

(A) Mens Rea (Mental State/Intent)

TYPES OF CRIMES	RULES	GENERAL DEFENSES	CASES/EXAMPLES/HYPOS
SPECIFIC INTENT CRIMES	Multiple-intent crimes i.e. actions that require specific further purpose of mind	<ol style="list-style-type: none"> 1. “Reasonable mistake of fact” (complete defense) 2. “Unreasonable mistake of fact” (partial mitigation) 3. “Diminished Capacity” (partial mitigation) <i>*In CA no more “diminished capacity” defense b/c someone got off murder charge on Twinkie defense.</i> <ol style="list-style-type: none"> a. Voluntary Intoxication b. Mental Illness 	<ul style="list-style-type: none"> ▪ All attempt crimes are specific intent: <ul style="list-style-type: none"> ◦ Attempted Rape: (1) you did something physical to get you closer to committing crime (e.g. throw victim on the ground) AND (2) attempt to rape ▪ Solicitation, conspiracy, attempt, theft crimes, receiving stolen property, robbery, burglary, first degree murder, 2nd degree felony-murder ▪ Assault (in jdxs that define it as “attempted battery”) ▪ [HYPO] Husband tells D wife likes threesome but she’ll say she doesn’t. D attempts to rape her. Unreasonable mistake of fact = viable defense.
GENERAL INTENT CRIMES	Single-intent crimes <i>*Easy for Prosecution to win b/c only need to prove 1 intent</i> Jury may infer intent merely from D’s doing of the act	<ol style="list-style-type: none"> 1. “Reasonable and honest mistake of fact” (complete defense) 	<ul style="list-style-type: none"> ▪ Rape, battery, false imprisonment/kidnapping, extortion, voluntary/involuntary manslaughter ▪ Assault (in jdxs that define it as “threat of bodily injury”)
MALICE CRIMES	Crime w/ reckless disregard for obvious high risk of danger	<p>Often treated as “general intent” crimes, but sometimes apply “specific intent” defense rules. Determined by facts.</p> <ol style="list-style-type: none"> 1. Imperfect Self-Defense (partial defense) 	<p>Separate category covering 2 types of crimes:</p> <ol style="list-style-type: none"> 1. Murder 2. Arson
STRICT LIABILITY CRIMES	No Intent Crimes If you commit this crime, you’re guilty – period. Intent is irrelevant. Act is enough.	<ol style="list-style-type: none"> 1. Insanity (complete defense) 2. Involuntary Intoxication (complete defense) 3. Duress (complete defense) 4. Small minority of jdx allow “reasonable and honest mistake of fact” as defense to statutory rape. 	<ul style="list-style-type: none"> ▪ Statutory rape ▪ [Regina v. Prince] Statutory rape victim told D she was over 18. D is criminally liable even though he reasonably and honestly believed she was of age. In CA, this defense is accepted. ▪ [HYPO] Meat is only 0.8 lbs but packages says 1lb ▪ [HYPO] Dump waste in river, didn’t know it was hazardous but it was
TRANSFERRED INTENT	D’s intent to commit crime on A is transferable to the <u>same</u> crime committed on B <i>*Can’t transfer to a different crime committed, unless it’s felony-murder or misdemeanor-manslaughter</i> 2 separate crimes available for prosecution to charge: <ol style="list-style-type: none"> 1. Crime on B 2. Attempted Crime on A 	<p>Depends on what the intended crime was.</p>	<ul style="list-style-type: none"> ▪ [HYPO] D wants to set fire to A’s house. Fails and accidentally burns down B’s house. Intent to commit arson is transferable. ▪ [Regina v. Faulkner] D tried to steal rum. Accidentally burns down boat. D’s intent to steal is not transferable to crime of arson. ∴ not guilty of arson. ▪ *Dead guy on the street – If you commit a crime and someone dies as a result, courts are willing to make an exception and hold you liable by transferring intent. (e.g. felony-murder rule)

<p>NEGLIGENCE</p>	<p>*Ultimately determined by jury. Instructions should be given if negligence is a defense issue.</p> <p>Civil Negligence</p> <ul style="list-style-type: none"> ▪ One unknowingly drops below the standard of care / of reasonable persons <p>Criminal Negligence</p> <ul style="list-style-type: none"> ▪ One knowingly engages in dangerous conduct <p>Gross Recklessness / Negligence</p> <p><i>*Applies only to homicides</i></p> <ul style="list-style-type: none"> ▪ Wanton, reckless, willful disregard for human life and safety. ▪ Requires D's subjective awareness of substantial and unjustifiable risk 	<p><i>** "Criminal Negligence" = partially mitigating defense to 2nd degree murder</i></p>	<ul style="list-style-type: none"> ▪ [HYPO] D waxed floor too much and victim slipped and injured herself = Civil Negligence ▪ [HYPO] Rape victim tells D she's 18 but she looks 13 at most. = Criminal negligence. She looks too young to reasonably believe her. ▪ [HYPO] D driving down on Olympic Blvd. To avoid an oncoming car, he swerves into street and kills pedestrian. = Not criminal negligence. ▪ [HYPO] D is at party. Shoots gun at the wall but someone walks into the range, gets shot and killed. Gross Recklessness → 2nd Degree Murder of Malicious/Depraved Heart Kind. He intentionally fires gun, knowing that it was crowded room. ▪ [HYPO] D wants to show off his gun to friend. Throws it to friend across the room. It accidentally goes off and kills someone. Criminal Negligence → Involuntary Manslaughter. No intentional act of pulling trigger. ▪ [HYPO] D suffers from epilepsy. He gets into car, suffers a seizure and kills 4 children. Criminal Negligence → Involuntary Manslaughter. (Can't raise "unconsciousness defense" b/c he knew he was susceptible to attacks)
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(B) Actus Reus (Act)

TYPE	RULES	EXCEPTIONS	CASES/EXAMPLES/HYPOS
COMMISSION	<p>Any intentional/affirmative act</p> <p>*If there's no actus reus @ the moment of crime, prosecution will track back to find one.</p>	<p>No criminal liability for the following (due to lack of intent)</p> <ol style="list-style-type: none"> 1. Reflexive/Convulsive Acts 2. Acts committed while unconscious / asleep 	<ul style="list-style-type: none"> ▪ [HYPO] Intentionally yelling at someone knowing that they have a weak heart ▪ [HYPO] D is epileptic. Charged w/ assault and battery. Best defense = epileptic seizure is a reflexive/convulsive act. No actus reus here. ▪ [HYPO] D is epileptic. He got into car, suffered seizure and killed someone. No act @ moment of crime (b/c seizure is convulsive) but can back track to when he – on his own volition – got into car to drive w/ awareness that he was susceptible to seizures. This is criminal negligence.
OMISSION	<p>Aka "Failure to Act"</p> <p>Generally, no legal duty to act – especially if it's dangerous for you to help someone.</p>	<p>(Omission) + (Duty to Act) → Criminal Liability</p> <p><i>Failure to act gives rise to liability when D knows he has a legal duty to act but doesn't and it's not otherwise dangerous to do so.</i></p> <p>OR, if a reasonable person in D's situation would have</p> <p>5 situations where law imposes legal duty to act.</p> <ol style="list-style-type: none"> 1. Statutory duties 2. Contractual/Employment duties 3. Relationship duties (child/elderly persons) 4. Voluntary assumption of duty 5. D was source of peril 	<ul style="list-style-type: none"> ▪ [State v. Williams] Child w/ infected tooth dies. Parents found guilty of involuntary manslaughter b/c they had a legal duty to act (provide medical care) by virtue of their relationship. Can't claim negligence* b/c a reasonable person could have noticed the symptoms and saved child's life in time. <ul style="list-style-type: none"> ○ *NOTE that this court uses "ordinary negligence" standard but that's a minority statute. Normally, it would be a "criminal negligence" standard. ▪ [Barber] Doctor and family authorized removal of life support from comatose patient. It's not an affirmative act (like assisted suicide), it's omission (withdrawal of medical treatment, stopping to feed). Omission does NOT give rise to liability since doctor didn't have a duty (b/c family agreed, it didn't violate their duty) ▪ [HYPO] Stranger was shot and laying on street. By picking him up, you've voluntarily assumed a duty to act.

(C) Causation

TYPE	RULES	CASES/EXAMPLES/HYPOS
CAUSE IN FACT (BUT-FOR)	<p>Logical cause "But for D's conduct, the result would not have happened."</p> <p>Prosecution needs to prove that had this "event" not happened, the injuries would not have resulted.</p> <ul style="list-style-type: none"> ▪ If you're the proximate cause, you're always a cause-in-fact. 	<ul style="list-style-type: none"> ▪ [Barber] Pulling life support case. Pulling the plug is a cause-in-fact of patient's death b/c they stopped feeding him (he was technically alive b/c he was breathing on his own even after plugs were pulled) No criminal liability here b/c no duty to continue feeding.
PROXIMATE CAUSE	<p>Legal cause Closer to the actual harm (death)</p> <p>You're the proximate cause when:</p> <ol style="list-style-type: none"> 1. You're the DIRECT and FINAL cause of the harm; or 2. You're initially the cause-in-fact and if some other foreseeable intervening event was the final and direct cause of the injury <ul style="list-style-type: none"> ↳ You're still liable for an event that's not objectively foreseeable, if it still was subjectively foreseeable to you ↳ Was death foreseeable? Was the death caused by something w/in the chain of foreseeable consequences? <p>You're NOT the proximate cause when</p> <ol style="list-style-type: none"> 1. You're the cause-in-fact BUT 2. Your liability is cut off by an unforeseeable intervening event (superseding) that cuts off all preceding causes <p>Are you the direct and final cause? If not, to what extent was this person dying reasonably foreseeable?</p> <p>If victim's injury/death was caused by both a separate but-for and proximate cause, the 2 sources of cause are jointly and severally liable.</p> <ul style="list-style-type: none"> ↳ [EX] A pushed victim off building. B shot through window. Victim was shot and killed instantaneously by gunshot. <ul style="list-style-type: none"> ○ A = But-For Cause → guilty of attempted murder ○ B = Proximate Cause → guilty of homicide <p>*Proximity cut-off is a question of fact for the jury unless judge decides if facts are not enough for jury to decide on</p>	<ul style="list-style-type: none"> ▪ [HYPO]

