Oct 3rd 2023 TA

Santillanes v. Offenses criminal negligence.

Elonis: What Elonis thinks matters. Had to know what he was threatening.

*Mens rea*

MPC 2.02 (3) Reckless Default

Statute says,

Speeding: mens rea term (O)

Strict liability: 증명의무🡪 금지된 행동 자체. Ex. 금지된 장소의 낚시 등. 등산시 취식 등.

|  |  |
| --- | --- |
| Mala in se | Mala prohibitum: |
| illegal in tradition | Question of life |
| Felony, assault, burglary | Nuisance |
| Serious. Just Not killing | Not that serious |

U.S. v. Balint

> Illegal Drug Seller 파는 것을 모르는 사람

* Mens rea필요 없음
* Strict liability
* Public welfare offenses don’t require a mens rea term.
* Dotterweich: No mens rea required because statute a person to be found guilty.
* Morrissette
  + Crime : Grand larceny: Common law crime🡪 needs mens rea.
* Staples: altered military assault rifle.
* Common law crime: needs mens rea.

MPC homicide

***Default rule***

Welansky: Involuntary manslaughter. Wanton & reckless conduct.

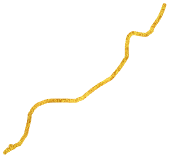
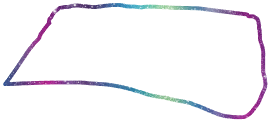
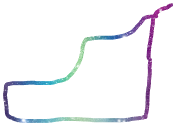
MPC 210.2 (b)

Unintentional killing as murder.

Felonies Extreme indifference.

Homicide Chart





Unintentional Killing MPC

210.3: Reckless Manslaughter.

210.4: Negligence homicide.

And THIS.

Provocation: Maher.

EED: Cassessa

|  |  |
| --- | --- |
| * Motive. | * Opportunity to reflect. |

EED:

* Extreme Emotional Disturbance

Provocation

“Reasonable” Explanation

🡪 가족을 죽인 장면을 직접 봄 🡪 죽인자를 보복 살인.

🡪 In MPC, no cooling off period.

🡪 EEC is broader than provocation.

* Cassessa: EED: objective O, and subjective O.
* Cooling off period: no need.
* People v. Warner-Lambert Co. : 2nd degree manslaughter aware, disregard the risk and criminally negligent homicide: failure to perceive the risk.
* State v. Lane 1990. 9.
  + 🡪 involuntary manslaughter.
  + Lane … cousins:맥주 사러갔다가 집에 옴🡪 취한 린턴. 머리 때려눕힘 public intoxication
  + 린턴 경찰이 발견해서 병원갔지만 사망. 부검을 해보니, Swollen brain. Blunt force injury to the head.
  + Involuntary manslaughter
  + Proximate causation: police? Because 린턴 was in custody?
    - Cause in fact X …
    - Proximate causation O.
  + No evidence linking his actions to Linton’s death by blunt force trauma because Linton did not fall on his head. Lane struck🡪 Lanes punch was cause-in-fact.
  + 🥊🥊🥊🥊🥊🥊🥊🥊cause in fact. Of Linton’s death.
  + Commonwealth Intervening cause
    - Linton sustained any injuries 전에🡪 no
    - Actual and legal cause 🡪 O.
* King v. commonwealth: imputing malice aforethought.
  + Furtherance of felony. 2nd degree Felony murder.
  + Foreseeable:
* Kibbe: direct cause of death.--> to prove murder. 검사: actual, proximate cause of another’s death.
* Arzon: 5-6th floor arson . 2nd floor??? No substantial factor test.

Foreseeable?

Hypo: X

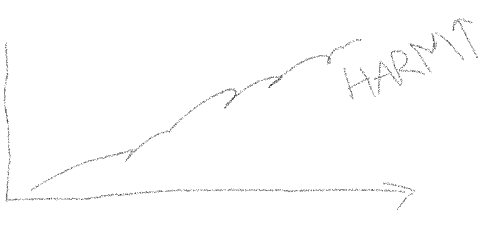
🡪 intends to kill Y instead causes S physical injuries

* Transferred intent

🡪 X: charged assault

* Physical injury because intended to kill.

