Criminal Law Outline[1]

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Contents

1 Basic Principles of Criminal Law

1.1 Introduction

1. Henry Hart argues that criminal law is a method with five features:
   (a) It operates by a series of commands ("don't kill or steal").
   (b) A community makes the commands binding.
   (c) There are sanctions for disobeying the commands.
   (d) The distinction between civil and criminal sanctions is that criminal violations draw a community's moral condemnation.
   (e) Violations are punished.
2. Murray: laws are framed as conditions ("if you do x, then y"—e.g., punishment), emphasizing agency and choice.
3. *nulla poena sine lege*: no punishment without law authorizing it.
4. Sources of criminal law:
   (a) Codification (statutes, administrative rules, etc.).
   (b) Common law (based on the English system, as distinct from a civil-law system).
   (c) Case law.
   (d) Model Penal Code.
5. What distinguishes criminal punishment?
   (a) Criminal penalties can restrain personal liberty (but civil penalties don't).
   (b) Moral stigma.
   (c) Judgment is collective—it isn't about two parties.[1]
6. **Probable cause** is necessary to make an arrest.
7. **Indictment** by a grand jury is usually necessary before a case can go to trial.
8. Sixth Amendment guarantees a right to a speedy and public trial, by an impartial jury.
9. **Due process clauses** in the Fifth and Fourteenth amendments guarantee persuasion **beyond a reasonable doubt** (as determined by the factfinder).

[1] See Schelling, "Ethics, Law, and the Exercise of Self-Command."

10. What does it mean to prove something "beyond a reasonable doubt?" *Owens v. State*: Driver was found drunk and asleep behind the wheel of a running car in a private driveway. Circumstantial evidence gives equal weight to two interpretations of the facts: either he had just arrived (guilty) or had not yet left (not guilty). If each interpretation is equally likely, the factfinder could not fairly choose the guilty option beyond a reasonable doubt. But after analyzing the evidence, the court finds "the totality of the circumstances are, in the last analysis, inconsistent with a reasonable hypothesis of innocence." The court affirms the conviction of driving while intoxicated.
11. Can you satisfy the burden of proof with only circumstantial evidence?
12. What is required to meet the reasonable doubt standard?
13. How should a judge instruct a jury on the definition of "reasonable doubt"?

1.2 Principles of Punishment

1. Some types of punishment: prison, fines, community service, shaming.
2. Two key questions:
   (a) Who should be punished?
   (b) How much punishment is appropriate?
3. Two predominant (and non-mutuallly-exclusive) theories of punishment: **retributivism** and **utilitarianism**

1.2.1 Utilitarianism

Punishment is justified because it's useful.

1. Jeremy Bentham: the **principle of utility** evaluates actions in light of their effect on the happiness of the interested party. Laws aim to augment a community's total happiness.
2. Kent Greenawalt: "Since punishment involves pain, it can be justified only if it accomplishes enough good consequences to outweigh this harm."[2] The consequences of an action determine its morality.
3. Benefits of utilitarian punishment:
   (a) General deterrence (i.e., discourage an action from occuring in a community).
   (b) Specific deterrence (i.e., discourage a specific person from doing something).
   (c) Incapacitation.
   (d) Reform.

[2] Casebook p. 35.

1.2.2 Retributivism

Punishment is justified because criminals deserve it.

1. Michael Moore: "the desert of an offender is a sufficient reason to punish him or her."[3]

2. Immanuel Kant: penal law is a categorical imperative.

3. James Fitzjames Stephen: **assaultive retribution** holds that hatred and vengeance in the name of morality are socially beneficial; criminals are "noxious insects."[4]

4. Herbert Morris: **protective retribution** holds that rules exist to provide collective benefit; they guards against unfair advantage for freeriders; if somebody cheats, punishment evens the score.