(D) HOMICIDES – 1ST DEGREE MURDER

TYPE	ELEMENTS	DESCRIPTIONS / RULES	CASES/EXAMPLES/HYPOS
1ST DEGREE “INTENT TO KILL MURDER”	<ol style="list-style-type: none"> 1. Act 2. Causation 3. Premeditation & Deliberation 4. Malice: Intent to Kill 	<ol style="list-style-type: none"> 1. Someone died 2. As a but-for and proximate result of your actions 3. You “premeditated” aka thought about and planned killing 4. You “deliberated” aka acted w/ cool-headed & rational state of mind <p>*Malice doesn’t require ill-will. Motivation doesn’t matter if you premeditated and deliberated. (Husband shot wife to put her out of pain – 2nd shot was definitely planned → 1st Degree Murder)</p> <p><u>General Rule:</u> Premeditation and Deliberation are not instantaneous</p> <p><u>CA Rule:</u> Premeditation and Deliberation CAN be instantaneous. ↳ Murder perpetrated by a destructive device satisfies the standard for Perp&Delib.</p> <p>Mitigating Factors:</p> <ol style="list-style-type: none"> 1. Honest but Unreasonable Provocation: D was honestly but unreasonably provoked (Caruso / Dr. laughed @ son’s death case) → 2nd Degree Intent to Kill (Still the law in CA) 2. Diminished Capacity: D is unable to “maturely reflect” b/c of age, mental capacity etc. (Wolff / 15 yr old killed mom to take pictures of naked girls) → 2nd Degree Intent to Kill (Abolished in CA) 	<ul style="list-style-type: none"> ▪ [HYPO]

(D) HOMICIDES – 1ST DEGREE MURDER CONT'D

TYPE	ELEMENTS	DESCRIPTIONS / RULES	CASES/EXAMPLES/HYPOS
<p>1ST DEGREE FELONY MURDER</p>	<p>1. Act 2. Causation 3. Malice: Intent to commit inherently dangerous felony</p>	<p>1. Someone died 2. As a but-for and proximate result of your perpetration / attempt to perpetrate an inherently dangerous felony 3. No intent to kill, but the felonious intent is transferred to satisfy this element.</p> <p>Foreseeability is much more broad under felony-murder/misdemeanor-manslaughter</p> <p>Felonies listed as 1st degree: Burglary, Arson, Robbery, Rape, Kidnapping (Mayhem)</p> <p><u>When we can use felony-murder</u></p> <p>1. Traditional Felony-Murder Rule: You commit felony and murder ensues → Felony-murder. <ul style="list-style-type: none"> o If a death was caused by a perpetration of a crime, you were guilty. No need to prove malignant heart. The very fact that they were engaged in felony and death was reasonably foreseeable makes someone criminally liable for murder. </p> <p>2. Merger Doctrine: Only non-assault felonies are subject to felony-murder. <ul style="list-style-type: none"> o Assault-based felonies are not subject to felony-murder rule. Can only use non-assault underlying felony (sale of dangerous drugs) o Burglary is a fill-in-the-blank intent felony. If the intent is assault, then can't use burglary to get perpetrator for felony murder. If it's based on something else, you can use it. </p> <p>3. Ireland Rule: Only felonies that are inherently dangerous to human life are subject to felony-murder. <ul style="list-style-type: none"> o *Mayhem is the only assault-based felony allowed under this rule o Limits the "Merger Doctrine" (Needs to be non-assault AND inherently dangerous) o Look at the crime committed and determine with foresight if it's inherently dangerous. (Theft isn't dangerous to humans – it's dangerous to property. Even if someone died in perpetration of theft, you can't use felony-murder.) </p> <p><u>When co-felon/innocent 3rd party dies and we want to hold D liable by felony-murder theory</u></p> <p>*For the purposes of the exam, treat the death of bystander as you would the death of a co-felon.</p> <p>1. Proximate Cause Theory: Liable for CO-FELON's death if death was reasonably foreseeable <ul style="list-style-type: none"> o If there's a proximate cause b/t co-felon's death and the perpetrated felony (aka, the death was foreseeable,) felony-murder applies </p> <p>2. Agency Theory / Redline Rule (Majority): Liable for death of CO-FELON if YOU fired the shot. <ul style="list-style-type: none"> o If an agent dies in perpetration of a felony, the surviving felon can only be convicted if you/ another co-felon fired the shot. (Rejects proximate cause theory – even though it's reasonably foreseeable that co-felon would die in committing a felony) o If police shot the fire, you're not responsible. </p> <p>3. Washington Rule (Minority/CA): Liable for death of ANYONE if you ESCALATED the situation <ul style="list-style-type: none"> o Modified the proximate cause theory and rejected agency theory o If someone (co-felon, police, bystander) dies during the perpetration of a felony, you're responsible for that death if you escalated the situation by doing something outlandish and dangerous to human life/safety (e.g. initiating gun battle) o **In CA, 1st degree felony murder results only when D is actually guilty of 2nd Degree Murder (Intent to Kill, Commit Serious Bodily Injury or Depraved/Malignant Heart) committed during the perpetration of one of the listed felonies. </p> <p><u>Misc.</u></p> <p>1. "Get to Mom's" Rule: The felony ends at some point after the commission – when the felon reaches a certain point of safety.</p> <p>5 Defenses to Felony-murder</p> <p>1. When D has a defense to the underlying felony (Most common defense) 2. Underlying felony is an assault that results in a homicide (Violates the Merger Doctrine/Ireland Rule) 3. If the death in perpetration of a felony was not foreseeable (Fails Proximate Cause Theory & causation element) 4. If the original felony ended before deaths occurred (Get to Mom's rule) 5. Someone other than the co-felons committed the homicide (depends on which jurisdiction you're in)</p>	<ul style="list-style-type: none"> ▪ [HYPO] Police officer shoots & kills someone OTHER THAN the co-felon <ul style="list-style-type: none"> o <u>Under the Agency Theory:</u> Co-felon is not liable o <u>Under the "Proximate Cause" Theory:</u> May be liable, depending on if death was foreseeable or not OR if you escalated the danger. ▪ Between arson, manslaughter, attempted rape, and burglary... <i>manslaughter</i> is the MOST likely to violate the Merger Doctrine/Ireland Rule. It's not likely to involve a felony other than the killing itself.

(D) HOMICIDES – 2nd DEGREE MURDER

TYPE	ELEMENTS	DESCRIPTIONS / RULES	MITIGATING FACTORS	CASES/EXAMPLES/HYPOS
2 ND DEGREE "INTENT TO KILL MURDER"	<ol style="list-style-type: none"> Act Causation Malice: Intent to Kill <p>OR</p> <p>Mitigated from 1st Degree "Intent to Kill" by</p> <ol style="list-style-type: none"> Honest but unreasonable Provocation or Diminished Capacity 	<p>You intend to kill absent premeditation & deliberation.</p> <p>In jdxs where "instantaneous" premeditation & deliberation is accepted, could still be 1st degree intent to kill.</p> <p>In a case that's clearly an "intent to kill," prosecution can also claim "gross recklessness" b/c every time you shoot someone, you're engaging in reckless disregard of human life.</p> <ul style="list-style-type: none"> Majority Rule: Prosecution can choose to charge (D) under "intent to kill" or "gross recklessness" theory. <i>Sometimes, we want to pursue both b/c under "gross recklessness" theory, intoxication can't be used as a mitigating defense.</i> Minority Rule: "Gross recklessness" only applicable when there's no intent – the two theories cannot overlap. 	<ol style="list-style-type: none"> Provocation → No Malice → Voluntary Manslaughter Diminished Capacity → No Malice → Voluntary Manslaughter 	<ul style="list-style-type: none"> [HYPO]
2 ND DEGREE "INTENT TO COMMIT SERIOUS BODILY INJURY"	<ol style="list-style-type: none"> Act Causation Malice: Intent to commit serious bodily injury 	<p>You intend to inflict seriously bodily harm, absent intent to actually kill.</p> <ul style="list-style-type: none"> Using non-deadly weapon/force → malice ONLY IF D was subjectively aware that victim had "egg-shell-thin-skull" Using deadly weapon/force → no malice required b/c it's certain that death will result 	<ol style="list-style-type: none"> Provocation → No Malice → Voluntary Manslaughter Diminished Capacity → No Malice → Voluntary Manslaughter 	<ul style="list-style-type: none">
2 ND DEGREE "DEPRAVED MALIGNANT HEART"	<ol style="list-style-type: none"> Act Causation Malice: (a) Intent to engage in gross recklessness w/ (b) subjective awareness of danger 	<p>When you</p> <ol style="list-style-type: none"> intentionally commit an act of gross recklessness, knowing that you're creating high risk of danger to human life/safety. 	<ol style="list-style-type: none"> No subjective awareness of grave danger (or dumb defendant) → Involuntary Manslaughter You're committing an act to do something w/ great social value → Involuntary Manslaughter <ol style="list-style-type: none"> [HYPO] Racing down 70 mph in the rain to get someone sick to hospital and running over a pedestrian. <p>*Voluntary intoxication is generally not a mitigation factor here, b/c intoxication itself is a reckless conduct.</p>	<ul style="list-style-type: none"> [HYPO] Drunk driving resulted in homicide. Driver had been put on notice by police officer. B/c he was subjectively aware of the high degree of danger he was creating, he's charged with 2nd degree MURDER. DD is also murder if driver was a repeat offender. [HYPO] D is in a room full of people. He shoots the gun at the wall. Someone walks by, gets hit and dies. That's gross recklessness. [Malone] D plays Russian Poker. D puts the gun to friend's head and pulls the trigger. Death was reasonably foreseeable and D still intentionally shoots the gun at deceased head.
2 ND DEGREE "FELONY-MURDER"	<ol style="list-style-type: none"> Act Causation Malice: Intent to commit inherently dangerous felony <i>not listed in statute</i> 	<p>Same thing as 1st degree felony-murder, but for felonies NOT listed in statute.</p>	<ol style="list-style-type: none"> Not a felony, but misdemeanor → Misdemeanor Involuntary Manslaughter 	<ul style="list-style-type: none">