🡪 Results: foreseeability.



**Attempt**

Smallwood v. State

A person and person talking to each other

Description automatically generated

* Intent? 있는가?
* Natural probable cause of action
* Risk of transmission
* 1991. Positive HIV: safe sex educated by social workers.
* 1993. 3 times. 3 women were robbed and raped at gunpoint.
* Did not say AIDS.
* Attempted to murder.
* Attempted reckless manslaughter.
* Smallwood deadly weapon all 3 instances
* Intent to murder.
* Attempt to murder.
* May facts infer an intent to kill if defendant’s natural and probable acts, conducts, and words directly led to the death of the victim?
  + Yes. Smallwood argues his engaging in unprotected sex while HIV-positive is insufficient to infer an intent to kill those he sexually assuatled.
  + AIDS🡪 deadly weapon.
* Required intent: of assault with intent to murder and attempted murder is the SPECIFIC INTENT TO MURDER.--> GUILTY if there is sufficient evidence at trial that he had a specific intent to kill at the time of assault.
* Circumstantial evidence such as the surrounding circumstances like,
  + The accused acts, conducts, and words.
* Deadly weapon directed at a vital part of the human body
* INS v. Raines 🡪 pistol 🡪차 좌석 알고 쏨.
* Raines knew his weapon deadly and fired someone head.
* HIV-🡪 one intends the natural and probable consequences of his act.
* Raine’s pistol at truck driver.
* Sufficiently probable to support an inference that Smallwood intended to kill his victims.
* S exposed his victims to be risky of HIV.
* CT🡪 You can infer intent.
* Knowlingly risk infect the victim.
* State v. Raines, 326 Md. 582, 591 (1992). In Raines, the defendant, while driving on the highway, fired a pistol into the driver’s side of a truck with knowledge that a driver was sitting where the pistol was aimed. Consequently, Raines’s conviction was upheld, because he knew his weapon was deadly and that he was firing at someone’s head.

People v. Thomas

A red rectangular sign with white text

Description automatically generatedIntent: unintentional.

* Thomas : 3 times shot: 1 : warning. 2: accidental.
* 1st degree assault and attempted (🡨 Intent O) reckless (🡨 Intent X) manslaughter.





Attempt

다 거론 할 것.

People v. Rizzo 1927 NY

* Rao 🤹🏻‍♂️를 찾아라.
* Actus reus: Intent?
* Rizzo 🙎‍♂️🙎‍♂️🙍🏽‍♂️Armed robbery in a payroll courier.
* Police: timely interfered.
* Rizzo 🙎‍♂️🙎‍♂️🙍🏽‍♂️firearm 🡪 courier,🡪 did not find Rao 🤹🏻‍♂️🡪 police의심 .
* May the defendant be attempt if the defendant has not committed an act tending to the commission of a crime, which is so near to accomplishment of the crime that in all reasonable probability the crime itself would have been committed but for timely interference?
  + No. Act done with intent to commit a crime, and tending but failing to effect its commission….
  + Very near to the accomplishment of the intended crime will support an attempt conviction.
* Dangerous proximity: 물리적 거리와는 무관
* Successful commission of crime
* Rizzo looked for Rao to rob him of the payroll, but never located Rao.
* Intent (O). 🡪 just they had no chance.
* Their acts are too remote to support conviction for attempted 1st robbery.
* 🡪 reversed.
* Why the court reject?

<https://open.lib.umn.edu/criminallaw/chapter/8-1-attempt/>

A diagram of a diagram

Description automatically generated

McQuirter v. State 1953

* Blackman assaulted 🡪 white woman in Alabama.
* Telephone booth.
* Daughter confirmed the story.
* Different testimony
* Police testifies, “McQuirter told us he would come to town with the intention of getting him a white woman that night.”
* McQuirter testifies, “다름…” Plaintiff testifies, “다름”
* Social justice customs, and conditions in 1950s

Thacker v. Commonwealth

* May defendant be found guilty of an attempt to commit a crime if it can be shown by direct or circumstantial evidence that the defendant had specific intent to commit a particular crime?
* Attempt to commit a crime
  + Intent to commit
  + Direct. Ineffectual act
    - Reach to desired result.