5. Jeffrey G. Murphy & Jean Hampton: **victim vindication retribution** wrongdoers implictly place their own value above their victims'; "retributive punishment is the defeat of the wrongdoer at the hands of the victim."[5]

1.2.3 Justifying Punishment

1.2.3.1 ***The Queen v. Dudley and Stephens*** Dudley, Stephens, Brooks, and Parker were castaways on a boat 1600 miles from the Cape of Good Hope. They quickly ran out of food and water. After twenty days, Dudley and Stephens decided to kill and eat Parker (with Brooks dissenting). They ate Parkers body for four days, at which point they were rescued and brought to trial for murder.

The case highlights the differences between retributive and utilitarian theories of justice. Parker was weak and unlikely to have survived the last four days if he hadnt been killed. Dudley and Stephens likely wouldnt have survived, either. Moreover, Dudley and Stephens had family responsibilities, while Parker was a drifter. A retributive response would hold that Dudley and Stephens are morally culpable and should be found guilty regardless of the mitigating factors. A utilitarian response would find them not guilty on the recognition of a net benefit for all parties involved.

1.2.3.2 ***People v. Du*** The defendant, Soon Ja Du, a 51-year-old woman, owned a liquor store in LA. A 15-year-old girl, Latasha Harlins, in the store put a bottle of orange juice in her backpack. It's not clear whether she intended to pay. A fight ensued, in which Du was injured. As Harlins was leaving, Du pulled out a gun (which had been previously stolen, heavily modified, and then recovered) and shot Harlins in the back of the head. She testified that she

[3] Casebook p. 39
[4] Casebook p. 42.
[5] Casebook p. 46.

did not intend to kill Harlins. The jury rejected this defense, convicting her of voluntary manslaughter.

Du's probation officer concluded "would be most unlikely to repeat this or any other crime." The sentencing court sentenced Du to ten years, but suspended the sentence and placed her o n probation. She wrote, "it is my opinion that justice is never served when public opinion, prejudice, revenge or unwarranted sympathy are considered by a sentencing court in resolving a case." She tests Du's case against seven goals of sentencing:

1. Protect society.
2. Punish the defendant.
3. Encourage the defendant to lead a law-abiding life.
4. Deter others.
5. Incapacitation.
6. Secure restitution for the victim.
7. Seek uniformity in sentencing.

None of these reasons is sufficient to justify prison time. The only somewhat convincing motivation for prison time is the strong presumption against probation when guns are involved. But this is an unusual case, she concludes, "which overcomes the statutory presumption against probation."

1.3 Proportionality of Punishment

1.3.1 General Principles

1. Kant: The "right of retaliation" (*jus talionis*) is "the only principle which in regulating a public court...can definitely assign both the quality and the quantity of a just penalty."[6] Murderers must be punished with death.
2. Bentham: Punishment has four goals:
   (a) General deterrence.
   (b) Encourage criminals to choose the lesser of two offenses.
   (c) Encourage criminals to do no more mischief than necessary.
   (d) Punish cheaply.
3. ...and five rules:
   (a) To effectively deter, the value of the punishment must be greater than the value of the offense.

[6] Casebook p. 70.

(b) The greater the mischief, the greater the punishment.

(c) Punishment must be sufficient to induce criminals to choose the lesser of two crimes.

(d) Punishment must be adapted to each offense.

(e) Punishment should not be greater than necessary.

1.3.2 Constitutional Principles

1.3.2.1 ***Coker v. Georgia*** The defendant escaped from prison, where he was serving time for multiple violent felonies. He broke into the Carvers' house, tied up Mr. Carver, and kidnapped and raped Mrs. Carver. The Supreme Court held that the Georgia jury's death sentence violated the Eight Amendment, because rape is a crime "not involving the taking of life." In their dissent, Justices Burger and Rehnquist argue that the Eight Amendment does not prohibit states from taking prior behavior into account. While the death penalty may be disproportionate to the current crime, it can act as an effective deterrent.

A related case, *Kennedy v. Louisiana*, involved the rape of a child. The court narrowly upheld that the death penalty was "grossly disproportionate" for rape, but Alito issued a scathing dissent questioning the argument that every murder is more "morally depraved" than every rape.

