Criminal Law, Goldman, Fall 2016

Thursday, November 17, 2016 10:24 PM

CRIMINAL LAW OUTLINE

CRIME = Mens Rea + Actus Reus + Causation + Harm - Defenses

I. Mens Rea

RULE: Mental state necessary to commit a criminal act, which includes any of the following:

- General Intent
- Specific Intent
- Strict Liability
- Malice

1. General Intent
   a. D possessed a single mental state at the time he perpetrated the actus reus of the crime (Ex: Assault, Battery, Rape, ect…)
      i. It is easier to convict a person of a general intent crime rather than a specific intent crime b/c you only need to prove one intent and b/c there are fewer defenses available.
   b. Defenses
      a. Reasonable mistake of fact
         - A person reasonably commits a battery against another, under the circumstances, because he thought he was being attacked.
      b. Involuntary Intoxication
         - A person taking medication that does not know the effects beforehand in which the medication subsequently triggers a psychotic episode.
      c. Unconsciousness (Where the subject physically acts but is not, at the time, conscious of acting)
         a. You can theoretically be awake and physically doing things while unconscious, e.g. sleepwalking.
         b. *People v. Newton* (D shot cop after being shot himself, claimed he was unconscious because of his wound): Involuntary unconsciousness is a complete defense to a charge of criminal homicide. Police officer shot defendant in the stomach, which was proven could release chemicals that could make a person legally unconscionable.
   c. Not a Defense
      a. Unreasonable Mistake of Fact
      b. Mitigating Defenses
      c. Diminished Capacity
         - *People v. Hood* (D was drinking, broke into GFs house, and took the responding cop's gun and shot him. Claimed his intoxication as a defense): Assault with simple intent to commit a violent act or assault with a deadly weapon is a general intent crime in which voluntary intoxication is not a defense.
2. Specific Intent
   a. Intentionally doing something with the intent to do something further: Involves more than 1 mental state - Assault with intent to rape
      a. Specific intent requires both mental states to exist simultaneously. If you break into a house to escape a hailstorm, and then steal something once inside, this would not be burglary, but rather a separate trespass and larceny.
      b. Examples
         - Solicitation
         - Conspiracy
         - Attempt
         - Larceny
         - Receiving Stolen Property
         - Embezzlement
         - False Pretenses
         - Robbery (Intent to permanently deprive + Asportation + Force)
         - Burglary
         - Forgery
         - 1st degree murder only when premeditated and deliberated
         - Assault (When defined as an attempted battery. Assault is general intent (more narrow) when defined as a threat.)
   b. Defenses: Includes all the general intent crime defenses plus:

i. Unreasonable mistake of fact
ii. Diminished capacity (Voluntary Intoxication, Mental Issue Short of Insanity)
1. Majority
- *State v. Stasio* (D claimed voluntary intoxication when he tried to rob the bartender with a knife): Voluntary intoxication can absolve a person from committing the specific intent crime of robbery
2. California
- Voluntary use of drugs or alcohol does **NOT** extinguish criminal responsibility, and CANNOT be used as a defense in California for any crimes.

3. Strict Liability
a. The D's state of mind (intent) is irrelevant. As such, you do not need proof of any of the elements of intent; the act by itself is enough.
i. Ex: Statutory rape is the primary example, but also dumping certain toxic wastes and mismarking meat weights in grocery stores.
b. Case Example (Majority)
- *Regina v. Prince*: Statutory rape is a strict liability crime, so it does not matter that D had a reasonable and honest belief that the girl was over 18.
c. Not Case Example (Minority)
- California allows reasonable mistake of the fact as a defense for statutory rape as long as the girl is 14 years and above. The state simply does not treat the crime as a strict liability crime. If the girl is under 14, it is a child molestation case which is a strict liability crime.

4. Malice
a. Malice = state of mind + no defenses or mitigation
b. Arson and Murder are the only malice crimes
i. Arson - The malicious (intentional or reckless conduct) burning of the dwelling house of another.
ii. Murder - the unlawful killing of another with one of the 4 following states of mind.
c. States of Mind:
1. Intent to kill
2. Intent to commit serious bodily harm
3. Malignant/depraved heart (gross recklessness/negligence)
4. Felony murder
d. Defenses
i. Reasonable Mistake of Fact
ii. Insanity
iii. Voluntary Intoxication (Majority): Regarding murder, defense will negate premeditation and deliberation of first degree murder to the second degree.

5. Transferred Intent
a. Intent may be transferred to a different victim than originally intended
1. Example: defendant shot at one person, missed and killed someone else.
b. When transferred intent takes place, there will always be two separate crimes available for prosecution and conviction:
1. Crime (i.e. murder)
2. Attempted crime (attempted murder)
c. Not possible to transfer intent between different crimes
1. Exceptions: felony-murder and misdemeanor-manslaughter
d. *Regina v. Falkner*: (robbed rum from a ship and accidently burnt it down) can't transfer intent between two separate crimes - burglary and arson (except felony murder)

II. Actus Reus
1. Commission - any intentional act could potentially qualify as a criminal act
i. doesn't qualify for criminal liability when
- not performed on D's own volition (reflexive or convulsive)
- act performed while unconscious or asleep
ii. *People v. Decina* (D was criminally negligent and reckless is driving knowing that he was subject to epileptic attacks)
- Reckless behavior doesn't have to be at the moment the injury took place
- Actus reus here is getting in the car
- Mens rea is getting in your car recklessly because you should have known that getting in your car was a dangerous thing to do
iii. *Commonwealth v. Atencio* (Group of friends playing Russian roulette)
- Commission case because they engaged in an activity that was reckless, so even though D didn't pull the trigger, still counts. D had a duty to not cooperate or join the victim in the game.

2. Omission - failure to act
- Five situations where the law can impose a legal responsibility to act

1. Statutes can impose a legal duty
2. Failure to fulfill contractual agreements that are relied upon by others
    - Agreements obligating lifeguards, surgeons, etc.
    - Criminal liability arises when foreseeable injuries result from the failure to reasonably perform such duties.
    - *Barber v. Superior Court* (Family told doctors to stop life support on man in a coma)
        - This is not a case of euthanasia, which would have been a commission, an affirmative killing. Just stopping the life support is an omission.
3. Relationship between the parties
    - Parents and minor children
        - *State v. Williams* - D as a parent had a duty to furnish medical treatment for his child.
    - Doctors and patients
        - *Barber v. Superior Court* - Since the family agreed to stop life support, the doctors were not under any duty to continue to treat and therefore are not responsible for failing to continue to treat.
4. Voluntarily assume a duty of care
    - *Stephenson v. State* (D kidnapped and raped woman on a train, then the woman poisoned herself. D did not take her to the hospital after finding out) - D placed the victim in a perilous situation and didn't provide her with reasonable care in a reasonable amount of time.
5. Defendant's conduct created perilous situation
    - *Commonwealth v. Welansky* (Club goes up in flames and the exit doors were jammed or locked, 500 people died) - Court says there's a duty of care for the safety of business visitors invited to premises.

III. Causation

1. Cause in Fact (But-For Cause): "But for D's conduct, victim wouldn't have been harmed."
    i. Cause in fact includes an infinite number of preceding events.
        a. **Goldman's Example**: Parent mistreat and abuse their child. However, it is found that the child died as a result of cancer and not as a result of the abuse. Although the government may charge the parents with child abuse, they are not the cause in fact of the child's death.
    ii. A cause-in-fact can become a proximate cause if there was an intervening act that was the direct and final cause of harm, but was foreseeable (Knocking someone out and leaving them in the street. Then they get run over). The car hitting them is the direct and final cause, but because it was foreseeable given that you left a dude lying in the street, you are culpable.
        a. However, if the intervening act was not foreseeable, making it a superseding act, then the superseding act cuts off all liability for the prior action (Negligent medical treatment is foreseeable, but gross and outrageous malpractice would not be)
2. Proximate Cause ("Direct and Final" or Legal Cause): D's behavior and conduct was so close in time and place to the event that D is held as the legal cause.
    i. Just b/c you're the proximate cause does NOT mean that you're held criminally liable since you may have been merely negligent; you must have also acted **intentionally** (See *Welansky*).
    ii. Case Examples
        a. *State v. Williams*: D was a proximate cause because a reasonable person would've known that treatment was necessary early enough to save the baby, but D did not seek treatment. If a reasonable person wouldn't have been put on notice to get treatment for the baby before it was too late, then they are not the proximate cause of the death even if the baby died.
        b. *Commonwealth v. Atencio*: Ds were held to be the proximate cause of the death of the victim because although they did not actually pull the trigger, the Ds had a duty not to participate or cooperate with the victim in the "game."
        c. *Brown v. Thayer*: Automobiles racing where the driver, whose car did not strike the victim, was equally held to be the proximate cause of the victim's death because the driver participated in the race.
        d. **Goldman's Hypo** (Old Western Hypo): If the victim dies because of a combination of wounds inflicted by 2 actors and would not have died if only one injury were sustained, then <u>both independent actors</u> are the proximate cause of the victim's death.
    iii. <u>Approach to Causation</u>
        1. Determine if D is the cause-in-fact.
            a. If no, D is not the proximate cause and not liable.
            b. If yes, then you need to see if there is an intervening act.
                i. If no, then D is automatically the proximate cause and liable.
                ii. If yes, then you need to determine whether the intervening act was foreseeable.
                    1. If no, the intervening act is superseding which cuts off D's liability making him not the proximate cause and not liable.
                    2. If yes, the intervening act is not superseding and D is the proximate cause and liable.