(D) HOMICIDES – VOLUNTARY MANSLAUGHTER

TYPE	ELEMENTS	DESCRIPTIONS / RULES	CASES/EXAMPLES/HYPOS
<p>MITIGATED “INTENT TO KILL” MURDER INTO VOLUNTARY MANSLAUGHTER</p> <p>OR</p> <p>MITIGATED “INTENT TO COMMIT SERIOUS BODILY INJURY” MURDER INTO VOLUNTARY MANSLAUGHTER</p>	<ol style="list-style-type: none"> 1. Act 2. Causation 3. Intent to Kill/Commit Serious Bodily Injury 4. NO MALICE b/c of (1) Provocation or (2) Diminished Capacity 	<p>(1) PROVOCATION</p> <ol style="list-style-type: none"> 1. D was subjectively provoked 2. A reasonable person in D's position would have been reasonably provoked 3. D had not yet cooled 4. A reasonable person at the time D acted would not have yet cooled <p><i>*This does not eliminate INTENT. It only negates MALICE. If it also negates intent, prosecution can only get D for involuntary manslaughter (only homicide that doesn't require intent)</i></p> <p><i>*W/ respect to 1st Degree Murder – If (D) is imperfectly provoked (honestly but unreasonably) this knocks down to 2nd Degree Murder of either “Intent to Kill” or “Intent to Commit Serious Bodily Injury” theory.</i></p> <ul style="list-style-type: none"> ▪ A reasonable person is assumed to have self-control in most situations ▪ Victim needs to have provoked (D), not some 3rd party. ▪ INSULTING words NEVER qualify as reasonable provocation. ▪ DESCRIPTIVE words sometimes qualify as reasonable provocation <ul style="list-style-type: none"> ○ Can be interpreted as a threat of an attack ○ Describing something that has the same affect as seeing something “I slept w/ your wife” or “I shot your brother” ▪ Cooling-Off Period: Parallel to the degree of provocation <ul style="list-style-type: none"> ○ Depends on extent to which passions have been aroused and the nature of the act that caused the provocation. ▪ The court has a duty to instruct on voluntary manslaughter instructions when evidence is substantial enough to merit consideration. 	
	<p>---</p> <p>Someone died as a result of your intentional act, however requisite malice has been negated by one of the following factors:</p>	<p>Many jurisdictions allow the diminished capacity defense (but not in CA)</p> <p>(2) VOLUNTARY INTOXICATION (DIMINISHED CAPACITY)</p> <ul style="list-style-type: none"> ▪ D knowingly and voluntarily consumed an intoxicant ▪ Heavy voluntary intoxication is generally a <u>defense to specific intent crimes</u> b/c incapable of forming complicated mens rea. (Doesn't apply to general intent) ▪ MAJORITY JDX: Viable defense to crimes of murder, EXCEPT the gross recklessness variety <p>(3) MENTAL DISEASE/DEFECT (DIMINISHED CAPACITY)</p> <ul style="list-style-type: none"> ▪ D is unable to “maturely reflect” upon the gravity of the crime b/c of age, mental capacity etc. (Wolff / 15 yr old killed mom to take pictures of naked girls. 1st D was knocked down to 2nd.) ▪ “Mature and meaningful reflection” is a subcategory of deliberation ▪ “Mature” does not have to do w/ age. It's where someone, although not insane, lacks a true understanding of the consequences of his crime 	
		<p>(4) IMPERFECT SELF-DEFENSE</p> <ol style="list-style-type: none"> 1. D actually believed that he (or 3rd party) <u>was in imminent danger</u> of being killed/suffering great bodily injury; AND 2. D actually believed the <u>immediate use of deadly force was necessary</u> to defend against the danger; BUT 3. At least 1 of those beliefs was <u>unreasonable</u>. <ul style="list-style-type: none"> ▪ The court has a duty to instruct on voluntary manslaughter instructions when evidence is substantial enough to merit consideration. 	

(D) HOMICIDES – INVOLUNTARY MANSLAUGHTER

TYPE	ELEMENTS	DESCRIPTIONS / RULES	CASES/EXAMPLES/HYPOS
“CRIMINAL NEGLIGENCE” INVOLUNTARY MANSLAUGHTER	1. Act 2. Causation 3. No Malice and no intent, but criminally negligent	1. Someone died 2. As a but-for and proximate result of your actions 3. No malice and no subjective awareness of danger, but a reasonable person in D's position would have known acts were reckless You don't have to be aware of the danger, if <u>you're aware of the facts that may cause danger</u> (Welansky - fire inside club case) Usually falls into one of two categories: (1) Really, really dumb defendant excuse OR (2) Not sufficiently reckless to qualify as murder or voluntary manslaughter	<ul style="list-style-type: none"> ▪ [HYPO] D fell asleep at the wheel ▪ [HYPO] D threw the gun across the room to show off to friend and it accidentally went off. No affirmative action of pulling the trigger ▪ [HYPO] Usually, lack of knowledge/notice in drunk driving cases → involuntary manslaughter. ▪
MISDEMEANOR INVOLUNTARY MANSLAUGHTER	1. Act 2. Causation 3. No Malice and intent to commit an inherently dangerous misdemeanor	1. Someone died 2. As a but-for and proximate result of your perpetration / attempt to perpetrate an inherently dangerous misdemeanor 3. No Malice 4. No intent to kill, but the intent is transferred to satisfy this element. *Foreseeability is easier to prove under this theory. It's much more foreseeable that someone will die during the perpetration of a misdemeanor (as it is during perpetration of a felony) The DOES allow assault-based misdemeanors (unlike the Merger Doctrine/Ireland Rule under Felony-Murder Rule)	<ul style="list-style-type: none"> ▪ [HYPO]

(E) THEFT (OFFENSES TO PROPERTY)

TYPE	DESCRIPTIONS / RULES	CASES/EXAMPLES/HYPOS
<p>LARCENY (LARCENY BY TRICK)</p>	<ol style="list-style-type: none"> 1. Trespassory <ul style="list-style-type: none"> ↳ Lacking permission or fraudulently obtaining permission ("larceny by trick") ↳ Very flexible rule. You don't need to affirmatively take. ↳ If you trick someone into believing that it belongs to you → Larceny (by trick) ↳ You only need to prove that you meant to keep the property...KNOWING that it's not yours. (innocent taking is civil trespass) 2. Taking & <ul style="list-style-type: none"> ↳ Exercising complete dominion and control over the property. ↳ TV chained to wall does not allow exercise of complete dominion and control ↳ An intentional trespassory taking continues until the property is safely returned. 3. Carrying away <ul style="list-style-type: none"> ↳ Requires at least the slightest movement ↳ Don't need to get out the door 4. Of Personal Property <ul style="list-style-type: none"> ↳ It's the passing of POSSESSION (as opposed to title) ↳ Once title passes, it becomes the crime of "False Pretenses" 5. Known to be that of another <ul style="list-style-type: none"> ↳ Crime against rightful possessor (as opposed to rightful owner) ↳ Stealing from a thief is not larceny, it's the crime of "receiving stolen goods" ↳ If someone puts something in front of you, thinking that it belongs to you and you take it w/ intent → Larceny. ↳ An employee generally has rightful possession, but if he was only given "custody"– where the employer has retained and not transferred possession – he's guilty of "Larceny" by misappropriating the property (not "embezzlement"). He can defend himself by claiming that he had possession. 6. With the Intent to permanently deprive <ul style="list-style-type: none"> ↳ If you have everything except for this intent, it's only trespass of property (which is not a crime w/ the exception of "joy riding" which is a general intent crime of "taking and carrying away another person's car") ↳ Doesn't require intent to never return <ul style="list-style-type: none"> ○ Even if D intends to return, if he engages in risky behavior that raises a strong possibility of damage to the property, this constitutes as "intent to permanently deprive" even if the property is not actually damaged ↳ Intent must exist at the same time as trespass <ul style="list-style-type: none"> ○ <u>Majority Rule (Common Law)</u>: Taking innocently and later developing the intent to deprive is not larceny (civilly liable to return the money, but not criminally liable) ○ <u>Minority Rule (MPC)</u>: Taking innocently and later developing the intent to deprive IS STILL LARCENY <p>DEFENSES:</p> <ol style="list-style-type: none"> 1. Unreasonable Mistake of Fact 2. Reasonable Mistake of Fact <p>*Larceny is a specific intent crime. Taking an item that D believes to be his own is not larceny. *Mistake of LAW is never a defense. *Having acquired "title" is not a defense to the crime of larceny. It just makes it "false pretenses" or nothing.</p> <p>RECEIVING/ POSSESSING STOLEN PROPERTY</p> <ul style="list-style-type: none"> ↳ Crime of receiving property which D knows has been stolen ↳ This is different from theft of property. D cannot be guilty of both. 	<p>[HYPO] Stole car. Start the car and just sit there → Attempted Larceny</p> <p>[HYPO] Stole car. Start the car and start rolling just a foot → Larceny</p> <p>[HYPO] Mechanic's Lein Hypo. Mechanic has rightful possession. Owner is the actual owner. If owner steals the car being held @ the body shop → Larceny</p> <p>[Ppl v. Robinson] Car is stolen from the dealership. Left at the streets and D comes to take the tires. That's a separate crime of "receiving stolen property" b/c the crime of larceny has already taken place and ended.</p> <p>[HYPO] Picking a pocket / snatching purse and victim is not aware? Larceny. If victim is aware → Robbery.</p>