1.3.2.2 ***Ewing v. California*** Ewing stole three golf clubs from a pro shop. With multiple prior felony convictions, California's three strikes law required a minimum sentence of 25 years, which Ewing argued violated the Eighth Amendment. The court's opinion, written by Justice O'Connor, relies on Justice Kennedy's opinion in *Harmelin v. Michigan*, where he lays out a set of principles for determining proportionality:

1. The primacy of the legislature.
2. The variety of legitimate penological schemes.
3. Federalism.
4. Objectivity.
5. **The Eighth Amendment does not require strict proportionality. It only forbids "grossly disproportionate" sentences.**

The court upheld Ewing's 25-year sentence, arguing that "Ewing's sentence is justified by the State's public-safety interest in incapacitating and deterring recidivist felons..."[7]

Scalia concurs, but argues that the justification for the sentence has nothing to do with proportionality and everything to do with the idea that "punishment should reasonably pursue the multiple purposes of the criminal law" (incapacitation, deterrence, retribution, rehabilitation).

[7] Casebook p. 85.

The dissenters compare two prior cases, *Rummel* and *Solem*, which both involved major prison sentences for recidivist felons who committed relatively small crimes. In *Solem*, the court found the sentence to be too long, and upheld the sentence in *Rummel*. *Ewing* falls in the "twilight zone" between the two. Given that ambiguity, 25 years to life is grossly disproportionate to the crime of shoplifting golf clubs.

1.4 Statutory Interpretation

TODO: legality principle; commonwealth v mochan; keeler v superior court; in re banks; city of chicago v. morales; muscarello v united states

2 Elements of a Crime

1. Every crime has two elements: *actus reus* and *mens rea*.
2. Every crime also has attendant circumstances.

2.1 Actus Reus

1. Literally, "guilty act." There is no universally accepted definition. In murder, for instance, some would consider it to be the pulling of the trigger. Others would consider it to be the death itself. The most common definition would consider it to be both.
2. "Omissions are not accidents."—Marianne Moore
3. What constitutes an act? When does the act begin? See Model Penal Code 2.01.
4. If someone holds a gun to your head and tells you to act, your act is voluntary. An act is something you do willfully.
5. Thought crimes are not punishable (*Minority Report*, *Firestarter*).
6. The **harm principle**: we punish acts that are socially and individually harmful.

2.1.1 *Martin v. State*

1. Police officers took a drunk man from his home and onto a public highway, where they then arrested him for public drunkenness. The court held that public drunkenness cannot be established when the accused was involuntarily carried to a public place.

2.1.2 *State v. Utter*

1. Defendant (here, the appellant) was drunk and stabbed his son. He had no memory of the stabbing. He argued that his service in the army had caused him to develop a "conditioned response" in which he reacts violently and involuntarily to people approaching unexpectedly from behind. The court reasons that an "act" requires voluntary action—that is, "act" is synonymous with "voluntary act." An involuntary or unconscious act cannot induce guilt—that is, it is not an "act" at all. The court finds that the defendant's theory of conditioned response should have been presented to a jury *if there was substantial evidence to support it.* However, because the jury could not possibly know or infer what had happened in the room at the time of the stabbing, the question should not be sent to the jury.

2.1.3 *People v. Beardsley*

1. While his wife was away, the defendant was drinking heavily with a woman at his house. The woman took several tablets of morphine and became unresponsive. The defendant put her in a basement room in his house (which another man was renting). The woman died that evening. The issue is whether the defendant had a legal duty to protect the woman. If he omitted to perform his duty, he would be criminally liable for manslaughter. The prosecution argued that the defendant was in the role of the woman's guardian. The court reasoned, however, that if the defendant had been drinking with a man and that man attempted suicide, the defendant would not have had a duty to protect him—so it should make no difference that he was with a woman.

2. Criminal law is reluctant to create positive responsibilities, but there are a few common law relationships where such responsibilities exist:

   (a) Parent-child.

   (b) Spouse-spouse.

   (c) Master-servant.