IV. Homicide

1. There are 3 types of homicide:
    i. Murder
        1. Intent to kill

2. Intent to commit serious bodily harm
3. Malignant/depraved heart (gross recklessness/negligence)
4. Felony murder

ii. Voluntary manslaughter
iii. Involuntary manslaughter.

2. A murder conviction also means that there is the **absence** of one of the following:
   i. Complete defense
      - Justification (self-defense)
      - Legally recognized excuse (insanity or unconsciousness)
   ii. Mitigation (partial defenses)
      - Diminished capacity
        a. In some jurisdictions, intoxications counts as diminished capacity
        b. No diminished capacity defenses are allowed in CA (still has imperfect claim of self-defense which is another kind of partial defense requiring reasonable mistake of fact)
      - Provocation
        - Both objective and subjective requirements because all four of the following must be met.
          1. Reasonable person would've been provoked
          2. D was subjectively provoked
          3. Reasonable person would not have yet "cooled"
          4. D had not yet "cooled"
3. 1st Degree Murder
   i. Either a premeditated and deliberate murder OR a felony murder.
      1. Premeditated and deliberate murder
         1. **Premeditated** means that you thought about the killing in advance and planned it out, even for a short period of time.
         2. **Deliberate** means that you were cool-headed and in a rational state of mind (vs. in the heat of passion) when you decided to kill, and you weighed the consequences.
         3. CA determined that one can premeditate and deliberate instantaneously
         4. *Gilbert v. State* (D killed his wife that was suffering from Alzheimer's as a mercy killing)
            - The fact that D killed his wife for what he believed to be the proper reason is not a form of defense or mitigation from murder in the 1st to the 2nd degree. He premeditated and did it coolly, even though he's claiming it was the rational thing to do. The firing of the second shot, especially, after he went out and reloaded the gun, really proves the premeditation and deliberation.
      2. Felony Murder
         1. Any killing that occurs during the perpetration or attempt to perpetrate the inherently dangerous BARRK felonies: burglary, arson, robbery, rape, and kidnapping.
         2. Discussed in depth below.
4. 2nd Degree Murder
   i. Any murder that is not 1st degree murder because there is:
      1. No premeditation and deliberation
      2. Mitigation
         a. Provocation that meets the *Caruso* Standard – honest but unreasonable
            - *People v. Caruso* (D's son died after being treated by a doctor. D believed that the death was a result of the doctor wrongly administering the medication and then failing to come back when called. When doctor returned, D thought the doctor laughed, and then killed the doctor)
              - There was not sufficient premeditation and deliberation to be 1st degree murder, but there was not enough to take away the malice because he did intend to kill. Therefore, honest but unreasonable mistake of fact mitigates to 2nd degree murder. He was subjectively thrown into a heat of passion so was not cool-headed enough for 1st degree, but it was not objectively reasonable to be in that heat of passion so not manslaughter.
         b. Diminished capacity meets the *Wolff* Standard – mental illness short of insanity
            - *People v. Wolff* - CA case. 15-year old boy killed his mother to get her out of the way so he could use the family home for a bizarre sexual scheme. Although it was premeditated and deliberate since he chased her around the house and beat her to death, he had a real mental problem short of insanity, so this was enough to mitigate from murder 1 to 2.
   ii. A murder where the actor only had **intent to commit serious bodily harm**
      - When one intends to inflict serious bodily harm upon the victim even though he did not consciously desire to cause the victim's death and did in fact cause the victim's death (examples: shooting, stabbing, swinging a bat, breaking bones)
      - It doesn't matter what the defendant intended if he used a deadly weapon - Would be murder 1

- a jury will find intent to kill based on the nature of the weapon because it is certain death will result

iii. Depraved and Malignant Heart Murder (Gross Recklessness/Negligence)

- Extreme disregard and indifference for human life and safety. Outrageously reckless conduct that causes death. It needs to be to a higher degree of negligence required with both criminal liability (criminal negligence) and civil liability (ordinary negligence). There are 4 elements that must be met:
  1. The conduct of D exposed a high degree of risk to human life and safety;
  2. No social value to the conduct
  3. D intentionally engaged in the behavior; and
  4. D must ***subjectively*** have been aware that his intentional conduct had a great likelihood of causing death or serious bodily harm.

     **This can only lead to 2nd degree murder, not 1st degree
- *Commonwealth v. Malone*: (Russian Poker 2 kids) D loaded a revolver with 1 bullet to the right of the firing pin, shoots friend on third shot.
  - D is guilty, not because he intended to kill, but because he <u>intended to engage in the reckless act</u> that ended up killing and was subjectively aware of the high risk of harm.
- *People v. Register*: D shot victim, an acquaintance, without explanation while drinking at a bar.
  - <u>Majority Rule</u>: Voluntary intoxication is not a defense for depraved heart murder. (Use for M/C)
  - <u>Minority Rule</u>: Some states allow voluntary intoxication to mitigate away intent for reckless conduct, because drunk people can't formulate intent. (Mention both majority and minority rules in an essay)
- *Pears v. State*: Cops told D he was too drunk to drive, but decided to drive anyways. D was <u>subjectively aware</u> of the risk because the cops put him on notice, but he didn't listen.
- *Gibson v. State*: D was arrested while going thru heroin withdrawal and put in the back seat of a cop car. D grabbed the wheel and caused an accident which lead to the death of one of the officers. There were 4 possible scenarios:
  - D did **not do anything**.
    - Here, D is not guilty.
  - D acted in the throes of **heroin withdrawals** which end up in a physical convulsion making him lunge forward and unintentionally grab the steering wheel and cause the accident.
    - Here, the jury must find D either (1) criminally or grossly negligent; or (2) find that he was unconscious, and thus completely innocent.
    - However, it can be argued that although D didn't voluntarily get in the car, he did voluntarily take the drugs and thus should be criminally liable despite that he may have been unconsciousness - by using the drugs, it is reasonably foreseeable that he may endanger others. The more likely that D was going through withdrawals, the more likely that he will be criminally liable of manslaughter, and not 2nd degree murder.
  - D wanted to **escape** by crashing the car.
    - Here, he could be held liable of felony murder or even gross recklessness. He's more culpable b/c he's trying to achieve something – he had an intention to crash – thus he had a depraved heart.
    - However, a jury could also find him liable for just criminal negligence b/c he just wanted to escape, he did not intend kill or even commit serious bodily injury.
  - D wanted to **commit suicide**, so he tried to crash.
    - Here, D could likely be held guilty of either 2nd degree murder (acting grossly reckless) or voluntary manslaughter (intentional homicide mitigated due to a diminished capacity).
    - He actually had the intent to kill (trying to kill himself). He wants to crash the car SO badly that someone will die (even though its himself). However, in the one above, he didn't have intent to kill (he just wanted to crash just badly enough to allow him to escape).

iv. Or 2nd degree felony-murder: any killing that occurs during the perpetration of a non-assault based or dangerous felony not listed under statutes as 1st degree felony-murder.

- i.e. administration of a dangerous drug is inherently dangerous but not on the list thus leads to 2nd degree murder.

5. Felony Murder

i. The killing of another human being during the commission of a felony. D must be first guilty of the felony in order for the prosecution to use the felony murder doctrine against him. *(Ex: During a robbery, the bank teller was shot and killed)*

- This can lead to either 1st degree or 2nd degree murder (it depends on the felony).

ii. This is the single major exception to the general prohibition against allowing the mens rea of one crime to be used as mens rea for a completely separate and distinct crime.

- "Dead man on the floor" policy reason -> someone has to be held accountable for the death.

iii. The underlying felony must be inherently dangerous.