**Mistake**

Mistake of fact

Regina v. Prince

Elements in Prince



* Unlawfully taking a girl younger than 16 yrs old without guardian
* Statute: silent on mens rea
* MPC: reckless🡪 he should’ve known.
* Annie Phillips 🡪14 yrs old🡪 against her father’s wishes.
  + If her father consented🡪 then, consent.
* Annie lied that she is 16 years old.
* Jury and Prince believed 18 yrs old.
* Is reasonable mistake of fact as to victim’s age a defense to a crime if the statute contained no explicit mens rea requirement?
  + NO.
* “Knowlingly” word into a criminal statute if the legislature clearly intended to omit.
* ***Reckless***
* Knowledge of the girl’s age🡪 element to convict.
* 법안에 없으면, “know”가정🡪 법 목적이 여성을 보호하기 위한 것이기 때문.
* No defense to a felon charge if a man fucked a girl he believed her 11🡪 in fact, 9 years old
* 🡪 to prevent abduct.
* Regardless of the man’s knowledge.
* 법안: Interpret
* “unlawfully”🡪 “without lawful excuse.”
* Concurrent: Jury 🡪 Prince did everything necessary for conviction. Bona fide, reasonable beliefe🡪 excuses his acts.
* Prince was guilty of aiding Phillips unlawful act of escaping from the custody of her father.
  + Mens rea🡪 Defence.
* Mistake belief about Dad’s consent, or not knowing 🡪 Phillips was under guardianship.
* Prince did not know about age: irrelevant.
* Dissent: The man’s belief is not a crime.
  + No mens rea required.
  + Such an omission alters the burden of proof🡪 create assumption that the man knew absence of mens rea
  + Mistake of fact negate mens rea

A group of men with a knife

Description automatically generated

People v. Olsen 1984

* Mistake of fact🡪 defense 가 안 된 경우.
* The defendant believed in good faith that
  + 13 years old girl was in the camping car in her bedroom; houseguest was there.
  + Father: Olsen had sex with my girl while Garcia watched.
* Olsen (friend)+ Garcia (Boyfriend): flee:
* Shawn testifies, that on that night, Garcia said he would stabbed me if I did not have sex with Olsen.
* “I didn’t want to but Olsen forced himself on me.”
* Garcia says, “Shawn and I have had consensual sex.” “Shawn wanted to have sex with 2 years old boy.” “I did not threat her with knife.” “I did not threat her to have sex.”
* Shawn says, “I said I am 16 years old.”
* Trial Court: Olsen, “acquitted but convicted lewd acts on childe under 14.
* Statutory rape<<<< ***forceable*** rape.
* Is reasonable mistake as to the victim’s age a ***defense*** to a charge of commit a lewd act on child under 14 years old?
  + ***No***.
  + Tender years, “Shawn included.
  + Public policy
* People v. Hernandez, the court overturned 🡪 the defendant’s good faith reasonable beliefe that the age over 18 years old was a victim: mistake of fact= defense to a charge of statutory rape.
* 1203.066 (a) (3)🡪 “probation,” 🡪 ok, if the defendant reasonably believed the victim’s age to be more than 14 years old.
* Reasonable mistake of facts
* Violation of 288: much harsher penalty than that for statutory rape.
* Concurrent: Cruel, unusual punishment
  + Reasonable,
  + Tender years
  + Belief, reasonable.

A comparison of a person's face

Description automatically generated**B. v. Director of Public Prosecution**

A cartoon of a person speaking to a judge

Description automatically generated

A cartoon of a person speaking to a person at a podium

Description automatically generated

Mental element: 보통 법안은 silent.

🡪 inciting indecency

B: not guilty because I believed she was over 14.

* Is it a defense to a criminal offense that defendant had an honest belief essential fact related to crime?
* YES.
* Defendant’s mens rea at the time of act is an essential element unless Parliament expressly or implicitly indicated a contrary.
* “Reasonable Belief.” “Honestly believed”
* No intent to grossly indecent act.