2.1.4 *Barber v. Superior Court*

1. A patient suffered cardiac arrest after surgery. Doctors managed to save him, but he suffered significant brain damage. He remained in vegetative state on life support with little chance of recovery. His family decided to remove him from life support, and he died a few days later. The question is whether his doctors had a duty to keep him alive—since omitting to perform that duty would make them liable for murder. **"There is no criminal liability for failure to act unless there is a legal duty to act."** The court reasons first that removing the man from life support constituted an omission, not a positive act. The court holds that the

decision of whether to continue treatment was left to the family. Therefore, the doctors did not unlawfully fail to perform a legal duty.

2.1.5 *Lawrence v. Texas*

1. In an opinion from Justice Kennedy, the court decided whether a Texas law criminalizing sodomy violates the Fourteenth Amendment's Due Process Clause and equal protection guarantee. It held that the statute violates individuals' rights to privacy and liberty. It overturned an earlier ruling on a similar Georgia statute in *Bowers v. Hardwick*: "*Bowers* was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent."

2. The Constitution limits states' power to outlaw social harms.

2.2 Mens Rea

1. "Guilty mind."

2. *United States v. Cordoba-Hincapie* includes a brief history of the evolution from ancient English strict liability to modern requirement of a guilty state of mind.

3. There are two usages of mens rea:

   (a) **Culpability**: a morally culpable state of mind in general.

   (b) **Elemental**: the mental state specified in the definition of the crime.

2.2.1 *Regina v. Cunningham*

1. The defendant stole a coin-operated gas meter from the basement of his mother-in-law's house, causing noxious gas to escape and partially asphyxiate his neighbor. The issue was whether his action was malicious. A lower court convicted the defendant on the definition of malice as "wickedness," i.e., a generally culpable state of mind. This court defined malice as (1) an **intention** to do the specific harm, or (2) **recklessness** (i.e., he foresaw that the harm might occur, but did it anyway). In this case, there was no malice directed at Mrs. Wade. The court overturned the conviction.

2.2.2 *People v. Conley*

1. In a fight after a high school party, the defendant smashed a wine bottle into the victim's face, causing permanent disability. He intended to hit someone else (who ducked), but the court found that the defendant's words and demeanor nonetheless intended his action to cause permanent disability.

2. The common law definition of intent includes both the actor's conscious goal and the results that are "virtually certain to occur."[8] Analogous to substantial certainty in intentional torts.

3. A person "intends the natural and probable consequences of his actions." The Fourteenth Amendment prevents courts from presuming this, but juries can use common sense to recognize it.

4. **Transferred intent** (in criminal law) allows transfer from one victim to another. Transfer between different types of harms is less clear cut. Courts often apply it, but not always.

5. There is dispute about the meaning of "general intent" and "specific intent." Some versions include:

   (a) General: the definition of the crime sets out no specific mental state, so the prosecutor needs only to prove a generally culpable state of mind. Specific: the definition of a crime explicitly sets out a mental state.

   (b) General: reserved for crimes that permit conviction on the basis of a less culpable mental state (e.g., negligence or recklessness). Specific: denotes an offense that includes a definition of intent or knowledge.

   (c) **The most common version**—general: any mental state related to the act that constitutes the social harm. Specific: an additional "special mental element": (1) intent to commit a future act (e.g., intent to sell), (2) special motive (e.g., offensive contact intended to cause humiliation), or (3) knowledge of attendant circumstances (e.g., sale of obscene material to a minor).

6. At common law, there are ten specific intent crimes (BAFFLEPACK):

   (a) Burglary.

   (b) Assault.

   (c) False pretenses.

   (d) Forgery.

   (e) Larceny.

   (f) Embezzlement.

   (g) Premeditated murder.

   (h) Attempt.

   (i) Conspiracy/solicitation.

   (j) Kidnapping for ransom.

[8] Casebook p. 155.

2.2.3 MPC 2.02: General Requirements of Culpability

1. The MPC requires "elemental" culpability—i.e., the specific state of mind required in the definition of the crime, rather than a generally morally culpable state of mind.

2. The MPC abandons the elemental-culpable distinction. Most jurisdictions have adopted it in whole or in part.

3. There are four levels of culpability:[9]

   (a) **Purpose**: An actor intends to perform a specific action or to cause a specific result.

