CRIMLAW OUTLINE - 10-14-19 - PRE-MIDTERM (UP TO INVOL. M.S.)

- I. Criminal Law
 - a. General
 - i. Types of Crimes
 - 1. Category
 - a. Malum in se (bad in itself) generally, CL crime
 - b. Malum prohibitum (bad b/c we prohibit it) generally, statutory
 - 2. Severity
 - a. Felony (> 1 year)
 - b. Misd. (<1 year)
 - c. Regulatory Infractions (traffic tickets, etc)
 - 3. Jurisdiction (federal, state, local, etc)
 - ii. Theories on Punishment
 - 1. Deterrence
 - a. General (societal): risk v. reward
 - b. Specific (Individual): Inhibit behavior in a person
 - 2. Incapacitation (immobilize/neutralize)
 - 3. Rehabilitation (make better, improve, heal)
 - 4. Retributive Justice (suffer in return)
 - iii. Burdens of Proof (BoP)
 - 1. Reasonable Suspicion (to investigate)
 - 2. Probable Cause (to charge)
 - 3. Preponderance of the Evidence (CIVIL BoP)
 - 4. Beyond Reasonable Doubt (BrD)
 - a. Jackson v. Va test: "rational trier of fact (juror) could have found the essential elements of the crime beyond a reasonable doubt (sufficiency of the evidence)
 - b. *In re Winshop:* upheld Due Process no person…shall be deprived of life, liberty, or property w/out due process of the law
 - c. Blackstone's Formulation: It is better that 10 guilty person roam free than 1 innocent person imprisoned
 - b. Elements of a Crime
 - i. Identification government must prove BrD that Δ & Perp. Are the same person
 - 1. Direct Evidence fingerprints, photographs/camera footage, DNA
 - 2. Circumstantial Various circumstances/evidence that doesn't directly implicate but, when taken together, could prove BrD that this was the person
 - ii. Actus Reus the act that we are punishing => necessary, "cannot convict on guilty mind alone"
 - 1. Voluntary (must be)
 - a. Act
- i. Possession
 - 1. Actual Δ physically possesses the/an item
 - 2. Constructive
 - a. Exclusive Δ knowingly holds the power and ability to exercise dominion and control over something
 - b. Shared Government must establish 'nexus' between Δ and item and show knowledge and access required to exercise dominion and control
 - i. Proximity alone cannot establish knowledge in joint occupied nor dominion and control
 - ii. May be established through direct or circumstantial evidence (more than proximity though proximity can be used as long as there is more)
- b. Omission failing to meet a legal duty to act

- i. Statute imposes duty to care for another
- ii. One stands in certain status relationship (parent & child)
- iii. One has assumed contractual duty to care for another
- iv. One has voluntarily assumed the care of another and secluded the helpless person from others/other forms of aid
- 2. Involuntary (doesn't count for actus reus)
 - a. Reflex or convulsion
 - b. Bodily movement while unconscious or asleep
 - c. Conduct during hypnosis or resulting from hypnotic suggestion
 - d. Bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual
- 3. Status is not an action (having STD, addiction to alcohol, etc) and cannot be criminalized
- iii. Mens rea guilty mind
 - 1. Culpability (broad meaning): morally blameworthy mindset
 - 2. Elemental (narrow meaning): particular mental state by the statute
 - a. Knowingly
 - i. Actual Knowledge: has the knowledge
 - ii. Deliberate Ignorance: chose to avoid knowledge/verification
 - 1. Ostrich Instruction
 - a. Δ claims no knowledge
 - b. Evidence in record of deliberate ignorance
 - b. Intentionally acting w/ conscious object
 - i. Types
 - 1. General Intent: intending the action
 - 2. Specific Intent: intending the outcome
 - ii. Transferred intent intent can transfer person-person or property-property
 - 1. Ex) shoot at dog but kill neighbor = no transfer
 - 2. Ex2) shoot at neighbor and kill their wife = transfer
 - c. Willfully
 - d. Recklessly (gross deviation of reasonable behavior of reasonable person)
 - i. Consciously disregard
 - ii. Substantial
 - iii. Unjustifiable risk
 - iv. Leading to cause of death/injury of another
 - e. Negligently same as reckless but w/o awareness (conscious disregard)
- iv. Jurisdiction requires a 'federal nexus' of constitutional authority b/c of limited police power
 - 1. Jurisdiction: power of the court to hear a case (adjudicate)
 - 2. Venue: place w/in jurisdiction you're located (place where judicial authority should be exercised). Every case requires proof (gov must make) that venue is proper.
- v. Causation important for "results crimes"
 - 1. Types
 - a. "But For" Causation: start here. This is where you determine what, if any, actions Δ took that either **caused or accelerated** the results crime.
 - b. Proximate Cause: when you find "but for" cause, now determine if this can be held 'legally responsible'. (choosing the "but for" cause is the <u>one</u>) "fairness"
 - i. Direct Causation act or omission → result/harm
 - ii. Indirect Causation act or omission → intervening causes → result/harm
 - 1. Intervening causes are separate 'but for' causes that happen after Δ voluntary act
 - 2. Intervening superseding causes break causal chain between Δ act and result key factor: FORSEEABILITY