Mistake of fact🡪 Defense?

MPC: Reckless

MPC: honestly believed to be 18.--> Common law: 명시된 것 없음.

Morally wrong: Prince. Immoral.: giving marijuana to a minor. Mistake of facts. Mens rea not issue. Reasonable mistake.

Legally wrong: lesser crime: giving marijuana to the adult: mistake of law.

Mens rea: mistake 없음.

Mistake of fact: MPC 2.04 (1) and (2)

O’s PPT flowchart

O’s PPT Mistake of Law: Overview

* In general, it is not a defense.
* Where things get complicated:
  + When person misinterprets meaning of the law, VERSUS, doesn’t know the law
    - People v. Marrero: “what the peace officer” means.
  + When misinterpretation or ignorance is relevant because awareness or knowledge of some legal standard is part of offense, 🡪 that mistake as a matter is an “on point issue”
  + What about when Defendant misinterpretation based on official document or official advice.

**Mistake of Law**

People v. Marrero 1987

* 🙎🏻Federal교도관 🡪총기소지
* Different reading
* Honest mistake of law:🡪 defense?
* 🙎🏻Federal교도관Arrested for possession of an unlicensed pistol.
* Felon. NY Law
* 🙎🏻Federal교도관 “Oh, I thought peace officers are allowed to carry unlicensed firearms.”
* “peace officer” ? 🡪 correction officers of any state correctional facility or of any penal correctional facility
* 🙎🏻Federal교도관 interprets “any penal corrections facility” includes federal facilities
* Prosecution says, “only State”
* 🙎🏻Federal교도관 his mistaken belief about his conduct was “official statements” of the law contained in the statute itself.

A person standing next to a group of people

Description automatically generated

People v. Weiss

NJ: Ellis Parker, Police

* A girl was 🡪20 days,🡪abducted 🡪died
* Harry and Martin believed that they were helping kidnapping. However, they were committing crime something else.
* “I need your help to apprehend and interrogate Wendel.”
* “you’ll act under legal authority.”
* “with intent.--> ?? NO MENS REA.
* 차 타고 가서 10일동안 Wendel묶어놓고 고문함.
* “we made a mistake.”
* In NY, the defendant is permitted to prove that he believed he was acting with authority as a defense to a charge of kidnap.
* “even if they did believ it, it is no defense.
* Acted in sincere belief (X)
* “Without authority of law”
* Intent, or lack of it.
* Weiss and the others🡪 opportunity to testify regarding their intent.
* Dissent: Good faith belief defense:
* Authority to confine Wendel🡪no excuse to crime.
* Immaterial.

Regina v. David Smith 1974

* Honest mistake
* Roof, Wall penals, floor,🡪 법: once installed (고치면), it is a part of landlord’s property
* They were destroyed once the owner refused the brother staying there.
* Smith 🙎🏻 Thought it’s his.
* “How can I be liable for damaging my own property?”
* Consequence of mistake.
* Jury🡪 it is not a defense…..~~Reckless X~~
* May an honest mistake of fact negate mens rea as to an element of an offence?
* The usual element of mens rea🡪 applies to each element of an offense.
* No mens rea. Yes actus reus: to destroy
* O’s PPT: Smith’s good faith misbelief negated the mens rea of what he was charged with.
* O’s PPT: the guy thought he was damaging his own property.

State v. Varszegi

* O’s PPT: Defendant’s good faith misbelief that he could evict the tenant negated the mens rea for larceny.
* Varszegi: landlord🡪 1st degree larceny and criminal coercion.
* The 3rd degree larceny:
  + Under state law, good faith claim of right negate the required intent for larceny? YES
* Larceny: specific intent crime🡪 to steal someones property. Stole and 🡪intent “I need to get out of here now.”
* Conscious believed he was entitled to take Topp’s property under the lease.
* Police don’t believe the authority to negate civil contracts.