<p>EMBEZZLEMENT</p>	<ol style="list-style-type: none"> 1. Fraudulent conversion <ul style="list-style-type: none"> ↳ Concealment or inappropriate use of property for his own purposes ↳ Misappropriation by doing something with the money you don't have the right to do ↳ Requires more than simple taking away b/c one who has rightful possession also has the right to move/control the property ↳ D does not need to have been personally benefited from conversion. You can appropriate \$ to charity and it's still embezzlement. 2. Of Property 3. Of Another 4. By a person who was in lawful possession at the time of misappropriation 5. With the intent to "permanently deprive" <ul style="list-style-type: none"> ↳ Fraudulent intent is necessary for D to be held criminally liable but it doesn't necessarily have to be an intent to "permanently deprive" ↳ Intent/ability to restore (or even actual restoration of) the equivalent value is not a defense ↳ Putting the property at risk is sufficient for the purposes of "intent to permanently deprive" (e.g. gambling/putting in stock market) ↳ <u>Majority Rule</u>: Embezzlement is a general intent crime (no defense of unreasonable mistake of fact) ↳ <u>Minority Rule (including CA)</u>: It's a specific intent crime in minority jurisdictions and requires specific intent to permanently deprive <p><u>DEMANDING MONEY RETURNED</u></p> <ul style="list-style-type: none"> • A person can lawfully demand return of embezzled money and threaten criminal prosecution as long as threats are made in good faith (extortion) <ul style="list-style-type: none"> ○ But he can't demand more than what is due. If you ask for more, you're in violation of the extortion statute ○ <u>Majority Rule</u>: If you think someone embezzled, threaten, and turn out to be right – you have a complete defense against the claim of extortion (b/c it's a specific intent crime which requires mens rea) ○ <u>Minority Rule</u>: "Unreasonable mistake" of thinking someone embezzled can be a defense against "extortion" in this context <p>*If you obtain rightful possession (without malicious intent) and later develop the intent to trick/convert → Embezzlement (not "larceny by trick" b/c that requires intent @ the very beginning)</p>	<p>[HYPO] A trustee converts a trust fund to a charity organization instead of giving it to the rightful heirs.</p> <p>[Commonwealth v. Ryan] Cashier briefly puts money into cash register and puts it into pocket. → Embezzlement</p> <p>[HYPO] Cashier takes money directly from owner → Larceny (b/c no rightful possession)</p> <p>[HYPO] Cashier takes money directly from customer and never put it into cash register → Embezzlement</p> <p>[HYPO] Cashier goes to owner's office and looks through drawers, take some money → Larceny</p> <p>[HYPO] Valet takes car out on joy ride. Goes 15 mph on an abandoned ride about → No Intent</p> <p>[HYPO] Valet takes car out on joy ride. Goes 50mph up and over hills → Intent b/c risk.</p>
<p>FALSE PRETENSES</p>	<ol style="list-style-type: none"> 1. Obtaining title <ul style="list-style-type: none"> ↳ Requires deceitful acquisition of BOTH title and possession (2) ↳ Prof. thinks obtaining title is enough (obtained title to car but it's sitting in another state → that's good enough) ↳ Once title passes, it's no longer the crime of larceny 2. To the property of another <ul style="list-style-type: none"> ↳ You are NOT the rightful owner/possessor. 3. By an intentional (or knowing) false statement <ul style="list-style-type: none"> ↳ Misrepresentation has to be material – victim must have relied (can be unreasonable) on the misrepresentation in transferring the title ↳ There must be an actual false representation of fact. If D believes facts to be false but later turns out to be true – he's not guilty. ↳ <u>Majority Rule</u>: False pretense must be about a present or a past fact. Promise to do something in the future is not enough to constitute "False Pretenses" ↳ <u>Minority / CA Rule</u>: Large minority rule that a false pretense about a future fact constitutes a crime of "False Pretenses" 4. With Intent to defraud the other <ul style="list-style-type: none"> ↳ <u>Majority Rule</u>: It's a specific intent crime. You're only guilty if you're knowingly making a false representation ↳ <u>Minority Rule</u>: Before, it was strict liability. Even you were making an honest representation that later turned out to be false, you were STILL guilty. 	<p>[HYPO] D falsely induces victim to give him money so that he can bribe the authorities. → "Larceny by trick" b/c D only has possession, not title.</p> <p>[HYPO] D falsely induces victim to lend him money → "False Pretenses" b/c both title and possession passes.</p>

	Activity	Right	Possession/ Title	Intent
Larceny	Taking & Carrying away	No right, maybe "custody"	Possession	Permanently Deprive (Put @ Risk)
Embezzlement	Misappropriation	You are the rightful possessor (more than "custody")	Possession	Permanently Deprive (Put @ Risk)
False Pretenses	Obtaining title	No right	Possession & Title	Defraud

(F) ROBBERY / EXTORTION

TYPE	DESCRIPTIONS / RULES	CASES/EXAMPLES/HYPOS
ROBBERY	<ol style="list-style-type: none"> 1. Trespassory 2. Taking and Carrying Away 3. IN THE IMMEDIATE PRESENCE of another person <ul style="list-style-type: none"> ↳ Presence is interpreted broadly (e.g. tying up farmer in his barn and taking things from his house can constitute "immediate presence") 4. BY THREAT/FORCE OF IMMINENT PHYSICAL HARM TO A HUMAN BEING <ul style="list-style-type: none"> ↳ Needs to be to a human being (can't be animal) ↳ Threat of future harm is extortion, not robbery ↳ Any small force/violence will do (e.g. yanking necklace off of someone's neck) ↳ Threat can be to another person (not victim himself) (e.g. stranger standing next to victim) ↳ Victim must be aware of the taking (e.g. picking pocket and victim not aware → Larceny) 5. With the intent to permanently deprive <p>If you don't have "immediate presence" or "force of imminent harm" → Larceny If you fail on any "larceny" elements → Attempted Larceny</p>	<p>[HYPO] You grab the bag, victim tugs, and you let go. → Attempted larceny (threat against the bag so not "robbery" and you haven't taken the bag so not "larceny")</p> <p>[HYPO] You take the bag by cutting the strap and run away and victim doesn't know → Larceny (not threat against a person)</p>
EXTORTION	<ol style="list-style-type: none"> 1. Use of malicious threat <ul style="list-style-type: none"> ↳ "Extortion" is a specific intent crime. A malicious threat must be involved 2. In order to obtain property or change the victim's conduct (do or don't do something) <p><u>Robbery v. Extortion</u></p> <ul style="list-style-type: none"> ↳ Unlike "robbery," extortionist doesn't need to take anything ↳ Future threats = ok ↳ Harm / threat doesn't need to be toward a person ↳ Harm / threat doesn't need to be physical harm <p><u>"Extortion" by a Rightful Possessor</u></p> <ul style="list-style-type: none"> ↳ Guilt for extortion does not pivot on whether extortionist is legally entitled to property/services he is seeking. The focus of extortion is on the means used to obtain such property/services ↳ Must demand legitimate debt owed by a threat that's directly related <ul style="list-style-type: none"> ○ [EX] Can't demand debt w/ threat to disseminate harmful/embarrassing info (not a direct nexus) ○ [EX] Photographer may demand legitimate money owned w/ threat to sell to publication (that's a direct nexus) ↳ <u>Lawful Rights of Extortionist against Embezzler</u> <ul style="list-style-type: none"> ○ The victim of another's theft may lawfully threaten criminal prosecution. That's not extortion. <ul style="list-style-type: none"> ▪ But he can't demand more than what is due. If you ask for more, you're in violation of the extortion statute ▪ Majority Rule: If you think someone embezzled, threaten, and turn out to be right – you have a complete defense against the claim of extortion (b/c it's a specific intent crime which requires mens rea) ▪ Majority Modern Rule: "Reasonable mistake of fact" is a defense if extortionist possessed reasonable good faith ▪ Minority Rule: "Unreasonable mistake" of thinking someone embezzled can be a defense against "extortion" in this context 	<p>[HYPO] Ex BF threatens to release photos if Ex GF doesn't pay him back the \$50 she owes. → Still "extortion" b/c no legal nexus b/t exercise of right to collect money and the threat to post embarrassing nude photos</p> <p>[VARIATION] Ex BF threatens to call the police/ criminal prosecution. → May not be extortion</p>