- Responsive/Dependent Event: generally forseeable & doesn't sever causal connection
- b. Coincidental/Independent Intervening Event: generally unforeseeable & severs the causal chain
- 3. Concurrent sufficient causes do not outweigh or destroy one another. They simply hold that both parties equally responsible b/c indeterminable *exactly* who killed someone/it was at exact same time
- vi. Concurrence actus reus and mens rea must happen simultaneously in order to find crime. Can't intend to kill someone and then not do it and then later accidentally/otherwise kill them
- c. Crimes
 - i. Causing death contain the following elements: act, causation, death, and...
 - 1. What is Death/Life?
 - a. Life: CL: "Born Alive" Rule = in order to qualify as homicide one must be born alive (if the baby cries at birth then it is universally considered alive)
 - b. Death
 - i. CL
 - 1. Dead = at the cardiopulmonary cessation (i.e. no breath or pulse)
 - 2. Chargeable up to a 'year and a day' from the cause of death
 - ii. Modern
 - 1. Dead = full brain activity + cardiopulmonary cessation
 - 2. As long as Gov can show "but for" + prox. Cause they can continue to charge
 - 2. Murder + malice aforethought
 - a. 1st degree
 - i. Premeditation (intent to kill)
 - 1. Planning or deliberation
 - 2. "some appreciable amount of time" → can be as quick as a thought
 - ii. Intent to commit serious bodily injury to child
 - b. Felony-murder (in commission of following felonies & any others listed in statute)
 - i. Applicable Felonies
 - 1. Burglary
 - 2. Arson
 - 3. Robbery
 - 4. Rape
 - 5. Kidnapping
 - ii. Approaches
 - 1. Broad/Prox. Cause Approach: any death during felony qualifies
 - 2. Narrow/Agency Approach: caused by Δ or Δ conduct
 - c. 2nd degree
 - i. Serious bodily injury to anyone else
 - ii. Depraved heart disregard for human life
 - 3. Manslaughter no malice aforethought
 - a. Voluntary manslaughter
 - i. 'heat of passion' or 'sudden quarrel'
 - 1. Require adequate provocation almost always needs more than words
 - 2. No time in between must be almost immediate (if not immediate)
 - ii. Intentional (meant to commit the act in general, not planned it)
 - b. Involuntary manslaughter
 - i. Unintentional
 - ii. Killing of another person while:
 - 1. Committing misdemeanor