Self Defense



People v. Goetz (NY) 1986

1. Dec 22nd 1984: Jury acquitted.



1. NY지하철에 총 들고 탐
2. 4 people young men: “Give me 5 $.”
3. In response🡪 Goetz shot 3 people .
4. Goetz prior experience: 3 years ago, mugged.
   1. O’s note: ppt 5: Prior experience in self defense:
      1. The same has assaulted victim before.
      2. Prior incidences of violence by known to victim.
      3. Threats has made to complainant
      4. Victim has knowledge that carries weapon.
      5. has a reputation for violence
   2. Goetz: Prior experiences can be considered when determining if a has a valid self-defense claim.
5. 4 people were recovered.
6. Attempted murder.
7. ***Illegal possession of firearm***

|  |  |
| --- | --- |
| Subjective standard V | Objective standard X |
| Goetz shot four people🡪 no remorse. “I had a fear of maimed.--> that I was about to be robbed” |  |
| Heuristics: It justifies self defense in NY. |  |
| Not a law |  |
| 자신의 관점 |  |
| He was ***reasonable*** on his own perception | The reasonable man in the same circumstances would have done… |
| Deadly force was necessary |  |
| Goetz’s reasonable: just what Goetz thinks. | NY: reasonable |

1. Deadly force will be used against Goetz
2. An attacker is attempting to commit a kidnap, forcible rape, forcible sodomy, robbery
3. Goetz believed that deadly force was necessary but intent negated if the belief was mistaken
4. 전 경험 EEC etc. 현 범죄
5. Imminent deadly force

O’s note Self-defense

O’s PPT

Jahnke v. State: Battered-persons-syndrome:

* Past incidence of abuse was not an imminent threat.
* Counter to Goetz🡪 prior experiences cannot be considered.
* Threat was not imminent.

Smiley v. State: Guy shot a man in his cab.

* Retreat required🡪 cannot just stand your ground.

Commonwealth v. Sands: 🡪 Battered wife killed her husband

* Imperfect self defense denied🡪 because threat was not imminent.

State v. Schroeder: prisoner stabbed his cellmate

* Threat of violence does not equal imminence.

Ha v. State: guy got beat up, so he tracked down the guy who did it and killed him.

* Inevitable harm does not equal imminence.

\*

**Limited to Murder Charges**

Unlike "perfect" self-defense, which is available for most violent crimes, imperfect self-defense applies only to murder and attempted-murder charges. It negates only the type of malice required to prove murder; it doesn't apply to other crimes, even those that have malice as an element. For instance, even though the crime of [mayhem](https://www.criminaldefenselawyer.com/resources/the-crime-mayhem.htm) often includes a malice element, imperfect self-defense doesn't apply to it.

In the states that recognize it, imperfect self-defense typically applies where a defendant kills someone pursuant to an actual, but unreasonable belief that:

* there was an imminent threat of death or great bodily injury, or
* deadly force was necessary to stop a threat.

If there is evidence that the defendant actually believed in the need for self-defense, both imperfect and perfect self-defense could apply. Which defense is successful depends on whether the defendant's belief was reasonable. It's for the jury to ultimately determine the reasonableness of the belief.

**Example:**Oscar, who lives alone, awakens in the middle of the night in his bedroom and hears someone moving around in the next room. He hears footsteps coming toward his bedroom door and gets his gun from the nightstand. As he sees the doorknob begin to turn, he starts firing, killing the person on the other side of the door. Oscar doesn't qualify for "perfect" self-defense if he didn't reasonably believe that he faced an imminent threat of death or great bodily injury when he started shooting. Firing through the door without knowing who was on the other side may have been unreasonable. As a backup to self-defense, Oscar could argue imperfect self-defense in order to reduce the murder charge he faces to manslaughter.

<https://www.nolo.com/legal-encyclopedia/imperfect-self-defense.html#:~:text=Unlike%20%22perfect%22%20self%2Ddefense,have%20malice%20as%20an%20element>.