   (b) **Knowledge**: An actor is aware of factual circumstances that establish criminal culpability, and if the element involves a result of his conduct, he is practically certain that the result will occur.

   (c) **Recklessness**: An actor creates and recognizes a substantial, unjustifiable risk and acts anyway. The jury should decide whether the risk is substantial and unjustifiable and whether *disregard of the risk* deserves condemnation.

   (d) **Negligence**: An actor inadvertently creates a substantial, unjustifiable risk of which he should have been aware. The jury should decide whether the risk is substantial and unjustifiable and whether the defendant's *failure to perceive the risk* deserves condemnation.

4. If a law does not specify a culpable state of mind (i.e., no *mens rea*, culpability is established if the person acted purposefully, knowingly, or recklessly. Negligence is excluded unless the law specifically prescribes it (although many jurisdictions do not exclude negligence).

2.2.4 Knowledge of Attendant Circumstances

1. Willful blindness: suspecting the truth but not investigating it.

2.2.5 *State v. Nations*

1. The defendant, Sandra Nations, operated a bar where a sixteen-year-old girl was dancing for money. A Missouri child welfare statute imposed criminal liability on anyone who knowingly aided such activity. The Model Penal Code in 2.02(7) holds that "knowledge" of a particular element of a crime is established when the actor is aware of a "high probability of its existence"—i.e., willful blindness towards a fact constitutes knowledge of that fact. The Missouri statute, however, did not adopt this definition of "knowledge." The court thus found the defendant to be reckless, but not knowing, and held in favor of the defendant.

[9] MPC 2.02(2).

2.2.6 Strict Liability

1. todo.
2. todo: retributivist and utilitatarian justifications.

2.2.6.1 *United States v. Cordoba-Hincapie*

1. An exception to the *mens rea* requirement is in cases involving "public-welfare offenses"—e.g., liquor laws, anti-narcotics laws, motor vehicle regulations.
2. Public-welfare laws are meant to regulate administrative offenses unrelated to questions of personal guilt.
3. *Mens rea* is probably required if the punishment of the wrongdoer far outweighs regulation of the social order.
4. *Mens rea* is probably not required if the punishment is light (e.g., small fine and no prison time).
5. Even when a statute is silent on the *mens rea* requirement, it can still sometimes be interpreted as requiring a minimal level of *mens rea*. See *Staples* below.
6. With strict liability offenses, there is no basis for acquittal on the grounds of mistakes of fact or law. (It doesn't matter what you intended to do. For strict liability offenses, it only matters that you did it.)

2.2.6.2 *Staples v. United States*

1. BATF agents found the defendant in possession of an unregistered semi-automatic AR-15 rifle that had been modified to shoot as an automatic weapon. Under the National Firearms Act, this gun was classified as a machinegun and was required to be registered. The defendant argued that he didn't know the gun had been modified, and therefore he should be shielded from criminal liability for failing to register it. The District Court and the Court of Appeals rejected his argument.
2. Justice Thomas:
   (a) The relevant statute is silent concerning the *mens rea* requirement.
   (b) Common law holds that *mens rea* should be required here, despite the statute's silence, unless it's clear that Congress intended to remove the *mens rea* requirement.
   (c) The prosecution argues that Congress intended this statute to address "public welfare" offense, and thus impose strict criminal liability.

(d) This interpretation of Congress's silence (says Thomas) has typically been applied to situations where the regulated offense poses a very clear threat to public safety (e.g., hand grenades in *Freed* or narcotics in *Balint*).

(e) Gun ownership is generally an innocent activity (half of American households own a gun), unlike possessing a hand grenade or selling hard drugs.

(f) The severe penalty here (10 years) negates the public welfare rationale. Generally, *Mens rea* should be required as part of statutes defining felony offenses.

(g) If Congress wanted to impose severe criminal penalties on gun owners who unknowingly possessed certain offending weapons (like machineguns), it would have said so explicitly.

3. Justice Stevens, dissenting:

(a) This statute is not based on a common law crime. We cannot rely on common law to fill Congress's omissions. Rather, we should assume Congress's omissions are intentional.

(b) Machineguns are "dangerous [and] deleterious devices." This is clearly a public welfare statute.