- 2. Commission of lawful act w/out due caution
- 3. Commission of lawful act in unlawful manner
- iii. Criminal Negligence: gross deviation from standard of care
 - 1. Extent of risk v. extent of awareness = test between Crim. Neg. and Deprayed Heart.
- ii. Kidnapping: Δ...
 - 1. Knowingly & Willingly
 - 2. Transports in interstate commerce
 - 3. A non-consenting person: if it starts w/ non-consensual event it is highly unlikely to be made consensual and stop the kidnapping later (i.e. abducted at gunpoint but later remains)
 - 4. Who is held for ransom, reward, or otherwise (some other criminal purpose)
- iii. Sexual Assault Crimes
 - 1. CL: carnal knowledge of a woman forcibly against her will
 - a. Male Δ ; female victim
 - b. Force = resistance required;
 - c. Spousal immunity
 - 2. Modern: Gender neutral; no spousal immunity; no resistance requirement;
 - a. series of offenses:
 - i. forcible sexual assault,
 - ii. coercive.
 - iii. nonconsensual,
 - iv. SA of minor,
 - v. Statutory rape
 - 1. Age-Based (below age of consent; 16/18)
 - 2. Position-Based (teacher-student; coach-athlete, etc)
 - 3. Consent invalid, minor cannot consent
 - 4. Knowledge of minor status unnecessary (majority rule)
 - b. Sexual Acts: vaginal intercourse, oral sex, anal sex, digital penetration
 - c. Sexual Contact: intentional touching of genitalia, buttocks, breasts w/ intent to abuse, humiliate, harass, degrade, arouse (under or over clothing)
 - d. Consent
 - i. Consent obtained by fraud is invalid
 - 1. Fraud in Factum: deceived as to the act (putting something somewhere else than where you received permission = no consent)
 - 2. Fraud in Inducement: deceived as to some other issue (consented to act itself but defrauded as to why = consent)
 - a. Exception = medical community
 - ii. Express consent is fine, but unnecessary (can infer from situation/facts)
 - iii. Must be voluntarily given
 - iv. 'No' can change to 'yes'; 'yes' can change to 'no' (post-penetration withdrawal allowed)
 - v. Δ doesn't need to know there wasn't consent, knowledge unimportant
- iv. Inchoate Crimes 'unfinished business'
 - General Rules
 - a. Merger Rule: when an unfinished crime is completed, the two crimes are 'merged' into the completed, larger offense
 - i. Ex) solicitation to murder \rightarrow attempted murder or \rightarrow murder
 - ii. Never includes conspiracy, it is always a separate offense
 - b. Abandonment/Withdrawal: cannot ever 'abandon' or 'withdraw' from a crime

- Exception: can withdraw from a conspiracy, explicitly, and not be held liable for future Pinkerton liability stuff (i.e. tell them you're out and not held responsible for bank robbery, just the original conspiracy)
- c. Aiding & Abetting/Accomplice Liability: a theory of criminal responsibility (not a separate crime) where accomplice is charged as principal
 - i. Δ assisted or encouraged another in the commission of a crime before or during commission
 - 1. Even verbal encouragement in a fight is enough
 - ii. Δ had intent to assist or encourage
 - 1. No accidental/unwitting help to the crime
 - iii. Crime was actually committed by another (and completed)
 - iv. NOTE: This is narrower than conspiracy and totally different because:
 - 1. Not a crime (like conspiracy)
 - 2. Doesn't require agreement (like conspiracy)
 - 3. Crime needs completion (unlike conspiracy)
- 2. Attempt (charging the unsuccessful criminal)
 - a. Elements
 - i. Intent to do _____
 - ii. Took an overt act to complete _____
 - b. Two Types
 - i. Complete/Imperfect: Δ did everything in their power to finish but outside forces caused failure (i.e. security guard apprehends Δ who is shooting at teller)
 - ii. Incomplete: Δ was not able to complete all steps b/c of outside forces (security guard stops robber before he could shoot at teller)
 - c. Prep v Perp: preparation is not an attempt, movement towards perpetration is an attempt
 - i. Majority: "Substantial Step" rule: would a reasonable person deduce that, based on Δ conduct, he/she intended to commit that crime
- 3. Conspiracy: a separate crime based on agreement to commit more
 - a. Elements:
 - i. Agreement
 - ii. 2+ people
 - iii. To commit a criminal offense
 - b. Two Types
 - i. General overt act required in furtherance of conspiracy (extra element)
 - 1. Overt Act: any act that furthers the conspiracy, even a teensy bit
 - a. Purpose: give a Δ a window, albeit small one, to exit conspiracy
 - ii. Specialized no overt act required, simply is
 - c. Unilateral (w/ a government agent only) are illegal. If there is an informant there needs to be 2+ nongovernmental agents involved.
- 4. Solicitation: separate crime (like conspiracy) that merges (unlike conspiracy) upon furtherance
 - a. Elements
 - i. Command, encourage, request another person
 - ii. To commit a crime
 - iii. w/ intent that other person commit a crime (no jokes)
 - iv. Δ 's intent strongly corroborated by acts, etc
 - b. Only really charged in sting operations or moments where there is absolutely no other charge available
- 5. Accessory after the Fact
 - a. Separate crime (not treated as principal!)
 - b. "Clean-Up Crew" no involvement w/ the prep or commission of crime
 - c. Must be aware of the crime they are aiding and abetting to