\*

🔫 🔫 🔫 🔫 🔫 🔫 🔫 🔫 🔫 🔫 🔫 🔫 🔫 🔫

U.S. v. Norman

1. Self defense
2. Battered wife syndrome
3. Defendant killed her husband lawfully in perfect sef defense.
4. 1st degree murder. Dr Tyson said, “torture abuse inevitable death
5. Will evidence of battered wife syndrome absolutely justify a killing of an abusive spouse?
6. No . defendant🡪 most favorable necessitate killing 🡪 reasonable from imminent death
7. Norman reasonably believed she was faced with the threat of imminent death or great bodily injury.
8. 기준: 주관.
9. Jury: Self defense. Cool off.
10. Norman was in prison for 2 months.
11. Self defense not counted. Only provocation

O’s PPT, M’s PPT Class 26

Initial Aggressor

* Overall rule: initial aggressor forfeits right to self-defense.
* Common law🡪 initial aggressor is someone who commits “an affirmative unlawful act reasonably calculated to produce an affray (공공장소에서의) 소란[폭력] 행위 forebodying (forebody: 전부(前部) 선체, 선체 앞부분.) injurious or fatal consequences.
  + Peterson.
* MPC 3.04(2)(b)(i) initial aggressor is, “(i) the actor, with the ***purpose*** of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; or.”

**U.S. v. Peterson 1973**

1. Who escalated it
2. Whether they are allowed
3. No self-defense
4. 🤹🏼‍♀️ Keitt🦯 🚗 차 windshield가지고 장난 💆Peterson <그만해!>
5. 💆Peterson<총가지고 옴>
6. 🤹🏼‍♀️ Keitt🦯 💆Peterson대화.--> 💆Peterson 총으로 쏴 죽임.
7. 💆Peterson: Second degree murder, manslaughter
8. Law of self defense:
   1. If you find Peterson provoked Keitt to engage in threatening behavior
   2. Peterson cannot rely on self defense unless he attempted to withdraw and communicated his intention to Keitt by words or acts.
9. A person in a circle with text

   Description automatically generated
10. MPC 3.09
11. Initial aggressor changes.
12. O’s ppt: If you are the initial aggressor you cannot claim self-defense.
13. Deadly force

🙉을 죽일 필요🡪 내가 당장 죽음



* This approach is called the "true man" doctrine, it stands for the proposition that a "true person," or someone who is without fault, does not have to retreat from an actual or threatened attack even if he could safely do so before the person may use physical force in self-defense. See Beard v. United States, 158 U.S. Marquette Law Review Volume 86 Issue 4Spring 2003 Article 1 Of the Enemy Within, The Castle Doctrine, and Self-Defense Catherine L. Carpenter
* Imminence:
  + Norman and the relationship between imminence and necessity
  + Norman 판례: Provocation V. No imperfect self defense. No perfect self defense.
  + Norman: imperfect self defense as a defense to murder that downgrades it to voluntary manslaughter. Used when
    - The defendant is the initial aggressor but victim disproportionately escalates and
    - When a defendant has an honest but unreasonable belief of having to kill because of imminent threat.
    - Immediately necessary🡪 ALTERNATIVE. In MPC 3.04 (1) lower standard
* Retreat is only required if you know you can do so in complete safety.
* You need never to retreat before using non-deadly force.
  + These rules apply for CL and MPC.

**State v. Abbott**

Self-defense: Retreat: duty?

1. Abbott: atrocious assault and battery
2. Abbott🡪 self defense
3. Jury: Abbott had a duty to retreat before using force if he was not in imminent danger.
4. Does an individual have a duty to retreat before using deadly force to defend himself only to the point that he knows that he may retreat with complete safety?
   1. Yes
5. Advocates of the no-retreat rule argue that an individual must hold one’s ground.
6. The individual doesn’t use deadly force to defend himself, he may stand his ground regardless of the force used by an aggressor.
7. Jury: Abbott would hold his ground when Nicholas came at him with his fists and also when Mike and Mary came at him with instruments.
8. The question of retreat only arises if Abbott intended to use deadly force himself.
9. Altercation with Scaranos
10. An individual has a duty to retreat before using deadly force to defend himself the point that he knows that he may retreat with complete safety.
11. **Castle Exception**
    1. Your business or your home.
    2. No duty to retreat.

O’s ppt

Allen v. State (1997? 큄비에 없음)

Allen got attacked with a rake (갈퀴) then killed someone

Initial aggressor can switch throughout the confrontation.