- **BARRK** – burglary, arson, robbery, rape, kidnapping

- *People v. Phillips*: D chiropractor claimed he could cure child's cancer, so parents paid him a bunch of $$. Parents claimed D committed grand theft by misrepresenting himself to get their money. Court found that the grand theft could not support felony murder because it is not inherently dangerous.

iv. Defenses against Felony Murder
    1. Defense to the underlying felony
    2. Underlying felony must be something different from the killing itself = Ireland Rule
    3. Death must have been foreseeable
    4. Defendant reached point of temporary safety
    5. Homicide committed by someone other than the felon may not be felony murder

1. Defense to the Underlying Felony
    - One can't be guilty of felony murder if they are not found guilty of a felony.
2. **Ireland Rule / Merger Doctrine** - Underlying felony must be something different from the killing itself
    - Cannot convert assault-based crime to felony murder
    - Felony murder requires the perpetration of a felony other than, and in addition to, the assault which caused the homicide, or the homicide itself.
        - Otherwise all voluntary manslaughters would then be raised to murder under felony-murder rule.
    - *People v. Sears*: D committed burglary with intent to assault with iron bar. Court determined that because the underlying felony was an assault, it could not be used to find felony murder. D can still be found guilty of murder under another theory.
    - *People v. Sarun Chun*: Shooting at an occupied vehicle is an assaultive felony, and therefore can't be used for felony murder.
3. Death must have been foreseeable
    - A bolt of lightning would not normally be reasonably foreseeable, but a heart attack suffered by a victim during the course of a robbery would likely be foreseeable.
4. Defendant reached point of temporary safety
    - If you rob a bank, and then you escape and go to your mom's house to sleep over, that felony is now over. If you get into a shootout with the cops in the morning and one of them dies, then this would not attach to the robbery and lead to felony murder because you reached safety once you got escaped pursuit and got to your mom's house.
5. Homicide committed by someone other than the felon may not be felony murder
    - **"Redline Rule"**
        - Majority Rule
        - D is typically not liable for the death of his co-felon at the hands of a 3rd party (Victim, cops, ect.)
        - *Commonwealth v. Redline*: The defendant's co-felon was shot and killed by police as they fled the scene of their armed robbery. Court found that D was not liable for co-felon's death at the hands of the cops under felony murder.
    - **Agency Theory**
        - D is liable for the behavior of his co-felon, including anyone killed by the co-felon. If the victim is not killed by the felon or co-felon, there is no felony murder.
        - Exception: Can also be found liable for a 3rd party's death not directly caused by one of the felons if they engage in provocative behavior, like initiating gun battle or using as a human shield. (i.e. felon uses bystander as human shield and cops accidently kill the bystander. Felon would be liable under felony murder).
    - **Proximate Cause Theory**
        - Felons are liable for the deaths of innocent victims caused by someone other than a co-felon. (If you didn't rob the bank, the death would never have happened).
    - **CA Rule**
        - It's not felony murder unless the death is caused directly by the felon or co-felon. If the bullet is fired by anyone other than the felon or his agents, it is not felony murder, regardless of the victim. If one of the felons escalates the situation, they can be found guilty of murder, but it would be under malignant heart (2nd Degree), not felony murder.
        - *People v. Washington*: The storeowner was in his office at his gas station when he heard someone yell "robbery". He took out a revolver as one of the felons entered his office pointing his gun at him. The owner fired and mortally wounded the first felon. Court found that D was not guilty for the murder of his co-felon based on felony-murder because he was killed by a third party.
            - *Washington* broadened the *Redline* holding to apply to any 3rd party, not just a killing of a co-felon by a cop.

6. Manslaughter

i. Voluntary Manslaughter

a. Voluntary manslaughter will always be the result of mitigating a homicide that would have otherwise been murder if not for the mitigation (provocation, diminished capacity, or Imperfect self defense).
    - Voluntary manslaughter always involves the intent to kill or intent to commit serious bodily injury that been mitigated down so there is no longer malice.
b. **Provocation**: In order for provocation to mitigate an intent to kill or intent to commit serious bodily injury murder to voluntary manslaughter, all four of the following factors must be present:
    1. A reasonable person would actually have been provoked into a heat of passion by the conduct of the victim.
        a. in other words, this will be a killing as a result of passion created by something the victim did that would have enraged a reasonable person
        b. such situations would include but are not limited to the discovery of adultery or the victim having just struck the defendant with a staggering blow
    2. defendant was actually provoked into a heat of passion
    3. a reasonable person would not yet have cooled from the passion at the time of the act
    4. defendant had not yet personally cooled from passion.
    - Mere words are insufficient to constitute provocation, but some descriptive words may qualify.
        - *Holmes* (D killed wife with a hammer after she said she cheated on him. Court said words aren't enough to provoke and therefore could not mitigate the murder down to manslaughter)
        - *Berry* (D's wife taunted him, teased him sexually and rejected him, and described her cheating in detail over time. D killed his wife, but successfully argued that the series of confrontations amounted to provocation)
        - *Harris* (D beaten up by a club bouncer, and returned later that night and shot and killed him. Court found that a reasonable person would not have cooled, so reduced from murder to manslaughter)
            - The more extreme the provocation, the longer it takes to cool off.
c. **Diminished Capacity:** In many jurisdictions (though not CA) the defendant's diminished capacity can be used to reduce murder to voluntary manslaughter.
    1. voluntary intoxication
    2. mental disease or defect of the mind but less than insanity
d. **Imperfect Self Defense**
    a. In order to have an imperfect self defense claim:
        1. The person needs to believe that they were in imminent danger of death or suffering great bodily injury; AND
        2. D actually believed that the use of deadly force was necessary to defend against the danger; BUT
        3. One of those beliefs was unreasonable
    b. *Jahnke v. Wyoming*: Repeatedly abused son waited for his dad to return to kill him, mistakenly believing that his dad was going to kill him upon his return. A reasonable person would not have believed that "I'll deal with you when I get back" was an imminent threat of bodily harm or death, so self defense was not available.

ii. Involuntary Manslaughter
a. Will always be the result of an unintentional homicide. It is most often gross recklessness murder that was dropped down from murder or didn't quite qualify for felony-murder or may have been misdemeanor-murder. There is no subjectivity in involuntary manslaughter, it is only an objective standard.
b. Two theories of involuntary manslaughter:
    i. **Criminal Negligence:** (not enough for gross negligence required for murder)
        - A killing that occurs due to a gross deviation from the standard of care a reasonable person would observe in D's situation that goes beyond civil negligence but is NOT enough to be considered gross recklessness/negligence (depraved/malignant heart).
        - Common examples of criminal negligence involuntary manslaughter would include a victim dying as a result of injuries caused by
            1. Defendant's criminally negligent driving, such as falling asleep at the wheel
            2. Defendant's careless handling of a firearm.
        - D does not need to have subjective awareness that their conduct is negligent as they would need for depraved heart murder.
        - *Commonwealth v. Welansky*: Club goes up in flames and the exit doors were jammed or locked, 500 people died. D's wanton disregard for patron safety created a perilous situation in which the victims could not escape the burning club. Didn't have to be subjectively aware, but just had to have created a high risk and that a reasonable person would have understood the high degree of risk.
    ii. **Misdemeanor-Manslaughter**: The death occurred during the perpetration of an inherently dangerous misdemeanor, or a few jurisdictions also include non-inherently dangerous felonies as the basis for conviction of a misdemeanor manslaughter.

V. Theft Crimes
1. Larceny
    i. The (1) trespassory (2) taking (3) and carrying away (4) of the personal property of another (5) without consent, (6) with intent to permanently deprive the rightful possessor.

1. **Trespassory** (this can include obtaining possession by use of a misrepresentation of fact, a so-called "larceny by trick")
    - *US v. Rogers* - **Majority** - (D accidently received too much money from the bank, but didn't realize until later and didn't return it)
        - Defendant was guilty of larceny because at the time he took the money, he knew it was wrong and wasn't his; therefore it was a wrongful trespass since he wasn't the rightful possessor and he didn't bring it back.
        - Traditional majority says if you initially take something innocently and then later decide to keep it, it's not larceny. However, if you take it wrongfully initially, and then decide to keep it, that would be larceny.
        - **Minority** Model Penal Code - If at the moment you discover the mistake and decide to keep the money, then D is criminally liable. (this would NOT be the correct answer on a multiple choice question)
2. **Taking**: this requires an exercising of complete dominion and control by the would-be thief.
    - Thus, for example, if the attempted thief picks up an object which is still chained to the rightful possessor's wall, it is not yet a complete taking until the chain is cut.
3. **Carrying away:** the slightest movement for purposes of removing the property is enough
    - *People v. Robinson*: D, knowing the car had been stolen, helped his friends remove the wheels, but did not actively participate in stealing the car. The taking and carrying away with intent to permanently deprive had taken place before D had gotten involved, so can't say he's guilty of larceny, but rather, more likely is guilty of possession of stolen property.
    - **Contrast to embezzlement which requires conversion instead of carrying away.
4. **The personal property of another**
    - This is a crime against a rightful possessor of property, not necessarily the rightful owner.
        - E.g. bailments where you take your car into the shop and then take it without paying. You can be guilty of larceny of your own property. (mechanics lien)
5. **Without Consent:** consent obtained by fear or fraud does not constitute valid consent.
6. **With intent to permanently deprive the rightful possessor**
    - Intent must exist at the same time as the trespass.
    - Planning to return an item, but engaging in reckless behavior can satisfy intent to permanently deprive, and will still exist even if the property is returned unharmed.
    - Even if property is wrongfully taken, it is not larceny if the taker took it with the intent to handle it carefully and return it. Its not larceny because the taker does not have the intent to permanently deprive
        - Even if the property is accidently destroyed, this would not be larceny.