(G) ATTEMPT

TYPE	DESCRIPTIONS / RULES	DEFENSES	CASES/EXAMPLES/HYPOS
ATTEMPT	<p>Idea: Zone of mere "preparation" → cross the line → inside zone of "perpetration". But, how largely do we define this zone?</p> <ol style="list-style-type: none"> Specific intent to complete the target offense; and Conduct in furtherance of the target offense <ul style="list-style-type: none"> ↳ Majority Rule: "Substantial Step Test" (MPC) <ul style="list-style-type: none"> ○ Looks @ how far (D) has come ○ Has D engaged in conduct strongly corroborative of his criminal purpose? Does he pose a danger? ○ Allows early intervention by the police ○ Explicitly overturned Rizzo/Common Law Rule ↳ Large Minority Rule: "Dangerous Proximity to Success Test" (Common Law / Rizzo) <ul style="list-style-type: none"> ○ Looks @ how close (D) has come ○ D was SO close to accomplishing target offense that in all reasonable probability the crime itself would've been committed. ↳ CA Rule: Flexible "Rizzo" and strict "substantial step" test <p>**If (D)'s conduct wasn't enough to meet "substantial test," check if you can get him for solicitation which only requires "asking".</p>	<ol style="list-style-type: none"> Voluntary Abandonment (Complete Defense) <ul style="list-style-type: none"> ↳ Under "Substantial Step" Jdxs (Majority) <ul style="list-style-type: none"> ○ NOT a defense ↳ Under "Dangerous Prox. to Success" Jdxs (Minority) <ul style="list-style-type: none"> ○ If D voluntarily abandons his plans, he has a complete defense ↳ Under "CA" → NOT a defense Legal Impossibility (aka "Dishonest mistake of law") (Complete Defense) <ul style="list-style-type: none"> ↳ D intended to commit something, thinking that it was against the law but it turned out to be legal. ↳ Federal courts have abandoned this rule, but the Bar Exam still recognizes this as a complete defense. <p><u>NOT DEFENSES:</u></p> <ol style="list-style-type: none"> Involuntary Abandonment: Where D voluntarily abandons his plans b/c of difficulty of completing the crime or b/c he fears getting caught/apprehended Factual Impossibility: Where extraneous circumstances unknown to D / beyond his control prevents consummation of the intended crime. If D were able to succeed without that factual impossibility. 	<p>[Rizzo] (D) planned to steal payroll from Charles. Drove around in car, ran into building but Charles wasn't there. NOT GUILTY of attempted robbery using the "Proximity" Test.</p> <p>[Staples] (D) rented office above bank. Bought equipment and drilled holes into the floor to steal from vault. Guilty of attempted robbery under the "Substantial Step" test. (D) voluntarily abandoned, but in fear of apprehension (and no defense in substantial step jdxs)</p> <p>[Latraverse] (D) drove to target victim's house w/ bomb in his car to intimidate police from testifying. Guilty of intimidation under the "Substantial Step" test.</p> <p>[Berrigan] (D) smuggled letters in and out of prison, but warden knew about it. Legal impossibility b/c it's not against the law if warden knew about the letters. No defense b/c case is in federal court.</p> <p>Legal Impossibility Examples:</p> <ul style="list-style-type: none"> ○ Rape someone of age ○ Smuggle something legal ○ Sell cocaine, turns out to be flour ○ Steal something that actually belongs to you

(H) SOLICITATION / CONSPIRACY

TYPE	DESCRIPTIONS / RULES	DEFENSES	CASES/EXAMPLES/HYPOS
SOLICITATION	<p>1. Asking someone to assist you in a SERIOUS crime</p> <ul style="list-style-type: none"> ↳ The crime is completed when the question is asked. ↳ Solicitation of a "misdemeanor" would probably not be a crime ↳ Kind of like an "attempt to conspire"; requires only substantial preparation to solicit. <p><u>Evidence Rules:</u></p> <ul style="list-style-type: none"> ▪ Requires 2 witnesses or 1 witness + corroborating circumstances (physical evidence) ▪ It's a word crime, and someone can easily lie about D soliciting <p><u>Merger Rule</u></p> <ul style="list-style-type: none"> ▪ When the person being asked agrees → Conspiracy ▪ (D) can't be convicted of both solicitation and conspiracy. 	<p><u>Communication:</u></p> <ul style="list-style-type: none"> ▪ <i>How</i> you ask is important. If you're obviously joking, it's not solicitation ▪ [EX] "I will give you \$50K to kill my wife." Solicitation to commit murder? Not if you said it jokingly. Defense could be – "I was kidding. Where would I get \$50K?" 	<p>[Lubow] D asks someone to join his pyramiding of diamond-purchasing scheme w/ him. No commission of act. → Solicitation</p>

<p style="text-align: center;">CONSPIRACY</p>	<ol style="list-style-type: none"> Agreement b/t 2 or more persons <ul style="list-style-type: none"> Agreement doesn't have to be express, so long as there is "understanding" Various people can be in conspiracy even if they don't know each other or don't interact – so long as they're aware of each other's necessary participation (also see below) With the intent to pursue an unlawful objective <ul style="list-style-type: none"> Gebardi Rule (Majority): You can't be guilty of conspiring w/ someone who is not legally competent and therefore cannot be convicted (victim, underage, undercover agent). If this is the case, you're not guilty of conspiracy either b/c you can't conspire by yourself. MPC (Small Minority): Don't require subjective meeting of minds. Asking undercover agent is enough for both conspiracy and substantive crime. It's not normally a crime to retrieve one's own property or sneak into your own home to take something [EX] D thought he was helping friend retrieve something from his own house, but friend was actually stealing from someone else's house → No meeting of the minds; No conspiracy. Friend is guilty of "Burglary" + Overt act in furtherance of the conspiracy <ul style="list-style-type: none"> Majority Rule: Any "slight" act performed in furtherance (e.g. efforts to acquire equipment); Showing that the agreement/understanding wasn't just "big talk" Minority Rule: Requires "substantial step" toward commission of the crime <p><u>Exception to Hearsay Rule</u></p> <ul style="list-style-type: none"> All things said and done (1) during the scope of the conspiracy and (2) in furtherance of the conspiracy is admissible against all other co-conspirators Normally, hearsay evidence is inadmissible b/c we want the actual witness to testify. But here, conspirators are like "business partners" and can legally speak on behalf of each other <p><u>Merger Rule*</u></p> <ul style="list-style-type: none"> Conspiracy doesn't merge w/ substantive offense. If crime ends up being committed, you're guilty of BOTH conspiracy and the actual crime Wharton's Rule: If the crime necessitates 2 people to commit the crime (agreement is an element of the substantive crime), you can't charge w/ both conspiracy and substantive crime (e.g. dueling, adultery, bribery) – that's double punishment. <p><u>When D is liable for substantive crimes</u></p> <ol style="list-style-type: none"> Pinkerton Rule: Mere membership in a conspiracy is sufficient to establish criminal liability for all reasonably foreseeable substantive crimes committed by co-conspirators. (Rejected by MPC, but adopted by several jdxs) MPC Rule (adopted by some jdxs): D becomes guilty of substantive crimes only if he affirmatively/intentionally participated in acts in furtherance of that crime. If all D did was join the conspiracy and nothing else, only guilty of conspiracy. <p><u>When you're guilty of conspiracy by assisting</u></p> <ol style="list-style-type: none"> Knowingly providing services/goods (assisting) in a commission of a "serious" crime (assisting prostitute vs. extortion involving malicious threat) → Conspiracy <ol style="list-style-type: none"> [EX] Supplying gun to an assassin Knowingly assisting in a commission of a "non serious" crime + gaining a stake in the criminal enterprise → Conspiracy <ol style="list-style-type: none"> [EX] Charging more for drug ingredient to a drug manufacturer who is part of a conspiracy = you've gained a stake in the outcome <p><u>When there's no communication/knowledge b/t co-conspirators</u></p> <ol style="list-style-type: none"> Chain Theory: Single product/substance passing through the same chain and benefiting all members of the conspiracy = Ongoing enterprise of a single conspiracy. Every member can be charged w/ the substantive crime committed b/c they're linked by the same product. <ol style="list-style-type: none"> <i>Reasoning: Every member should have known others are involved b/c the entire operation is dependent on each member performing his part. Doesn't matter if you know/don't know the others. So each member is liable for each other's actions.</i> Wheel & Hub Theory: Separate transactions involving one common "hub" or person cannot be considered a single conspiracy. Co-conspirators are not benefiting from each other's involvement in the conspiracy. <p><u>When does conspiracy end?</u></p> <ul style="list-style-type: none"> Minority Rule: Conspiracy continues past the commission of the substantive crime if its objective is not realized. D can enter into the conspiracy after the commission of the substantive crime and still be guilty of conspiracy. (<i>McDonald</i> / Kidnapping & money laundering case). Krulewitch Rule: No such thing as conspiring to "get away with the crime". Evasion of justice is not the last element of conspiracy. Conspiracy must end at some point. 	<p>(1) Abandonment</p> <ul style="list-style-type: none"> If no party to conspiracy has committed any overt act in furtherance of conspiracy for a significantly long period of time → No conspiracy (ex. 2 yrs and 6 months) <p>(2) Withdrawal</p> <p><i>Doesn't release D from "conspiracy" charge, but releases liability for substantive crime or other foreseeable subsequent crimes.</i></p> <ol style="list-style-type: none"> Majority Rule (applied in every jdx): You're not guilty of the substantive crime if you affirmatively communicate to "every member" of the conspiracy that you no longer want to be part of the conspiracy w/ in a reasonable period of time. <ol style="list-style-type: none"> You have to do @ a point where others have time to rethink it. Doesn't require that you go to police. Theoretically, you have to inform everyone but you may not even know the co-conspirators. (Pinkerton problem) 	<p>[Pinkerton] D and brother conspire to commit fraud. D commits fraud while bro is in prison. D's bro is also held liable for D's crime even though he didn't do anything in furtherance of "fraud"</p> <p>[Bruno] Sellers of drug held liable for smuggling & distribution (even though they joined after crime was completed & didn't know those ppl) b/c they were part of a single, ongoing conspiracy. Geography ≠ matter. Retail seller can be in CA w/o knowing smugglers from Mexico → still liable for smuggling</p> <p>[Krulewitch] D and 1 woman convinced 2nd woman to violate Mann Act (prostitution across state borders). Hearsay statements after conspiracy ≠ admissible.</p> <p>[Blumenthal] Manufacture & distribution of prohibited whiskey = single, ongoing conspiracy b/c one product goes through same chain and benefits each party. Again, no need to know who's involved.</p> <p>[Gebardi] Man "conspires" w/ woman to violate Mann Act (prostitution). NO conspiracy b/c (1) can't conspire w/ victim (incapable of committing crime)</p> <p>[HYPO] Armed robbers may be guilty of conspiracy to commit robbery, but not guilty of conspiracy to commit felony murder (that was not part of the understanding)</p> <p>[HYPO] No conspiracy for reckless crime b/c can't agree upon that in advance</p>
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(I) AIDING & ABETTING (ACCOMPLICE LIABILITY / INCOHATE OFFENSES)