**Accomplice**

**A green square with white text

Description automatically generated**

Hicks v. U.S. 1893 (예습 빼먹음)

PPT: What mens rea is required for an accomplice ?

* Purpose.
* The accomplice must intend their acts or words to encourage and abet the prinaipal’s conduct.

|  |  |
| --- | --- |
| Actus Reus | Mens rea |
| What acts or words are actus reus? | Purpose |
| Where an accomplice is present but does not aid and abet, there can be no actus reus, unless they had a previous agreement to aid or abet. |  |
| Accomplice must either actually aid, abet or encourage or have an agreement to aid and abet. |  |

State v. Gladstone (1970) (예습 안함)

Accomplice: Giving Map

Does the mens rea w

Principal’s conduct require

* Genuine purpose to promote commission of the crime or
* Knowledge that one’s actions will aid the principal?

NO.

* Giving a map is not enough.
* **Profit secured. 정도는 되어야 함OK**

State v. Wilson X

**State v. McVay 1926**

1. Liability accomplices
2. Involuntary Manslaughter:
   1. Unintentional killings result from grossly negligent performance of otherwise lawful act
3. 보일러 터짐. 3명 죽음….
4. Underlying offence: unrelated.



1. May an individual be charged as an accessory before the fact to manslaughter even though manslaughter is a sudden and unpremeditated act resulting in death?
   1. Yes. Kelley because manslaughter is an act committed “without malice” and “involuntary” in a sudden and unpremeditated manner, he cannot be found guilty as an accessory before the fact.
   2. Manslaughter🡪 unintentional killing occurs as a result of gross negligence and a person who aids or abets another in such gross negligence may certainly be guilty as an accessory before the fact of the resulting death.
   3. **Kelley: intentionally directed and counseled the grossly negligent act which resulted in the death of 3 passengers**.
2. Indictment🡪 Jury could find that Kelley with knowledge of the possible danger to human life, recklessly and willfully advised, counselled, and commanded MCVay and Grant to.. …. Negligence.

M’s ppt: McVay

Question: What ***mens rea*** for the result does the accomplice need?

Yes. Counselling to negligence.

**Commonwealth v. Roebuck**

1. Unintended consequence of principal’s action.

PA

🙎🏻🧑🏻‍🎨👨🏻‍💼”야, 니 아파트 간다.” 🡪🧑‍⚖️Jones총쏴서 죽임.

* 🙋Roebuck: involved in planning ambush.
* 🙋Roebuck did not shot.
* The 3rd degree murder (involuntary manslaughter): A killing with malice but with no specific intent to kill.
* 🙋Roebuck is accomplice.

Appeal: the 3rd degree murder + accomplice 🙋Roebuck 🡪 impossible. Because only if appropriate.

* **If intended to promote or facilitate the underlying crime.**
* **Can a be convicted as an accomplice to the 3rd degree murder?**
* Yes. Every crime has many elements that individually must be established to establish guilty.
* The culpability requirement: knowlingly, purposefully, recklessly or negligently🡪 not the same.
* Accomplice🡪 doesn’t necessarily have to intend the result that are essential to the principal act.
* EX. Accomplice to involuntary manslaughter (3rd degree murder)
  + ***doesn’t necessarily intent the victim dies.***
  + ***acted with in culpable mental state required for principal.***
  + ***The 3rd degree murder: Recklessness🡪 required mens rea.***
* Concurrent: Eakin: the 3rd degree murder is not necessarily unintentional killing.
* ***It’s a killing where the prosecution did not prove that acted with intent to kill.***

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M’s PPT

Roebuck

MPC 2.06

The same logic as McVay:

* Accomplice must act with the same culpability as to the result as🡪 is sufficient for the commission of the offense.
* Roebuck relies on the following
  + MPC 2.06 (4) When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.
  + MPC 2.06 (3) A person is an accomplice of another person in the commission of an offense if: (a) with the purpose of promoting or facilitating the commission of the offense, he

(ii) aids or agrees or attempts to aid such other person in planning or committing it; or having a legal duty to prevent the commission of the offense, fails to make proper effort so to do; or

Hypo ppt 7

Felony murder: Accomplice🡪 Sergio : Burglary. YES.