2.2.6.3 *Garnett v. State*

2.2.7 Mistake and Mens Rea

1. Good faith mistakes do not have to be reasonable to be valid defenses against crimes with *mens rea* components.

2. Why limit the application of the mistake doctrine?

(a) Utilitarianism: we want people to know the law.

(b) Retributivism: hard to say; retributivists might actually want a broad application of the mistake doctrine, since unwitting offenders may not be morally culpable.

2.2.7.1 Mistake of Fact: *People v. Navarro*

1. The defendant stole four wooden beams from a construction site. He believed in good faith that the owner had abandoned the beams. The trial court instructed the jury that the defendant would not guilty of theft if he *reasonably* believed in good faith that the beams had been abandoned or that he had permission to take them. The jury found the defendant guilty of theft. The appellate court reversed, reasoning that if the defendant believed in good faith that he was allowed to take the beams—regardless of whether that belief was reasonable—he lacked the intent necessry for

theft. (A jury could infer that a defendant does not hold such a belief in good faith—but in this case, his belief was genuine.)

2. Honest mistake of fact is a defense when it negates a required mental element of the crime.

   (a) For specific intent crimes, mistake of fact negates the *mens rea* regardless of whether the mistake was reasonable.

   (b) For general intent crimes, the mistake must have been reasonable to negate the *mens rea*.

   (c) (The MPC does not draw a distinction between specific and general intent crimes.)

2.2.7.2 Mistake of Law: *People v. Merrero*

1. A federal prison guard was charged with possessing an unlicensed loaded pistol at a club. He argued that he interpreted a state statute as exempting "peace officers" from the gun law—but in fact, the statute only exempted state penal corrections officers, not federal officers. The trial court rejected the defendant's argument that his misunderstanding of the law exempted him from criminal liability. He relied on a New York statute that relieves criminal liability if the defendant mistakenly relies on "a statute or other enactment." The prosecution argued (and the court agreed) that misconstruing the meaning of a statute is not enough to establish a defense—drawing on MPC 2.04(3), it argued the statute must actually be "determined to be invalid or erroneous." The appellate court reasoned that allowing defendants to simply interpret the law case-by-case would lead to chaos.

2. The dissent argued that there is no retributivist or utilitarian justification for punishing the defendant in this case. It argued further that the defendant reasonably interpreted the statute exempting "peace officers" and that he had no way of knowing that the courts would later interpret the statute to exclude federal penal officers. The majority opinion ruled out *any* defense based on mistaken understandings of law. This is a misinterpretation of the reasons for the New York mistake-of-law statute—and the majority opinion's reliance on MPC 2.04(3) is puzzling since the New York legislature specifically rejected that part of the MPC. The dissent believed there should be room for "good-faith mistaken belief founded on a well-grounded interpretation" of official law.

3. The MPC reflects the common law view that ignorance of the law is no excuse. But it includes a few exceptions—for instance, when the statute was enacted without fair notice, when a defendant relied on an official statement of law that turned out to be erroneous.[10]

[10] MPC 2.04(3).

4. The three scenarios where mistake of law can serve as a valid defense are:
   (a) Reasonable reliance on an official source (*People v. Merrero*).
   (b) Lack of fair notice (*Lambert v. California*[11]).
   (c) When it negates an element of the offense (*Cheek v. United States*).

2.2.7.3 *Cheek v. United States*

1. The defendant stopped paying taxes in the early 1980s. He had been heavily involved in the anti-tax movement and genuinely believed that the income tax on wages is unconstitutional. Federal criminal tax offenses require specific intent to violate the law—they require *willful* failure to file and pay taxes (otherwise, we'd all be criminals for making mistakes on our tax returns). Cheek argues that he did not *willfully* fail to file or pay.
2. The lower courts rejected Cheek's argument against the validity of jury instructions requiring an "honest and reasonable" belief that he was not required to pay income tax (as did the lower courts in *Navarro*). In the court's opinion, Justice White identifies the precise issue as whether the defendant waw aware of his duty to pay taxes, "which cannot be true if the jury credits a good-faith misunderstanding and belief submission." It does not matter if his believe was unreasonable (though, as in *Navarro* the jury may infer that the belief was not in good faith). The Supreme Court reversed the Court of Appeals and held that Cheek could make his case to a jury.
3. Blackmun, dissenting, warns that this decision "will encourage taxpayers to cling to frivolous views of the law."