TYPE	DESCRIPTIONS / RULES	DEFENSES	CASES/EXAMPLES/HYPOS
<p>AIDING AND ABETTING</p>	<p><u>3 Types of Aiding & Abetting (By Time)</u></p> <ol style="list-style-type: none"> 1. Aider and Abettor “Before the Fact” – Those who assist & never go to scene of the crime 2. Principals (1st and 2nd degree) – Those who are present at the scene of the crime <ol style="list-style-type: none"> a. 1st Degree: e.g. the person who points gun and robs b. 2nd Degree: e.g. the look-out, encouraging bystander, added head-count for intimidation 3. Aiders and Abettors “After the Fact” – Those who assist after, guilty of a separate crime called “obstruction of justice” or “misprision” <p><u>General Rule:</u> A person can be found guilty of the foreseeable substantive crime that someone else committed if he knowingly and intentionally assisted the principals (actual perpetrators) in the criminal enterprise.</p> <ol style="list-style-type: none"> 1. Knowingly <ul style="list-style-type: none"> ▪ Difficult to prove “aider” is guilty if he didn’t know there was a crime going on ▪ Subjective Test: Whether a reasonable person would have known that he was assisting at the time. ▪ Indicators: Prior association w/ the principals ▪ [EX] Someone who sells a gun to a bank robber unknowingly 2. Intentionally <ul style="list-style-type: none"> ▪ Must prove at least a small bit of interest in staying at the scene ▪ Must be present and also have the intent to assist in the crime ▪ [EX] lookout, intimidation, encouragement 3. Assisted the Principals <ul style="list-style-type: none"> ▪ Presence and “silent approval” is not enough to hold D criminally liable ▪ D is culpable for not stopping principals when you know (omission) when there’s a duty to act. <ul style="list-style-type: none"> ○ Duty arises if you have already assisted, or your omission in itself is assistance ▪ For “serious and dangerous” crimes: [Knowledge] + [Assistance] <ul style="list-style-type: none"> ○ [EX] Robbing bank. If you provide food for D so that he can continue drilling, you’re guilty. ▪ For “less serious” crimes: [Knowledge] + [Assistance] [Stake in Outcome] <ul style="list-style-type: none"> ○ Less serious crimes = not an immediate physical harm to someone else ○ Stake in outcome: (1) overcharging (2) continuing nature of relationship (3) high volume / business depends on crime (4) suggestions/encouragement 4. In the substantive crime <ul style="list-style-type: none"> ▪ Usually, needs to be foreseeable (but see below.) ▪ [Marshall] – D knowingly gives the car keys to drunk friend. Drunk friend gets into accident and dies → Criminal Negligence Involuntary Manslaughter (he aided knowing the high degree of danger he was creating) <p><u>When the substantive crime is different from the conspired crime</u></p> <ul style="list-style-type: none"> ▪ Divided jurisdictions: <ol style="list-style-type: none"> a. <u>An aider is liable for the conduct of the principal if he engages in conduct in furtherance of the planned and intended act.</u> <ol style="list-style-type: none"> i. [EX] Intent to commit burglary. D is a look-out. During the commission of the intended burglary, the principal steals a car. → D is NOT guilty of grand theft auto b. <u>An aider is liable for the conduct of the principal for all foreseeable crimes in furtherance of the planned and intended act.</u> <ol style="list-style-type: none"> i. [EX] Intent to commit burglary. D is a look-out. During the commission of the intended burglary, the principal steals a car. → D is NOT guilty of grand theft auto ▪ You need “intent to kill” to be guilty of attempted murder b/c it’s a specific intent crime. <ul style="list-style-type: none"> ○ [EX] Intend to commit burglary. D is a look-out. During the commission of the intended burglary, the principals kill someone. → D is not guilty of attempted murder. 	<p><u>In General</u></p> <ol style="list-style-type: none"> 1. No subjective awareness and no reasonable person would have known 2. No intent to aid <ol style="list-style-type: none"> a. [EX] Too scared to leave the scene 3. Unforeseeable subsequent crime <i>*Depends on jurisdiction</i> <ol style="list-style-type: none"> a. [EX] D gave keys to drunk friend. Death of 3rd party may not be foreseeable. 4. D is charged w/ attempted murder <p><u>Supplier/Crime Context</u></p> <ol style="list-style-type: none"> 5. Non-dangerous nature of goods provided <ol style="list-style-type: none"> a. [EX] Provided sugar vs. provided morphine (controlled substance) 6. Goods supplied have legitimate purpose <ol style="list-style-type: none"> a. [Lauria] D’s business was running phone service but some of his customers happened to be prostitutes. b. [HYPO] If D had provided customers w/ phone directoy of avail prostitutes → Aiding 	

(J) Kidnapping / False Imprisonment

TYPE	DESCRIPTIONS / RULES	CASES/EXAMPLES/HYPOS
FALSE IMPRISONMENT	<ol style="list-style-type: none"> 1. Holding or detaining another by force or fear without their permission 2. Asportation Requirement: <ol style="list-style-type: none"> a. Merely incidental moving of the person b. Anything short of what's required for the crime of "Kidnapping" <p>*False Imprisonment is a wobbler – it's sometimes a misdemeanor and sometimes a felony.</p>	<p>[HYPO] Taking hostage for ransom but only imprisoning them at place they were found = no movement → False Imprisonment</p> <p>[HYPO] Robber takes victim from open street to a close-by alleyway.</p>
KIDNAPPING	<p>*No need to have intent/knowledge – kidnapper doesn't need to know he's kidnapping victim</p> <ol style="list-style-type: none"> 1. Holding or detaining someone by force or fear without their consent for a distance that is substantial in character 2. Asportation Requirement: General & CA rule – "EITHER (a) OR (b)" <ol style="list-style-type: none"> a. Substantial movement not merely incidental to the commission of another underlying lesser crime (e.g. robbery or rape) OR <ol style="list-style-type: none"> i. More than slight / trivial distance ii. 22 ft is "slight" as opposed to many blocks b. Movement that substantially increases the risk of harm beyond that inherent in the underlying lesser crime <ol style="list-style-type: none"> i. Risk of physical or psychological harm to the victim ii. [EX] Human shield but slight distance = substantial risk → "kidnapping" iii. [EX] Driving only 6 blocks but 80mph = substantial risk → "kidnapping" <p><u>When kidnapping is collateral to the commission of another crime</u> Things to consider:</p> <ul style="list-style-type: none"> ▪ How far & for how long has the victim been moved? ▪ Is there risk of harm? 	<p>[Stephenson] Kidnapped & raped an ex-girlfriend. It was actually a felony-murder kidnapping</p> <p>[HYPO] Robber makes victim drive him ~6 blocks away. Steals jewelry and watch and leaves. → Robbery but not substantial asportation for Kidnapping. Movement seems to still be a part of the robbery.</p>

(K) BURGLARY

TYPE	DESCRIPTIONS / RULES	CASES/EXAMPLES/HYPOS
BURGLARY	<p>*Burglary is a crime against the integrity of the HOME, not against the person</p> <ol style="list-style-type: none"> 1. Trespassory <ul style="list-style-type: none"> ▪ D must actually know he hasn't been invited <ul style="list-style-type: none"> ↳ If D recklessly/mistakenly believes he has obtained consent → Not burglary b/c no subjective awareness that he's trespassing ↳ [EX] D thinks he's entering his own apartment but it's actually his neighbors (that's no intent/awareness) ▪ Fraudulently obtaining entry is burglary ▪ Consensual, non-fraudulent entry is not burglary 2. Breaking <ul style="list-style-type: none"> ▪ Only slight movement is required (e.g. moving an open door, putting a ladder up to the window, moving window curtains) 3. And entering <ul style="list-style-type: none"> ▪ Breaking & entering must happen before consent is given ▪ Requires that any part of you/your instrumentality enters <ul style="list-style-type: none"> ○ e.g. stick your hand into the window to grab a watch at the windowsill ○ e.g. throwing a bomb into house or shooting a bullet through window is enough if instrument is used for the intended felony 4. The dwelling house of another <ul style="list-style-type: none"> ▪ Anywhere that people dwell in (e.g. boat, if people live there, like in the Regina case) ▪ Detached garage, if close to the main dwelling house is considered part of the house ▪ Not dwelling houses = model home, abandoned home, your own home 5. In the nighttime <ul style="list-style-type: none"> ▪ 30 minutes after sunset and 30 minutes before sunrise (common law) 6. With the intent to commit a felony/theft therein <ul style="list-style-type: none"> ▪ You need to have the intent to commit a crime as you are breaking in ▪ Having broken in and later developing a felonious intent is not burglary ▪ If you're intercepted by police before having stolen anything, you're still guilty of Robbery if prosecution can prove intent 	<p>[Collins] D was allegedly standing outside the window when the victim beckoned him in. Not burglary b/c he received consent before he broke in and entered. *Prosecution needs to be able to prove that he placed the ladder and climbed up w/ intent to rape (D says he developed intent to rape after he was beckoned in)</p> <p>[VARIATION] If victim asked, "Is that you, boyfriend?" and he deceptively said "yes" → Not consent → Burglary</p> <p>[VARIATION] If D opened the window and a part of his body had entered before victim invited him → Burglary</p>