ii. Larceny by Trick

- *Graham v. United States*: Plaintiff had been arrested and charged with disorderly conduct and was seeking American citizenship and was apprehensive that the arrest would affect his attainment of that goal. He says his attorney, Graham, told him that he would help him but charged $200 for his fee and $2000 for a bribe to the police. The police officer testified that no money was ever given to him and Graham testified that the entire amount was meant to be a fee for his legal service.
    - The court found defendant guilty of larceny by trick because even though he was given the money with the client's consent, it was still trespass by trick since he intended from the beginning to convert the money (permanently deprive) and obtained the money by fraudulent means.
        - ***larceny by trick is not separate crime from larceny
        - ***if title is passed, then it is no longer larceny by trick and becomes false pretenses.

2. Embezzlement

i. The fraudulent **conversion** of property by a person in lawful possession of that property.

- 5 Elements:
    1. Fraudulent
    2. Conversion – when D deals with the property in a manner inconsistent with the trust arrangement pursuant to which he holds it.
    3. Of property – tangible personal property (real property does not count)
    4. Of another
    5. By a person in lawful possession of that property
- Conversion requires that D deal with the property in a manner inconsistent with the trust arrangement pursuant to which he holds it.
    - i.e. a cashier can possess store money for the purpose of transacting, but cannot spend that money for themselves.
- D must intend to defraud for it to be embezzlement.
- Larceny and embezzlement are mutually exclusive – can't be guilty of both

ii. If an employee at a store takes money from a customer and takes it without it ever reaching the register, then that would be embezzlement because the money was never actually in possession of the store. If the money is put in the register, and then the employee takes it out of the register at the end of the day, then that would be larceny, because the money was in the store's possession.

- *Commonwealth v. Ryan* - D, a cashier, collected money from a customer, didn't ring up the sale, and instead took the money himself. Since D didn't ring up the sale and still had control over the money, he was in rightful possession of it when he took it so he was guilty of embezzlement, not larceny.

iii. *People v. Talbot* - (D openly used corporate funds to invest in the stock market, lost all the money, and didn't pay the company back) D wasn't conscious his acts amounted to embezzlement, since he didn't try to conceal it, but not an excuse. The fact that he intended to restore the money doesn't make him not guilty, he is guilty of the embezzlement when he initially took the money and used it inappropriately. Even if he did return it wouldn't make him not guilty; he was guilty once the taking took place with the improper intent.

iv. If the embezzler innocently converts property, then they cannot be found criminally liable because there was no criminal intent to defraud. However, they may be civilly liable for the conversion.

v. If D intended to restore the ***exact*** property taken, it would not be embezzlement, but if he intended to restore ***similar to substantially identical*** property, it is embezzlement, even if it was money that was initially taken and other money, of identical value, that he intended to return.

3. False Pretenses

i. Perpetrator persuading, by means of a false pretense (a lie), the owner of property to **convey title.**

- 4 Elements:
  1. Obtaining title
  2. To the property of another
  3. By an intentional (or knowing) false statement of past or existing fact
  4. With intent to defraud the owner

ii. **Majority**: False pretenses must be a misrepresentation about a present or past fact

- D's unfulfilled promise to do something in the future would not be false pretenses.

iii. **Large Minority** (Model Penal Code): Will still find false pretenses even if the misrepresentation was about a future fact.

iv. Requires that there is an actual false representation of a fact.

- If D believes what he is promising is false, but later it is discovered that the facts were true, no false pretenses (D lucked out).

v. *People v. Ashley* - D told others he would use their money to build a theater, but he never intended to do so, nor did he intend to give back their money. Here, he took title because he took the money as an investment, and the law holds that when you take money for an investment, you have been passed title. The very fact that he acquired title makes this a false pretenses case, not one of larceny.

vi. False Pretenses vs. Larceny by Trick
   a. False pretenses – obtain title by deceit (but possession is not necessary)
   b. Larceny by Trick – obtain possession by deceit

4. Robbery

i. Robbery = Larceny + Assault
Requires the trespassory taking and carrying away of the personal property of another without consent, with the intent to permanently deprive the rightful possessor; where the taking is from the person or in their presence by means of physical harm to, or by fear or threats of **imminent harm** to a human being. If it is future harm, it would be extortion.

- Ripping off a neckless would be sufficient force.
- If one pickpockets or snatches a purse carefully so victim is unaware, it would be larceny and not robbery.

5. Extortion (Blackmail)

i. Use of a malicious threat in order to obtain property or change a victim's conduct.

- 4 Important differences between extortion and robbery:
  1. Unlike robbery, extortion does not require actual taking from the person or presence of the victim.
  2. Unlike robbery, threats can be a future rather than imminent harm.
  3. Unlike robbery, harm or threat to harm, does not have to be directed towards a person.
  4. Unlike robbery, the threat does not have to be a physical harm.

ii. Threat of a civil suit is not extortion, but threatening criminal prosecution would be extortion if the prosecution is not related to the action that the person extorting wants.
   a. i.e. if a person steals your laptop, you can threaten to call the cops if they don't return it, but you can't use the fact that you know someone isn't paying their taxes and threaten to report them if they don't return your laptop.
   b. There must be a **nexus** between the debt and the threat

- Even if you have a debt owned to you, you can't maliciously threaten to post nudes in order to compel the debtor to pay you back.
- However, if you professionally took nude photos for someone, and they do not pay for them, then the photographer can threaten to sell them to compel payment.

- *State v. Pauling*: D had a judgement from the court again his Ex to repay a debt. D threatened to release Ex's nudes if she did not pay back the money. The court found that this was a malicious threat because there was no nexus between the nudes and the debt.
- *State v. Burns*: D accused an employee of embezzling $6,800, and threatened that he would be imprisoned unless he confessed to stealing $5,000 and also repaid the $5,000. Even though the employee denied taking the money, he signed a confession and paid $4,000. If no embezzlement, D guilty of extortion. If embezzlement occurred and D requested more than amount embezzled, guilty of extortion. However, if requested less than or = to embezzled amount, not guilty of extortion.
    - A defendant who demands the return of money embezzled by another and threatens criminal prosecution is not guilty of extortion if the defendant limits the demand to the amount embezzled.

6. Receiving Stolen Property
    i. One who receives property which they know to have been stolen, is guilty of the crime of receiving (or possessing) stolen property.
        a. The theft and the receiving of the stolen property are mutually exclusive - you can only be convicted of one or the other.
    ii. *People v. Robinson*: D, knowing the car had been stolen, helped his friends remove the wheels, but did not actively participate in stealing the car.

VI. Offenses Against Habitation
1. Burglary
    i. The trespassory breaking and entering of a dwelling in the nighttime, with intent to commit a felony or any theft therein
        a. Trespassory - Entering without consent (uninvited) OR by means of trick or fraud
            - i.e. Tricking the homeowner by saying, “I’m here to fix your cable.”
        b. Breaking - entry must be accomplished by the use of some force, threats or fraud
            - if the trespasser enters through an already open door, no breaking
            - pushing open an interior door in order to enter a room, however, is sufficient to constitute breaking, or pushing open an unlocked door that leads to the inside of the dwelling - move obstruction
        c. Entering - it is sufficient if any part of the body crosses the threshold into the house
        d. Dwelling - includes the garage, yard, the home, or other curtilage
            - i.e. a model home does NOT count b/c no one has lived there yet.
            - An abandoned home does NOT count either.
        e. Nighttime - defined at common law as 30 minutes after sunset and 30 minutes before sunrise.
        f. Intent to commit a felony or theft inside - this intent must have existed at time of the breaking and entering
            - if you enter and then later decide to steal, you would be guilty of trespass and theft, but not burglary.
    ii. *Regina v. Collins*: (Naked man coming in thru the window case) If the victim invited D in after he enters, and his intent was to commit a felony (rape), then it was a burglary. But if the victim invited D in before he entered, he would not have been a trespasser and therefore no burglary.
        - If he doesn’t enter until she beckons him in, there is NO burglary.
        - If he’s beckoned in after breaking but not entry, there is NO burglary.
        - But if he pushes the window open before being invited AND (must be breaking AND entering) entered, then its burglary.
        - Also, if she called out his name and said, “is that you Bill?” and he deceptively answered yes, then that would be a trespassory entering.
2. Arson
    i. The malicious burning of the dwelling house of another.
    ii. Elements:
        a. **Burning:** the majority rule requires charring due to fire damage though material wasting is not necessary.
            - if the damage done was as solely a result of smoke or the water used to put the fire out, it is not sufficient for common-law arson
        b. **Dwelling house:** on the essay portion of the exam you should discuss this as a common law requirement. On multistate bar, any structure will suffice for arson.
        c. **Of another:** at common law, if someone burned down the dwelling they owned and lived in, it was not arson.

