton rule
 - ii. Allows otherwise inadmissible evidence
 - iii. Location of charges
- c. The agreement
- d. Mental state
 - i. Traditional law: specific intent to both enter into the agreement and to have an unlawful act take place as a result of that agreement.
 - ii. MPC: purpose to promote or facilitate the crime
- e. Withdraw
 - i. Traditional law: The defendant must give up the conspiracy and communicate such to his coconspirators with enough time for them to give up their plans.
 - ii. MPC: The defendant must thwart the success of the conspiracy under circumstances that show a complete renunciation of criminal purpose.
- f. Punishment
 - i. All conspiracies the same
 - ii. Related to the target crime
 - iii. Same as the target crime (MPC)

XII. Solicitation

- a. When defendant asks another person to commit a crime with an intent to have the crime committed.
- b. Merger: attempt, conspiracy, and the target crime.
- c. Rarely prosecuted except when (1) murder is solicited; (2) the solicitation is made to a police officer under circumstances that suggest the police officer is telling the truth.

XIII. Accomplice liability

- a. Mental state
 - i. Traditional law: (1) specific intent to help and specific intent for the time to take place; (2) the mental state required by the target crime.
 - ii. MPC: If the defendant is charged with a crime that is not a result crime, purposely. If the defendant is charged with a result crime, whatever mental state is required for that particular crime.
- b. Criminal facilitation
- c. Extent of accomplice liability
 - i. If defendant helps another person commit a crime and during the commission of that crime, the other person commits another crime, is the defendant guilty of that other crime?
 - 1. Traditional law: (1) if it was foreseeable; (2) if the defendant intended the other person to behave that way if necessary; (3) if

the other crime was in furtherance of the original crime; (4) if the other crime was a result of the original crime.

2. MPC: the other crime must meet the same standards for accomplice liability.
- d. Exceptions to Accomplice liability
 - i. The victim rule
 - ii. The necessary party rule (MPC)