(L) DEFENSES (QUICK LOOK)

#	DEFENSE	TYPE	SPECIFIC INTENT	MURDER 1 & 2	GENERAL INTENT	INVOLUNTARY MANSLAUGHTER	STRICT LIABILITY	
1	INSANITY	Complete	✓	✓	✓	✓	✓	
2	INCOMPETENCE	Suspension of trial or criminal commitment	✓	✓	✓	✓	✓	
3	UNCONSCIOUSNESS	Complete	✓	✓	✓	✓	✓	
4	INVOLUNTARY INTOXICATION	Complete	✓	✓	✓	✓	✓	
5	DIMINISHED CAPACITY: VOLUNTARY INTOXICATION	Mitigating	✓	✓ (Not for "Gross Recklessness")	✗	✗	✗	
6	DIMISHED CAPACITY: MENTAL ILLNESS	Mitigating	✓	✓	✗	✗	✗	
7	PROVOCATION	Mitigation	✓	✓	✗	✗	✗	
8	HONEST & REASONABLE MISTAKE OF FACT	Complete	✓	✓	✓	✓	✗	
9	HONEST & UNREASONABLE MISTAKE OF FACT	Mitigating	✓	✓	✗	✗	✗	
10	SELF-DEFENSE	Complete	✓	✗	✓	✓	✗	
11	IMPERFECT SELF-DEFENSE	*See next	Complete	Complete	Mitigating	Mitigating	✗	
12	DEFENSE OF OTHERS	Complete	✓	✓	✓	✓	✗	
13	DEFENSE OF PROPERTY	?	Almost never a defense					
14	NECESSITY	Complete	✓	✗	✓	✗	✗	
15	DURESS	Complete	✓	✗	✓	✗	✓	
16	CONSENT	Complete	✓	✗	✓	✗	✗	
17	ENTRAPMENT	Complete	✓	✗	✓	✗	✗	

(L) DEFENSES**(1) INSANITY****[1] M'Naghten Test**

- As a result of his mental defect, D lacked the cognitive ability to know the wrongfulness of his actions or could not understand the nature and quality of his actions.
- a/k/a/ "Right or Wrong" Test
- This is a cognitive test

[2] Irresistible Impulse Test

- As a result of his mental defect, D lacked the capacity for self-control and free will to conform his conduct to the law.
- This is a volitional test.

[3] Durham Test

- D's conduct was a product of a mental illness (but-for the mental illness, defendant would not have done the act)
- This is a "causation" test.
- Easiest test to satisfy, but no longer followed

[4] MPC (A.L.I.) Test

- As a result of his mental defect, D lacked the substantial capacity to either (1) understand the wrongfulness of his actions or (2) conform his conduct to the requirements of the law
- Combination of the M'Naghten Test + Irresistible Impulse Test

Misc. things to know:

- Insanity is an affirmative defense – the D must raise it for jury instructions
- **Majority Rule:** Insanity is a complete defense for all crimes including strict liability

(2) INCOMPETENCE

D is unfit to stand trial if he is unable to (1) understand the proceedings against him and (2) assist in his own defense
If D is unfit to stand trial, he is civilly committed and the trial is suspended until he regains competency.

Traditional Procedure:

- **Traditional Rule:** If D has been determined unfit to stand trial, he is automatically committed to the institution until fitness was attained.
- *If D never becomes fit, he remains confined permanently

Jackson v. Indiana

- **Jackson Rule:** D cannot be held indefinitely or longer than the maximum sentence he is to be tried for
 - ↳ You can't commit someone for more than a reasonable period of time solely b/c of his unfitness to stand trial
 - ↳ **[EX]** D is being tried for petty theft, which has a max sentence of 6 months. D cannot be held in mental institution for longer than 6 months. If D regains competency after being in mental institution for 2 months, court must count those 2 months toward the sentence he receives.

People v. Lang (D is charged w/ two murders but he has a learning disorder, he is deaf and doesn't know how to speak.

- **CA Rule: Lanterman-Petris-Short Act (LPS)**
 - ↳ The court can civilly commit D if he is (1) mentally ill and (2) is a danger to himself or to society.
 - ↳ Worried about criminals who are likely to offend again *because* of their mental illness
 - ↳ **[EX]** Keorkian / doctor assisting suicide case. He's likely to offend again but he's not suffering from mental illness. Probably can't confine him to hospital after he serves his time.
- Problem w/ court's decision: Lang is intellectually disabled, not mentally disabled. Only allowed to civilly commit for people suffering from mental impairment
 - No current law allows the system to commit D suffering from a mental disorder, even though he may pose a danger to self / others.

(L) DEFENSES**(3) UNCONSCIOUSNESS**

Rule: Voluntary or involuntary unconsciousness is a defense to all crimes b/c you're unable to form the requisite intent to commit the crime.

[Decina] Epileptic seizures – D is considered to be unconscious when he killed the 4 children b/c he was suffering a seizure. However, he is held liable for his criminal negligence of entering the car knowing that he is subject to seizures.

[Newton] D shoots a police officer after having been shot in the stomach. Claims unconsciousness b/c he doesn't remember what he did and medical expert supports the contention that D could have been in a state of total shock & lost consciousness.

(4) INVOLUNTARY INTOXICATION

Rule: Occurs if D unknowingly and voluntarily ingested intoxicant or if the D reasonably didn't know the effects of the intoxicant & as a result engaged in the criminal conduct

- Defense to all crimes including strict liability.

[HYPO] D was forced to ingest intoxicant

[HYPO] D ingested an intoxicating substance, unaware of the potential side effects (e.g. Ambien / sleepwalking case)

(5) DIMISHED CAPACITY – MENTAL DISEASE

Rule: Partially mitigating defense for D suffering from mental defect, just short of insanity

- ↳ Specific Intent (Burglary) → General Intent (Trespass)
- ↳ 1st Degree Murder → 2nd Degree Murder (Wolff)
- ↳ Murder → Manslaughter

CA Rule: Does not accept this defense (b/c someone got off murder charges w/ Twinkie defense)

[Wolff] D (15) killed mom to take pictures of naked girls at home. He is charged w/ 1st degree premeditated and deliberated intent to kill murder buck knocked down to 2nd degree b/c he is unable to "maturely reflect" upon the gravity of the crime b/c of age or mental capacity. D lacks a true understanding of the consequences of his crime.

(6) DIMISHED CAPACITY – VOLUNTARY INTOXICATION

Rule: Partially mitigating defense to "specific intent crimes" if D knowingly and voluntarily consumed an intoxicant b/c he is incapable of forming requisite complicated mens rea.

Majority Jdx Rule: Viable defense to crimes of murder, EXCEPT the gross recklessness variety.

CA Rule:

- Does not accept this defense (b/c someone got off murder charges w/ Twinkie defense)

[Hood] D is drunk & forces his way into ex-gf's house. D grabs the officer's gun & shoots him twice in the legs. D is charged w/ assault with intent to murder (specific intent) → court allowed defense but rests on D's ability to prove that he was incapable of forming the intent

[Stasio] D gets drunk at a bar. Comes back armed with knife and tries to steal from the cash register. D claims that he was so drunk that he was in a "comatose" state that he doesn't even remember committing the crime. → Voluntary Intoxication does negate intent.

(L) DEFENSES**(7) PROVOCATION****ELEMENTS:**

1. D was subjectively provoked
2. A reasonable person in D's position would have been reasonably provoked
3. D had not yet cooled
4. A reasonable person at the time D acted would not have yet cooled

**This does not eliminate INTENT. It only negates MALICE. If it also negates intent, prosecution can only get D for involuntary manslaughter (only homicide that doesn't require intent)*

**W/ respect to 1st Degree Murder – If (D) is imperfectly provoked (honestly but unreasonably) this knocks down to 2nd Degree Murder of either "Intent to Kill" or "Intent to Commit Serious Bodily Injury" theory.*

- A reasonable person is assumed to have self-control in most situations
- Victim needs to have provoked (D), not some 3rd party.
- INSULTING words NEVER qualify as reasonable provocation.
- DESCRIPTIVE words sometimes qualify as reasonable provocation
 - Can be interpreted as a threat of an attack
 - Describing something that has the same affect as seeing something "I slept w/ your wife" or "I shot your brother"
- Cooling-Off Period: Parallel to the degree of provocation
 - Depends on extent to which passions have been aroused and the nature of the act that caused the provocation.

The court has a duty to instruct on voluntary manslaughter instructions when evidence is substantial enough to merit consideration.

(8) HONEST & REASONABLE MISTAKE OF FACT**ELEMENTS**

1. D honestly & subjectively made a mistake
2. A reasonable person in D's circumstance would have also made the same mistake

Defenses used for – all crimes except for strict liability

Mistake of LAW is never a defense

Cultural difference will never be considered a complete defense, but may be allowed as a partially mitigating defense

(9) HONEST & UNREASONABLE MISTAKE OF FACT**ELEMENTS**

1. D honestly & subjectively made a mistake
2. A reasonable person in D's circumstance would NOT made the same mistake

Defenses used for – only "specific intent" crimes

(L) DEFENSES**(10) SELF-DEFENSE**Non-Deadly v. Deadly Force

- This is a subjective test – what the aggressor and retaliator each subjectively knew.
- **[HYPO]** A has a weak skull. B doesn't know A has a weak skull and punches him.
 - B was using "non-deadly force". B is not guilty of using "deadly force" b/c punching is a non-deadly force and he didn't know it was deadly to A.
 - A has the right to retaliate w/ "deadly force" because he knows the blow is deadly to him.
 - *If B knew that A had weak skull, he was using "deadly force" by punching.