VII. Kidnapping
1. Rule: There are 2 ways in which a kidnapping can occur:
    a. Some significant movement of the victim.
        - Movement may be sufficient if it increases the risk of harm to the victim
        - Movement must be more than merely incidental to any underlying crime.

        OR
    b. The movement must substantially increase the risk of harm to the victim.
        - Movement doesn't need to be very far if victim is confined in a hidden location
            - i.e. if the victim is moved from the living room to a basement.

- Can also be driving recklessly or taking the victim somewhere dangerous.

2. *People v. Adams* (Prisoners got drunk and - Used to be that every time someone was moved even a few feet, it could be considered a kidnapping. After Chessman (guy raped girl on the side of Mulholland and moved her from her car to his) was executed, court moved away from that. Here, D moved the prison guard from a main area to a hospital.
3. If it is NOT substantial in character, it becomes false imprisonment instead b/c the lesser included offense of kidnapping can be false imprisonment (however, kidnapping is usually a general intent crime, unless it's for a purpose or ransom which makes a specific intent crime).
    - False Imprisonment - to hold someone by force or fear without their permission.
        - Difference between false imprisonment and kidnapping – asportation (moving the victim that is not merely incidental).

VIII. Rape

- The slightest penetration completes the crime of Rape
- Rape along with simple battery, is the most commonly tested **general intent** crime on the exam
    - Since it is general intent, mistake of fact is a defense available to the accused, but it must be reasonable.

IX. Statutory Rape

- Strict liability crime
- Consent of victim is not a defense
- Mistake of fact is not a defense
    - Except in CA if the victim is 14 or older

X. Battery

- Battery is a completed assault
- Battery is very commonly tested example of a general intent crime

XI. Preparatory/Attempt Crimes

1. Attempt
    - Must be an attempt to commit a target offense and mere preparation is insufficient to constitute attempt.
    - All attempts are specific intent crimes.
    - 2 requirements to constitute crime of attempt
        1. a specific intent to complete the target offense
        2. certain amount of conduct
            - 2 major competing definitions of how much conduct is needed:
                a. **Dangerous proximity to success** (slight majority including CA)
                    i. Acts performed in furtherance of a criminal project do not reach the stage of attempt unless they "carry the project forward within dangerous proximity to the criminal end to be attained".
                        a. The accused has to enter the "zone of perpetration" in order to be within dangerous proximity of committing the crime.
                    ii. Courts look at what remains to be done to see how close you are.
                    iii. *People v. Rizzo*: D had not found or seen the man he intended to rob, but was just driving around looking for him. Therefore, not guilty of an attempt to commit robbery because D was not in dangerous proximity of committing the robbery.
                b. **Substantial Step Test**
                    i. 50% of jurisdictions use this test.
                    ii. An attempt occurs when one "purposely does or omits to do anything which is an act or omission constituting a substantial step in a course of conduct planned to culminate in the commission of the crime".
                        a. The conduct must be strongly corroborative of the actor's criminal purpose
                    iii. Courts measure by how much you've done so far.
                    iv. Voluntary abandonment is an affirmative defense.
                        a. Being interrupted or having difficulty so giving up doesn't count as voluntary
                        b. If truly voluntary, the burden is on defendant to show by preponderance of the evidence that he
            - Must discuss both tests on an essay
    - Defenses to an Attempt
        a. Voluntary and complete abandonment
            - Only available in "substantial step" jurisdictions (NOT available in CA)
            - *State v. Latreverse*: D wanted to intimidate an undercover officer that was going to testify against him. Parked outside his house; car had explosives, a baseball bat, and a threatening note to the officer. When a patrol car drove by, D was scared off, but was later pulled over. Court said that D should have been given the opportunity to claim abandonment as a defense by establishing a preponderance of the evidence that he in fact voluntarily and completely abandoned his efforts.
        b. Legal Impossibility

- If you do everything you intended, but there would not have been a completed crime = legal impossibility.
- Example: You want to sell someone weed, and you complete the sale, but it turns out it was oregano.
    - Exception: in CA, there is "sale in lieu of" statute - allows conviction for someone who tries to sell something claiming it's a drug but actually isn't.
    - Exception: Model penal code and federal law do not allow this defense. A person is guilty if he purposely engages in conduct which would constitute a crime if the attendant circumstances were as he believed them to be.
- *United States v. Berrigan*: Ds attempted to send letters in and out of a Federal Penitentiary without the knowledge of the warden. However, it is undisputed that the prison officials did have prior knowledge of the letters. Ds not guilty of the attempt because even when completed, it would not be a crime, since the warden knew, and this was in a substantial step jurisdiction.

- NOT Defenses to an Attempt

a. Involuntary abandonment

- If D stops only because of police involvement, it would be involuntary abandonment.
- *People v. Staples*: D's wife was away and he rented an office directly over a bank. D brought equipment to the office including drilling tools, gas tanks, and a blow torch. D drilled two groups of holes into the floor of the office. He stopped drilling before the holes went through the floor. Landlord notified police and turned the tools and equipment over to the police. D found guilty because the abandonment was not voluntary but rather he was interrupted by his landlord discovering his actions. He had passed through the preparation phase and had begun his attempt.

b. Factual Impossibility

- Extrinsic circumstances unknown to the actor or beyond his control prevent consummation of the intended crime, but if he had been able to physically carry out everything he planned, a crime would have occurred
- Example: Someone puts their hand in another's pocket to steal their wallet, and the wallet isn't there—guilty of attempted larceny.

XII. Solicitation

- Asking someone to commit a crime
    - Crime is completed when the question is asked—the other person doesn't need to agree to commit the crime
        - If the other person accepts, then it becomes conspiracy instead of solicitation.
    - Not a completed solicitation if person does not get the message
        - *People v. Lubow*: (D approached diamond salesman to buy diamonds on credit and then declare bankruptcy without paying back the creditors. Salesman said no, and reported D to the cops). Solicitation and not conspiracy because salesman reported D's intention to the police and did not agree to go along with the crime.
    - Majority requires that the offense must be proved by the testimony of two witnesses, or testimony of one witness and corroborating evidence of some kind.

XIII. Conspiracy

1. Person solicited actually (subjectively) agrees to the criminal proposal.
2. Merger Doctrine - Conspiracy does not merge with the completed crime, meaning that you can be charged with both the main crime and conspiracy to commit the main crime.
3. Elements:
    1. **Express or implied agreement**
    2. Some slight "**overt act**" foreseeably performed by one of the would-be co-conspirators in furtherance of the conspiracy.
        - Such an overt act can be as slight as efforts to acquire equipment needed for commission of the crime
        - Overt act need not be anywhere near the physical conduct normally required in order to establish liability as an aider and abettor nor the "substantial step" necessary to establish an attempt.
    3. **Intent to pursue an unlawful objective**
        - Example: since it is not normally a crime to retrieve one's own property defendant would not be guilty of conspiracy to steal if he believed he was merely helping a friend retrieve that friend's property.
            - under such circumstances, the defendant would have no actual intent to pursue an unlawful objective.
                - Even unreasonable mistake of fact is a defense to conspiracy
    4. **Agreement must involve a meeting of the minds.**
        - Example: it is not a conspiracy if an undercover agent falsely promises to participate in a criminal enterprise. Both have to really intend to do the crime.
            - However, asking an undercover agent to participate in a crime may constitute crime of solicitation.
            - Can't conspire with a 3 year old because they don't understand
            - The other person must have heard/read and understood the invitation to conspire.
4. *Pinkerton* Rule
    - *Pinkerton v. U.S.*: D and his brother get involved in a conspiracy for fraud, but then his brother is arrested and sent to prison for an unrelated crime. D and some friends perpetrate the series of frauds that D and his brother had agreed to do.

After D's arrest, his brother is held liable for the crimes committed that were part of the original conspiracy and his jail sentence is extended as a result.