1. 다수의 주:But for, foreseeable,

2. 소수의 주: Felony = being inherent danger.

Welansky

* Reckless, and
* Negligence (알아야 했다)

Accomplice:

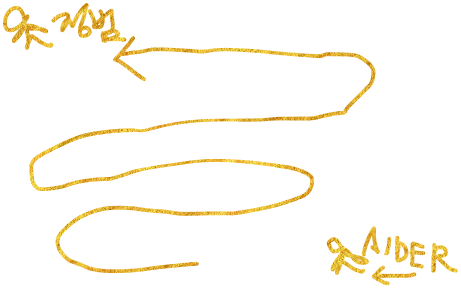
|  |  |
| --- | --- |
|  |  |
| Accomplice’s mens rea🡪 recklessness | Accomplice’s mens rea🡪 intent to aid |
| Principal’s mens rea🡪 recklessness, involuntary manslaughter | Principal’s mens rea🡪 more than intent to aid |
| Commonwealth v. Roebuck |  |
| Unintended consequence of principal’s action |  |
| Not a target crime | Target crime O |

1. ***intent to aid the conduct)***
2. ***NOT*** the same *mens rea* as the principal.
3. (***정범의 행위 자체가 unintentional crime, involuntary manslaughter일 경우 만 the same mens rea***)
4. Hypo ppt 8: attendant circumstance hypo 1: Aider: accomplice: should have known.

People v. Luparello 1986

1. Find exgirlfriend.
2. “whatever it takes.”
3. Martin know her location.
4. Accomplice.
5. 200 USD. 칼과 쌍절곤으로 무장
6. Lupellelo says, “돈은 잘 줄께. 정보를 찾아.”
7. Martin, “난 몰라”
8. 다음날 마틴을 죽임. “wait here”
9. 🙎🏻Luparello+… 🡪1st degree murder. Conspiracy to commit assault. Aid and abet.
10. May be found guilty as an aider and abettor or co-conspirator
11. He intended to facilitate or encourage?
12. No. Luparello argues that trial court improperly imposed mens rea on him in the killing of Martin.
13. He argues he did not share the killer’s intent and cannot be hled equally liable.
14. **Accomplice liability, the individual must be found to have intentionally encouraged, assisted, or influenced the illegal act.**
15. The policy that aiders and abettors should be responsible for the criminal.
16. 🙎🏻Luparello 1st degree murder under Aid Abet of Criminal responsibility.
17. Concurrent: Weiner: “Foreseeable consequence.”
    1. Mental state of perpetrator and or circumstance of the crime on the actor not directly involved shooter intentionally killed Martin “lying in wait.” (조준중)
    2. ***Foreseeable Consequence Doctrine***.
    3. Felony Murder Rule

Now they have the same mens rea



Only intent to aid.

🡪Aider 가 정범과 같은 mens rea를 가지고 있을 경우🡪 같이Liable.

🡪 요건: aider가 미리 알고 있어야 했다.

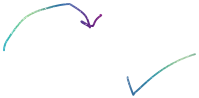
🡪 Accomplice: 📲 같은 장소에 없어도 정범 도움 가능.

🡪 정범의 상황이 aid당시 처음에 예측할 수 없는 경우.--> they should be reasonably foreseeable.

🡪Luparello

|  |  |  |
| --- | --- | --- |
|  | Target Crime | Unforeseeable crime |
| Aider | reasonably foreseeable | Not reasonably foreseeable. |
| Principal | Contemplated | Not Contemplated |
| Luparello | X Aider is liable | XX Aider is liable. |
|  | Target: Assault | Result: Martin DIED🡪 Murder. |

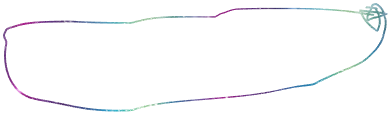
Luparello



* Aider’s knowledge: ***not mens rea knowledge***., knowledge about principal: ex. Principal holding a gun all the time.

안나옴

* Conspiracy

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Elements:

* Agreement: ex. Apple.
* Overt act not required. 🡨🡪 covert.