Victim's Use of Non-Deadly Force

- A victim may use "non-deadly force" in self defense if
 1. He **subjectively** believes there's a **threat of imminent harm** and
 2. A **reasonable** person in his circumstances would also have believed threat of imminent harm.

Victim's Use of Deadly Force

- **Imminent Harm:**
 - The aggressor must be walking toward you, "raising that baseball bat"
 - **[Jahnke]** You can only retaliate in self-defense *during* the abuse. (14 years of abuse is not legally relevant. Walking into garage is not a threat of imminent harm)
- **Stand Your Ground Rule (CA/ 50% Jdxs)**
D can use deadly force and **does not have a duty to retreat** if he
 1. He **subjectively** believes there's a **threat of imminent harm** and
 2. A **reasonable** person in his circumstances would also have believed threat of imminent harm.
- **Retreat Rule (MPC / Other 50% Jdxs)**
Before using deadly force one has a duty to retreat if
 1. There's a safe avenue of retreat and
 2. D knew about it.
 - Elements are both subjective and objective.
 - No duty to retreat if D is on his own property
 - If D can suffer minimal injury, may still be required to seek retreat

Initial Aggressor's Use of Force

- **Initial Aggression:**
 - Descriptive words never give rise to "initial aggression" (although it does for provocation)
 - Insulting words are never legally sufficient
 - Threatening words (e.g. I'm going to kill you) can be interpreted as an initial threat
- 1. The "initial aggressor" always has the **duty to retreat** if there's a reasonably safe avenue of retreat (1) available to them and (2) known to them.
 - It doesn't matter if he was on his own property.
- 2. The "initial aggressor" **regains the right of self-defense** if...
 - (a) He steps back and communicates relinquishment. (Needs to be reasonably communicated to the retaliator) OR
 - (b) He used non-deadly force during initial aggression and victim retaliated w/ deadly force

D's use of "Self-Defense" during arrest

- **Lawful Arrest:** An arrest w/ probable cause, regardless of whether person being arrested is actually innocent / not
- **Majority Rule:** D, who resisted arrest using physical force, has a claim of self-defense if he was subject to an unlawful arrest
- **Minority / CA Rule:** D has a claim of self-defense if he was subject to an unlawful arrest **ONLY IF** he resisted without physical force (e.g. running away)
 - If D uses physical force to resist a **LAWFUL** arrest, he's guilty of "assaulting a police officer" - felony
 - If D uses physical force to resist an **UNLAWFUL** arrest, he's guilty of lesser crime of "assault" – misdemeanor

(11) IMPERFECT CLAIM OF SELF-DEFENSEMajority Rule

- D has a claim of "imperfect" self-defense if
1. He **subjectively** believes there's a **threat of imminent harm**; AND
 2. He actually believe that immediate use of deadly force was necessary to defend against the danger; BUT
 3. At least one of those beliefs was unreasonable.

*If the court gives the jury "self-defense" instruction, it also needs to give the "imperfect" self-defense instructions.

(L) DEFENSES**(12) DEFENSE OF OTHERS**

Majority Rule: D has a right to come to someone else's aid so long as he honestly & reasonable believed that the person had the legal right to use force

- Reasonable mistake of fact is a defense
- Does not require a pre-existing relationship w/ the person D aided
- **[EX]** Little old lady is getting her purse stolen by a big thug. D beats up the thug to get her purse back, but turns out the lady was the one stealing the big thug's purse. Under the Majority Rule, reasonable mistake of fact is a defense.

Alter-Ego Rule (Common Law / Large Minority): When D comes to someone else's aid, D has no legal rights greater than those of the person whose aid he has come.

- Only if the person he aided had the right of self-defense, does he have the right to defense
- Only a defense if D was RIGHT.
- **[EX]** Little old lady is getting her purse stolen by a big thug. D beats up the thug to get her purse back, but turns out the lady was the one stealing the big thug's purse. Under the Minority Rule, lady does not have a right of self-defense so neither does D. He's guilty of assault.

Fleeing Criminals Situation:

1. Original Rule:
 - a. **Police:** Right to shoot a fleeing felon, as long as he has **probable cause** that the person as a fleeing felon.
 - b. **Private Citizen:** Right to shoot a fleeing felon as long as **he is RIGHT** that victim was a fleeing felon.
2. Garner Rule:
 - a. **Police:** Right to shoot a fleeing felon, as long as he has **probable cause** that the person was a **DANGEROUS fleeing felon**.
 - i. Added 4th Amendment Right, constitutional rule – applies nationwide.
 - ii. Is the felon physically dangerous in some way?
 - ↳ **[EX]** Fleeing felon is armed & threatened to shoot
 - ↳ **[EX]** Prior action – he had just attempted rape, kidnapping, or armed robbery
 - ↳ **[EX]** Prior action was a non-dangerous crime but police recognize him as a wanted fugitive for kidnapping
 - ↳ **[EX]** Has a record w/ long history of violence.
 - b. **Private Citizen:** Unchanged – Right to shoot a fleeing felon as long as **he is RIGHT**. (Doesn't need to be dangerous)
3. Couch Rule:
 - a. **Police:** Right to shoot a fleeing DANGEROUS felon, as long as he has **probable cause** that the person was a **DANGEROUS fleeing felon**.
 - b. **Private Citizen:** Right to shoot a fleeing DANGEROUS felon, as long as he has **probable cause** that the person was a **DANGEROUS fleeing felon**.
 - i. Doesn't have to be "right" anymore.
 - ii. Same exact rights as police.

(13) DEFENSE OF PROPERTY

General Rule: A person is criminally liable for setting up a deadly mechanical device that kills or injures another

- Deadly mechanical devices cannot distinguish from innocent people vs. criminals
- A device set up to just shoot someone in the legs (not to kill) is still considered "assault w/ a deadly weapon"
- A warning sign (e.g. "beware – spring gun trap") is nice but it doesn't deter innocent ppl from going in b/c some people don't read the signs.

Exception (Very Rare): If D were present and he were able to attack with deadly force/weapon at the time of crime (burglary/kidnapping)

- **[EX]** A kidnapper breaks in the middle of the night to take away a child in bedroom and is shot by a spring-gun trap. This is justifiable b/c if parent were there, he would have undoubtedly acted w/ deadly force.

(L) DEFENSES**(14) NECESSITY**

RULE: D has a defense of necessity where the circumstances / environment had forced him to commit the crime.

ELEMENTS:

1. D engaged in criminal act to **prevent an imminent harm** (subjectively and objectively accurate belief)
2. D's criminal act posed a proportionally **lesser harm** than the one he was faced with
3. And there was **no legal alternative** to the act

*Once D raises the defense of necessity, the prosecution bears the burden of removing it, but only needs to show by a "preponderance of evidence" rather than "proof beyond a reasonable doubt"

*This is never a defense to "homicides" No person's life is more valuable than another's.

[EX] Walking down the street and hailstorm occurs. In order to save your life, you smash down someone's door and enter into their home. No criminal liability for "burglary/trespass" because the harm to YOU was greater than the harm that you caused.

[EX] You see someone dying on the street. You want to save them so break into a car and drive them to the hospital. You have a defense.

When an escaped prisoner raises the "necessity" defense:

LOVERCAMP RULE:

1. D was faced w/ threat of death (not necessarily imminent)
2. No time to seek authorities / futile attempts
3. No time to resort to courts
4. No violence against prison/innocent people
5. Immediately reports to proper authorities when position of safety has been attained

Contempt of Court / Defense of Necessity in Refusing to Testify

[Carradine] D witness a gang murder and refused to testify b/c she feared for her death and the death of her children.

- Held in criminal contempt b/c "fear" cannot be a defense in refusing to testify.
- **Civil Contempt:**
 - D is charged w/ a fine until he agrees to cooperate.
 - Cannot be held in civil contempt when the controversy ends (trial is over)
- **Criminal Contempt:**
 - D is charged w/ a definite punishment (jail time, fine).

(15) DURESS

RULE: D has a defense of duress where he has forced him to commit the crime by a threat of imminent great bodily harm / death

- Reasonable mistake of imminent threat is ok.
- Exceptions: D must be faced with imminent bodily threat – a threat of wife's criminal prosecution is not enough

[EX] They made be go into the bank w/ a gun because if I didn't, there were going to kill me.

[EX] A points bun at B and threatens to kill him if he doesn't break into C's house and steal food → Defense of duress.

(L) DEFENSES**(16) CONSENT**

D is not guilty of the crime when ...

1. The crime is **not an aggravated assault** (serious bodily injury / assault with deadly weapon);
2. The **consent was freely & voluntarily** given;
 - No duress
3. The party was **legally capable of consenting**; and
4. **No fraud** was involved in obtaining the consent
 - If D lied about the nature & quality of the act, to which the victim consented to – there's no consent
 - **[EX]** Victim consented to sex but D lied about not having AIDS. → No consent, rape.

(17) ENTRAPMENT**[1] Constitutional/Due Process Violation (Applies to all jdxs)**

- Where the government's conduct is SO overbearing that it reaches a constitutional probation
- Involves an outlandish / high involvement to trigger a due process problem
- **[EX]** If you don't do this, I have connections and I will have your wife arrested and convicted → Violation of Due Process.

[2] Majority Rule (Subjective Test)

- Look @ the Defendant's predisposition
- **D has a defense of "entrapment" if he lacked the predisposition to commit the crime**
- Allows the Prosecution to admit D's criminal record into evidence (normally inadmissible)

[3] Minority Rule (Objective Test)

- Look @ the government's conduct and how a law-abiding citizen would have reacted
- **D has a defense of "entrapment" if the government's involvement would have induced a normal law-abiding citizen to commit the crime.**
- **[EX]** If you take this small package around the corner and drop it off, I will pay off your student loans (everyone has a price.)