- Takes a broad position on the liability of co-conspirators for acts of fellow conspirators.
    - Normally, and still in many jurisdictions today, criminal liability founded upon an aiding and abetting theory. Requires D knowingly provided aid towards completion or attempted completion of the crime. Merely joining a conspiracy deemed too attenuated of a connection.
- Under *Pinkerton,* membership in a conspiracy *is* sufficient, in and of itself, to establish criminal liability.
    - Expanded criminal liability in federal jurisdictions so that all co-conspirators automatically would become responsible for all reasonably foreseeable substantive crimes committed by co-conspirators even if they do not assist in completion or perpetration of those crimes.
- The model penal code rejected Pinkerton and a lot of states agree it would make conspirators too liable for any kind of crime committed by their co-conspirators without their participation.

5. *Gebardi v. United States:* D traveled with a woman from one state to another for the purpose of engaging in sexual intercourse. D purchased the railway tickets for them for at least one journey, and in each instance, the woman, in advance of the purchase of tickets, consented to go on the journey and did go voluntarily. Therefore D technically breached the Mann Act, but the prosecution also wanted to charge him with conspiracy to violate the Mann Act.
    - The woman was the victim, so it is not possible for her to be part of the conspiracy. Since no other 3rd party was involved in the Mann Act violation, there was no one for D to conspire with, thereby making a conspiracy impossible.
6. *Krulewitch v. US*: D cannot be convicted of a conspiracy, once the substantive crime has already failed or succeeded. Conspiracy to escape punishment is not sufficient to constitute conspiracy.
    - Rule: A statement by a co-conspirator to be admissible must be made in furtherance of the conspiracy (Exception to hearsay rule).
7. Time length of Conspiracy
    - *McDonald v. US*: Although a majority of jurisdictions would probably not agree with this today, a person who enters a conspiracy after the commission of the substantive crime, kidnapping, has already occurred, may be held liable for the conspiracy to kidnap. Court ruled that the aim of kidnapping was to illicitly gain money and that laundering the money after the fact, was still apart of the original crime of kidnapping.
    - Rule: A "late joiner" is not criminally liable for substantive crimes committed before joining, but would be guilty for conspiracy to commit that crime.
8. Warton's Rule
    - Precludes conspiracy from being charged in a crime that necessarily requires, as an element, a certain number of people to commit the crime (adultery or dueling require 2 people).
    - Only applies when the number people involved are the same number required to commit the crime. If there are 3 people involved with a duel, then Warton's Rule would not apply and all 3 would be charged with conspiracy to duel.
9. Chain Conspiracy
    - One large conspiracy with many members conspiring together.
    - *U.S. v. Bruno*: D and 86 others were involved in a drug ring where the parties would either smuggle, distribute or sell drugs. Even though all of the parties may not have known each other, the court held that they had all entered the same, single overriding conspiracy to get the drugs out onto the street. It did not matter that some of the participants did not enter prior to the drugs being smuggled. Smuggler -> Distributor -> Dealer
        - RULE: By joining an ongoing conspiracy, you can be held liable for the substantive crimes that are committed in furtherance of that conspiracy even if there is no actual knowledge of the other co-conspirators.
    - *Blumenthal v. United States:* Defendants worked for a Distributing company to sell whisky at inflated prices which were over the maximum permitted under wartime price control regulations. None of the defendants knew the specifics of the whole enterprise nor knew the other salesman involved, but were all involved with the scheme.
        - The court found there was a single conspiracy between all parties because each agreement was merely a step in the formation of the larger and ultimate more general conspiracy.
            - This is different from *Kotteakos* because everyone knew of and joined an overriding conspiracy and were all getting the profit of the same commodity. The one product linked them all together.
    - There could potentially be guilty of a limitless number of crimes because one co-conspirator is considered connected to every crime committed
        - theoretically one person could end up with multiple life sentences
        - it gives prosecutors the opportunity to get plea deals and get people to turn on each other.
10. Hub & Wheel Conspiracy
    - Multiple conspiracies with a common hub.
    - The common "hub" member is part of each conspiracy, but the members of each "spoke" conspiracy have not conspired together and therefore cannot be linked in a common conspiracy.
    - *Kotteakos v. United States:* Several persons including Kotteakos conspired to obtain loans by means of applications that fraudulently misrepresented the uses for which the borrowed money would be used. Eight distinct transactions occurred,

each involving defendants who had no connection with the other loans. The only connecting element was that all the loans were obtained through the services of a single broker named Brown, who pleaded guilty and testified against all others.

- **Holding:** court ruled that they could not use testimony of others involved because it was not one overarching conspiracy. It is not an inherent part of the act to involve others and each act could exist independently and one person had no vested interest in the success of the others.

11. **The model penal code rejected all these theories with the rejection of the Pinkerton Rule.** It is much easier to convict someone of conspiracy in federal courts than in most state courts which is why it is not that common to have them appear in state courts.

XIV. Accomplice Liability (Aiding and Abetting)

1. A theory in which a person can be found guilty of the substantive crime (i.e. burglary) that someone else committed. Common law requires that D must knowingly and intentionally aid or encourage the principal in the perpetration of the crime charged in order to be guilty of the substantive crime.
    - The more dangerous the crime, the easier it is to find aiding and abetting.
2. Factors to consider when evaluating if someone is an accomplice: (1) Level of relationship/association; and (2) Proximity.
    - *State v. Parker*: (D and some friends were picked up as hitchhikers, and the friends robbed the driver, but D claimed he didn't take part) D's presence in a crime and D's lack of objection to the crime, constitute aiding and abetting through encouragement and intimidation. D also ran away with the other perpetrators. These factors taken together are enough to support a conviction.
        - Rule: Presence can be considered to be participation because it can be seen to provide assistance by intimidation making one guilty of the substantive crime.
    - People v. Kessler: D, the getaway driver, waiting in the car while his accomplices broke into a tavern, were surprised by the owner, subsequently shooting the owner w/ a gun they found inside and then shot at a policeman. Court held that D was guilty of burglary and attempted murder b/c he was a principle in the 2nd degree by acting as a look-out and getaway driver.
        - Dissent Rule: D should not be liable for attempted murder b/c it is a specific intent crime. In order to get someone on an accomplice liability theory for a specific intent crime you have to establish that part of the agreement or participation by D was that he was there to assist, intentionally and knowingly, in the commission of the crime that he is charged with.
    - People v. Bailey: D was seen w/ a robber playing dice prior to the robbery. D was only 10 ft. away when the robbery occurred and D was seen running from the scene of the crime with the robber. Court held that D could not be liable for the robbery b/c his presence alone was not enough to find a reasonable belief that D was knowingly, attempting to assist the robber in the commission of the crime. Circumstantial evidence can be enough to convict someone as in the Parker case, however the evidence in this case was not sufficient.
        - Rule: Mere presence and knowing the criminal is NOT enough; there needs to be evidence to show beyond a reasonable doubt that the person intended to provide assistance.
    - People v. Marshall: D gave his drunk friend the keys to his car, and his friend crashed, killing himself and another driver. Court found that D could not be held liable for involuntary manslaughter even though he negligently turned his keys over to his friend b/c he did not encourage his friend to get into an accident and kill someone. D could not be seen as a participant b/c he was at home asleep in bed. If D had actually been in the car w/ the drunk driver he would be viewed as more negligent and culpable.
        - Rule: If a person facilitates a misdemeanor (i.e. drunk driving), he is not necessarily guilty of all the crimes that subsequently occur.
    - People v. Lauria: D ran a telephone answering service which he knew was used by several prostitutes in their business ventures. Court held that even though D had knowledge of the criminal activity taking place, he could not be held liable b/c he had no stake in the business venture and was not charging higher prices to the prostitutes. Also, furnishing telephone services does not imply that it will be used for prostitution b/c it is a service provided for normal business people engaging in legal activities such as doctors or dentists.
        - Rule: When D provides goods or services with knowledge of its illegal use, the knowledge can be sufficient to hold D criminally liable when:
            1. Knowledge of a serious dangerous felony; AND
            2. When he becomes a participant in the crime by having a "stake in the outcome":
                a. When he overcharges (because the provider knows that the service or product will be used in the commission of a crime);
                b. When there is a continuing nature to their relationship (i.e. providing sacks of sugar every week to a moonshiner);
                c. When he encourages the crime. (i.e. refers clients to them); OR
                d. When there is a large quantity of sketchy sales compared to the total sales (i.e. 450 out of 500 of his customers are prostitutes)

XV. Defenses egregious

1. Insanity and Competency
    1. Insanity

- Mental capacity of defendant during the time of the crime, not the trial

i. 4 Tests for Insanity

1. **M'Naghten Test:**
   a. At the time of the conduct, as a result of a mental defect, D lacked the ability to know the wrongfulness of his actions or could not understand the nature and quality of his acts
   b. This is a cognitive test also known as the Right/Wrong test.
2. **Irresistible Impulse Test:**
   a. The defendant, as a result of a mental defect, regardless of whether they know their actions are right or wrong, couldn't control their actions and conform their conduct to the law.
      i. i.e. God told me to do it, voices in your heard, ect…
   b. This is a volitional test
3. **New Hampshire Rule:** (most liberal and flexible/broad)
   a. Was the defendant's conduct a "**product**" of a mental illness?
   b. No longer really followed in this country, this test was the easiest for defendants to satisfy in attempting to establish the defense of insanity
4. **Model Penal Code (ALI)**
   a. Did the defendant, as a result of a mental disease or defect, lack the "substantial" capacity to either appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law
   b. This test combined the primary elements of all 3 of the previous tests.
   c. *People v. Drew*: CA case. D found sane under M'Naghten. Court found deficiencies in M'Naghten that it was not broad enough to cover the scope of mental disabilities. So CA abandoned the M'Naghten test here and adopted the ALI test, a broader test.
      a. But CA later passed a referendum that went back to the M'Naghten test.