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- i.e. if someone helped someone escape a crime scene where someone, unbeknownst to them, was murdered then they can be charged for helping escape but not for helping get away with murder, specifically
- v. Burglary
- a. Breaking: trespassory event w/ the creation of an opening (however slight)
 - i. Constructive opening: access through fraud or deception
- b. Entering: any part of the burglar and/or any object used as an instrument to effectuate an entering
- c. Dwellinghouse of another: anything w/in the curtilage (directly near home) will suffice
- d. At Night (CL requirement = at sunset up to sunrise; no longer modern requirement)
- e. W/ intent to commit felony inside: needs to intend to commit felony when entering
- vi. Larceny
 - 1. Elements
 - a. Unauthorized taking (caption i.e. securing control of the item)
 - b. Carrying Away (asportation i.e. slight change in position of the item)
 - c. Personal property of another
 - d. w/ intent to permanently deprive another of the property
 - 2. Larceny by Trick vs False Pretenses
 - a. By Trick: obtain possession of an item
 - b. FP: obtain title of the item
- vii. Embezzlement
 - 1. Δ came into possession of property of another lawfully
 - a. Usually came into possession through entrustment w/ said property
 - 2. Then, Δ converts the property to their own use
 - a. Bank teller handed money by depositor then later take the money from drawer home

viii. Robbery

- 1. Larceny+
 - a. By force or fear of immediate force
 - i. Can occur during the caption (taking) or the asportation (carrying away)
 - b. From person or immediate presence & control
- d. Defenses Come from Bill of Rights (Federal)
 - i. Types
 - 1. Failure of Proof: not enough evidence to convict (issue of ID of Δ , for example)
 - a. Mistake of fact: i.e. negates mens rea & must be honest and reliable
 - b. Alibi Δ (SODDI)
 - i. Written Notice Required
 - 1. Specific Places where Δ claims to have been
 - 2. Names and addresses of witnesses Δ intends to rely on for alibi
 - 2. Offense Modification: asking for lesser offense
 - 3. Justifications (Affirmative so burden of proof on Δ): focuses on the act i.e. the act is morally acceptable
 - a. Self-Defense
 - i. Elements
 - 1. Actual or apparent threat w/ unlawful + immediate force (cannot be in the future or a discontinued threat)
 - 2. Actually & reasonably believe (objective & subjective belief)
 - 3. Δ 's response was necessary (could Δ have other options)
 - a. Stand Your Ground (Majority) vs Duty to Retreat (Minority)
 - i. Castle Doctrine: in Duty to Retreat jurisdictions, home=sacred=right to Δ oneself
 - b. First Aggressor Rule: First aggressor disallowed selfΔ

- i. Exception1: escalation of force by other party
- ii. Exception2: First Aggressor retreats
- 4. Δ response was proportional (deadly-deadly force; non-non)
- b. Imperfect Self-Defense
 - i. How: subjectively reasonable; objectively unreasonable
 - ii. Result: Reduction in offense; reduction in penalty
- c. Defense of others
 - i. CL: first only family, then 'alter ego' approach (take on that person's ego)
 - ii. Modern: Reasonableness approach
 - 1. Force was reasonable
 - 2. Acting on behalf of person you reasonably believe in danger (subjective and objective)
 - 3. Used the force that other person would have been entitled to
- 4. Excuses (Affirmative): focuses on the actor i.e. the actor is morally unblameworthy
 - a. Public Authority Δ (affirmative): knowingly acted in violation of criminal law but did so based on reasonable reliance of authorization by government official
 - i. Usually covers informants
 - ii. Notice required in form of:
 - 1. Law enforcement agency or intelligence agency
 - 2. Member of agency who supervised Δ
 - 3. Time during which Δ claims to have acted w/ public authority
 - iii. Must prove:
 - 1. Official had given instructions
 - 2. Official had authority to do so
 - 3. Δ relied on that authority to carry out
 - b. Duress (affirmative)
 - i. Threat of imminent death or serious bodily harm forced Δ to commit crime
 - ii. No reasonable legal alternative
 - iii. Δ not responsible for creating the threat
 - c. Necessity: (affirmative) rare Δ . Δ must show a choice between two evils and choosing lesser
 - d. Insanity: (affirmative) legal Δ that relies on M'Naghten Rule. Usually only applies to Schizophrenia, Bipolar Disorder, but it's evolving. Doesn't mean mental illness
 - i. M'Naghten Rule:
 - 1. At time of crime, Δ suffered from mental disease/defect
 - 2. That rendered Δ unable to know what he was doing or
 - 3. If Δ did know was unable to know wrongfulness of his actions
- 5. Nonexculpatory Public Policy Defenses: Δ is guilty but shouldn't be convicted (i.e. entrapment)