- *Montana v. Korell*: (D was a Vietnam vet with PTSD that felt that he needed to kill his old boss before he killed him) No insanity defense in Montana and no constitutional right to plead insanity as a defense. There is only a question of whether D lacked the requisite criminal intent or not. If guilty, there is a trial afterwards that determines the sanity of D during the crime; so just look to mental state at the time of sentencing.
  - so, KNOW there is NO CONSTITUTIONAL RIGHT to plead an insanity defense. It's a right given by the courts and the legislature in any given jurisdiction.
    - It is not discriminatory for people with mental illness just like you can't punish someone for being an alcoholic but you can punish them for drinking alcohol. Therefore, you can't punish someone for being mentally ill but you can punish them if because of it they kill someone or commit a crime.
  - **Minority** of jurisdictions do not provide the defense of insanity, like Montana

2. Competency

i. D is unfit to stand trial if he is unable to understand the nature and purpose of the proceedings against him OR to assist in his defense. If held otherwise, this would violate a D's right to due process.
   a. *People v. Lang*: Fundamentally unfair to try D, an illiterate deaf mute, because he's not able to assist in his defense or understand the charges against him. Refers to case of Jackson, a deaf mute who could not communicate with others, which held that a person committed solely on account of his incapacity to proceed to trial cannot be held for an unreasonable amount of time. Court holds that since D is found unfit to stand trial, then he is mentally ill, and his dangerous conduct allows the law to hold him indefinitely, until he is able to stand fit for trial.
   b. CA Civil Commitment – just b/c you can no longer hold someone criminally committed (if they can't make him able to stand trial within the time allowed) does NOT mean that you have to completely release them since you can civilly commit them.
      - Two part evaluation
        - D has a mental illness; and
        - As a result of the mental illness, D is a danger to himself or to others
      - *Exception* - If the person can show that he has the ability to take care of himself, then he cannot be civilly committed.

2. Unconsciousness
   1. Where the subject physically acts but is not, at the time, aware of his actions.
      a. You can theoretically be awake and physically doing things while unconscious, e.g. sleepwalking.
      b. *People v. Newton* (D shot cop after being shot himself, claimed he was unconscious because of his wound): Involuntary unconsciousness is a complete defense to a charge of criminal homicide. Police officer shot defendant in the stomach, which was proven could release chemicals that could make a person legally unconscionable.
      c. CA Exception: may only mitigate a murder down to voluntary manslaughter instead of being a complete defense.
3. Intoxication
   i. **Voluntary Intoxication**
      1. This is not a defense to **general intent** crimes
         a. Can be defense to **specific intent** crimes

b. Regarding murder, voluntary intoxication will negate premeditation and deliberation of first degree murder to the second degree.

2. Majority
   - *State v. Stasio* (D claimed voluntary intoxication when he tried to rob the bartender with a knife): Voluntary intoxication can absolve a person from committing the specific intent crime of robbery

3. California
   - Voluntary use of drugs or alcohol does **NOT** extinguish criminal responsibility, and CANNOT be used as a defense in California for any crimes.

- *People v. Hood* (D was drinking, broke into GFs house, and took the responding cop's gun and shot him. Claimed his intoxication as a defense): Assault with simple intent to commit a violent act or assault with a deadly weapon is a general intent crime in which voluntary intoxication is not a defense.
  - Assault used to be categorized as general intent but the definition changed to qualify it as a specific intent crime. ½ of jurisdictions including CA now define it as an attempted battery which makes it specific.

ii. **Involuntary Intoxication**
1. Intoxicant was not knowingly and voluntary ingested
   a. Or at least the effects of the intoxicant were not reasonably known to defendant
   b. Example: defendant forced to ingest or was unware he was ingesting an intoxicating substance
      i. Or as case of Ambien, defendant was unaware of potential side effects
   c. Involuntary intoxication has the same legal effect as insanity
      i. Defense to all crimes including strict liability (no intent) crimes
      ii. The level of intoxication is important

4. Mistake of Fact
   i. Reasonable mistake of fact is a defense to malice crimes, specific intent, and general intent crimes.
   ii. Unreasonable mistake of fact can only be a defense to specific intent crimes.
   iii. Never a defense to any (no intent) Strict Liability crime.

5. Self Defense
   i. If a *reasonable* person under the circumstances would have believed that you were under imminent attack AND you yourself *honestly* believed that you were under ***imminent*** attack (of death or great bodily harm), then you are justified to use self-defense.
      - This is a complete defense assuming the above is true
      - However, you are only allowed to use force that is proportional to the imminent attack.

   ii. Non-Deadly Force by a Victim
      1. A person who is not the initial aggressor may use non-deadly force in self-defense any time that they reasonably believe that force is going to be used against them or another victim.
      2. An initial aggressor cannot claim self-defense for even non-deadly force, unless:
         a. He has withdrawn from the initial attack, and communicated that the attack as ended.
         b. He used non-deadly force in his initial attack, and then the victim responded with deadly force.

   iii. Deadly Force by a Victim who was not Initial Aggressor
      1. Majority Rule: A victim (a non-initial aggressor who possesses the legal right to self-defense) is permitted to use deadly force in self defense any time that victim reasonably believes that deadly force is about to be used against him and that their response is reasonably needed in order to stave off the attacker.
         a. *State v. Simon*: D believed that his neighbor was a martial arts expert due to his Asian ethnicity, and so he shot he him in self-defense when he mistakenly thought that he was going to be attacked by him. Court found that D was not reasonable in his belief and therefore was not justified in using deadly force to defend himself.
            i. CA RULE (Minority) – **Imperfect Claim of Self-defense**: When you only have a *subjective* belief, but not an *objective* belief, that you are under an imminent attack, then you have an imperfect claim of self-defense which makes you guilty of only the lesser included offense (i.e. if you *honestly* but *unreasonably* kill, then you will be found guilty of only manslaughter instead of murder). You are said not to possess malice. (Similar to what happened in *Jahnke*)
               a. *Jahnke v. Wyoming*: Repeatedly abused son waited for his dad to return to kill him, mistakenly believing that his dad was going to kill him upon his return. A reasonable person would not have believed that "I'll deal with you when I get back" was an imminent threat of bodily harm or death, so self defense was not available.
      2. Minority Rule: Prior to using deadly force in self-defense, the victim of a deadly attack must first "retreat" if it is safe to do so.
         a. 3 Exceptions:
            i. If victim is in their own home.
            ii. A rape or robbery victim doesn't have to retreat even if it is available.
            iii. Police officers have no duty to retreat.

   iv. Use of Force by an Initial Aggressor
      1. An initial aggressor cannot claim self-defense unless:
         a. He has withdrawn from the initial attack, and communicated that the attack as ended.

b. He used non-deadly force in his initial attack, and then the victim responded with deadly force.
c. Anyone who is an initial aggressor must retreat if it is safe for them to do so if they want to respond with deadly force.
i. *State v. Abbott*: A fight broke out between D and his neighbors who shared a driveway together. D was the first to throw the punch (initial aggressor) due to words (not threats) from the other side. The father of the neighbor came out with a hatchet. At the end, everyone was left lying on the ground injured besides D. Court adopted the minority rule which requires that when D had the right to use deadly force, he must have first sought an avenue of retreat if he knew about it and it safe to do so.

2. *Rowe v. U.S.*: D got into a racial argument with the victim (now deceased). The initial aggressor was D who first kicked the victim on his leg after the victim insulted him. Then the victim responded with a knife and cut D on his face. D then pulled out his gun and shot and killed the victim. D was the initial aggressor and used non-deadly force (kick), but was attacked in response with deadly force (knife), which gave him a right of self defense unless there was an avenue of safe retreat.
3. Insulting words do not make someone an initial aggressor.
a. The initial aggressor is the first person to use physical violence or an imminent threat of violence .

v. Defense of Others
1. The majority doesn't require a preexisting relationship with the person aided.
2. Majority Rule: If you reasonably believe that you need to defend someone, even if you were mistaken, you are justified.
3. Minority Rule - "Alter Ego" Rule: When you come to a victim's aid, you have no legal rights greater than the person to whose aid you have come. Only if the person that you defended had a right to self-defense do you have a right to defend them = no reasonable mistake of fact if you were mistaken.
4. Garner Rule – 4th Amendment: **Cops** are ONLY allowed to use deadly force to stop a fleeing felon when they honestly and reasonably believe that they have ***probable cause*** AND the felon is physically ***dangerous*** to human beings and society (i.e. armed robbery, rape, assault with deadly weapons, murder, kidnapping). However, if there is no other way to prevent the felon from getting away, and it was reasonable, then the cop can use deadly force.
5. Couch Rule: A **private citizen** can only use deadly force when the citizen has reasonable belief felon was ***dangerous***. Gives citizens same rights as cops based on the garner rule (reduction in rights to match what cops had).
a. *People v. Couch*: D drew his gun and shot and killed a fleeing felon who he saw was trying to steal his car radio. Court adopted the modern rule and held that D, a private citizen, was not allowed to use deadly force against the criminal who was not considered a dangerous felon.
- Minority: Citizens can only use deadly force if they are right, even if the belief was reasonable.

vi. Defense of a Dwelling
1. Deadly force may never be used solely to defend your property, only if you are also defending yourself.
a. i.e. can't use a spring gun to protect your house while on vacation, but if you set it up inside your bedroom while sleeping you may have a defense that you were protecting yourself as well as your property.
b. But if someone breaks into your home in the middle of the night, you can use deadly force to protect yourself and others in the house if you reasonably believe that it is necessary.

2. *People v. Ceballos*: D was suspicious of burglars so he set up a spring gun (trap) in his garage so when someone would try and break in, they would be shot. A burglar broke in and was shot and killed. Court held that since D was not present when the burglary took place, there was no threat of death or serious bodily harm, thus D was not justified in using deadly force to defend his property.

- However, D would have been allowed to use non-deadly force. Even if D was present when the burglary took place he still would NOT have been allowed to use deadly force b/c it was a garage, not a dwelling.
- RULE (Common Law) – You are not allowed to set up deadly mechanical devices (i.e. spring guns) to defend your property. Where the manner and character of the burglary do not reasonably create a fear of great bodily harm, you are not allowed to use deadly force. **Can never use mechanical device.**
- *Exception*: If it was in a bedroom (sleeping area) of a home and at night.

vii. Resisting Unlawful Arrest

- **Common Law RULE – Resisting a lawful arrest is a crime, but resisting an UNlawful arrest is NOT a crime but could be used as a complete defense since it was an equivalent to an unlawful physical force. D can use force to resist the arrest. **An arrest without probable cause** (specificity - i.e. a tattoo on left cheek) is unlawful and against the Constitution. Probable cause is what an officer reasonably believes.
- **CA RULE – CA passed a statute that says that you can resist an unlawful arrest without using any physical force (i.e. running away) – this is a complete defense. However, if you punch the cop, then you have no defense and are guilty whether the arrest was lawful or unlawful. If you use physical force and it's an unlawful arrest, it's still a crime, but it's only a misdemeanor (an assault on just a normal person), not a felony (assault on a cop).
- *People v. Curtis*: D was arrested on suspicion of burglary. Police officer arrests him b/c he had a vague recollection of what he looked like. D resisted the arrest b/c he was innocent.

6. Necessity
i. This is the CA rule and is an objective test

ii. Causes of necessity are things such as running out of air/water or escape from sexual assault. It involves a defendant choosing between 2 evils.
iii. It is an affirmative defense and the burden of proof is on the defendant to establish the defense by proving all 5 elements
iv. Necessity is NOT a defense to a killing
v. **Elements required:** A person is not guilty of a crime when he engages in an act otherwise criminal when
    a. Criminal act was done to prevent the threat of bodily harm to oneself or to another person
    b. Can't cause a greater harm than what was going to happen
    c. A greater harm was to be prevented
    d. The belief was subjectively and objectively reasonable AND
    e. The defendant did not substantially contribute to the condition.
vi. *People v. Carradine*: D refused to testify as a witness to a homicide claiming the necessity defense. She was afraid of serious injury or death to her and her family from the gang that she would be testifying against. Court says still guilty of contempt even if D is reasonable in her belief of a threat to her safety. Not a valid reason not to testify because the government can provide her and her family protection.
    i. **Civil contempt**: there is no definite amount of punishment but you can go to jail or pay a daily fine until you agree to cooperate. This is not really considered punishment because you have the power to get yourself out of jail anytime you want. You can be held for as long as your testimony is needed (i.e. when the trial is over)
    ii. **Criminal contempt:** this is a crime and there is a definite amount of punishment and is not meant to induce anything.
vii. *State v. Reese*: Inmate escaped prison out of a fear of further homosexual attack and possible death. Guilty of escape because he did not immediately report to the authorities, so he didn't satisfy all the elements of a prisoner necessity defense.
    a. Lovercamp Rule (CA): 5 elements must be met for an escaped prisoner to claim a defense of necessity:
        1. Defendant was faced with a specific threat of death, forcible sexual attack, or substantial bodily injury in the immediate future
        2. There was no time for a complaint to authorities or there exists a history of futile complaints
        3. No time or opportunity to resort to the courts
        4. No evidence of force or violence used towards prison personnel or other "innocent" persons in the escape
        5. The prisoner immediately reports to the proper authorities when he has attained a position of safety from the immediate threat.

7. Duress
    i. When someone makes you to do something or else you or someone close to you will be harmed. You are not guilty if you perform an otherwise criminal act under the threat of imminent infliction of death or great bodily harm, provided that you had a *reasonable* belief that you would be harmed in such a way if you do not perform such conduct.
        a. It must be a *reasonable* mistake of imminent danger (someone using a toy gun is enough).
    ii. Duress is a defense available to all crimes except homicide.
        - This is true even if the eventual defendants are threatened with their own or a loved one's death if they fail to commit the homicide.
    iii. **Example:** a defendant claims she committed a robbery only because someone was holding a gun on her at the time and told her that if she did not rob the bank she would be killed.
8. Consent
    i. D has a complete defense when the injured victim consented to the harm caused by D, but only when:
        a. the consent was voluntarily and freely given (without duress);
        b. The party was legally capable of consenting; and
        c. No fraud was involved in obtaining the consent.
    ii. *People v. Samuels*: D was found guilty of aggravated assault for making a film of sodomy that showed him beating another man. D claimed the defense of consent arguing that the victim consented to the beating in exchange for money. Court denied D's defense b/c even though they recognize the defense of consent, the beating was severe and a normal person in full mental capacities would not have given consent.
        a. **RULE** – Consent is NOT a defense to an aggravated assault (i.e. assault to commit serious bodily injury / assault with a deadly weapon).
    iii. The more physical and severe the attack, the less the consent of the victim is relevant. Cannot consent to murder.
9. Entrapment
    i. Inducement of a person to commit a crime by a law enforcement agent for the purposes of pursuing prosecution against the person.
    ii. Constitutional Defense - the government agent's behavior was so extreme that it violated D's due process rights.
    iii. General Common Law Defense of Entrapment – **Subjective Standard**: It is entrapment when an agent induces someone who wouldn't have been predisposed to commit the crime to commit the crime. If the defendant was predisposed to do the crime anyways, no entrapment. This is an affirmative defense (must be raised/proved by D).
        a. *U.S. v. Russell*: D made meth, and an undercover agent provided him with an essential ingredient that was difficult, but not impossible to get. D was found guilty because he clearly could have and did get the ingredient on his own and had a predisposition to commit a crime anyway. He was not permitted to use the defense of entrapment.

iv. CA Defense of Entrapment – **Objective Standard**: If the government's conduct would have induced a reasonable law-abiding person to commit a crime and whether D was induced by the government agent. Matters of predisposition are NOT looked at to determine whether entrapment occurred.

a. *People v. Barraza:* The defendant sold heroin to an undercover narcotics agent and claimed entrapment because she kept calling and harassing him until he agreed. He had a criminal history but was in a rehab program and worked at a rehab center and said he only sent her to his heroin contact to get her off his back and didn't even know if the person had drugs to sell. Court held that D could argue entrapment because the police officer went too far.