2.3 Causation

1. MPC 2.03(1) finds causation when an act is (1) a but-for cause of the result and (2) the causal relationship satisfies any additional statutory requirements.
2. Why does causation matter in terms of justifications for punishment?

2.3.1 Actual Cause

2.3.1.1 *Velazquez v. State*

1. "Cause-in-fact": a person's actions caused the outcome in question.
2. **"But-for" test**: a defendant's conduct is a cause-in-fact of the outcome in question if the outcome would not have occurred *but for* the defendant's actions.

[11] Casebook p. 207

(a) Establishing a but-for cause does not necessarily mean the defendant will be convicted. It's only a filter for identifying actors who *may* be culpable.

3. **"Substantial factor" test**: if two independent defendants commit two separate acts, each of which could have caused the prohibited result, neither act is a "but for" act. This test determines whether the action was nonetheless a "substantial factor" in bringing about the prohibited result. This test is used only in a minority of jurisdictions.

2.3.1.2 *Oxendine v. State*

1. The defendant's girlfriend pushed his six-year-old son into a bathtub, causing severe internal injury. Around 24 hours later, the defendant also hit his son repeatedly. His son died from his injuries soon after. Medical testimony was unable to isolate the mortal blow. The trial court found both defendants guilty of manslaughter. The Supreme Court of Delaware, however, found that the prosecution proved that the defendant had not *accelerated* his son's death, but only aggravated it. The court found the defendant innocent of manslaughter but guilty of assault in the second degree.

2.3.2 Proximate Cause

1. The doctrine of proximate cause determines whether an event that satisfies the but-for standard should be held accountable for the resulting harm.

2. Proximate cause answers the question of who is most culpable for the harm.

2.3.2.1 *People v. Rideout*

1. The defendant was driving drunk and hit a car. The car's driver and passenger suffered no major injuries, but the car was damaged enough so that the headlights no longer worked. After moving safely to the side of the road, the car's passenger entered the road to inspect the car to see if they could turn on the hazard lights, where he was struck and killed by an oncoming car. The trial court found the defendant guilty for the passenger's death. The question is whether the defendant's drunk driving was the proximate cause of the passenger's death.

2. The appellate court introduces the ideas of intervening and superseding causes. An intervening cause supersedes the original cause if the original actor could not reasonably foresee the second cause, i.e., if it breaks the chain of causation. Dressler divides the second cause into *responsive intervening causes*, which arise directly from the original cause, and *coincidental intervening causes*.

3. The appellate court also introduces the *apparent-safety doctrine*, which holds that the defendant's causation ceases when the victim has reached a place of apparent safety (e.g., far off on the side of the road).

4. The appellate court also introduces the idea of *voluntary human intervention*, which relieves the defendant's liability if the victim voluntarily enters into a dangerous situation (e.g., a road in the night without any lights).

5. The appellate court overrules the trial court, finding that the prosecution failed to establish proximate cause. It remanded the case for a new trial.

6. Later, the Michigan Supreme Court overturned the appellate court's assessment that a jury could not find proximate cause.

7. When does an intervening cause break the causal chain? Murray:

   (a) *De minimis* contribution to social harm—where the defendant's action was an insubstantial contribution to the harmful result, in comparison to the intervening event, the defendant is relieved of liability.

   (b) Intended consequences doctrine—a voluntary act intended to bring about the harmful result will be considered a proximate cause of the harm, regardless of other intervening events.

   (c) Omissions—an omission will rarely, if ever, supersede defendant's earlier, operative wrongful act.

   (d) Foreseeability of the Intervening Cause:

      i. Responsive (Dependent) Intervening Causes—defendant bears criminal responsibility for the harmful result to a victim who seeks to extricate himself or another from a dangerous situation created by defendant, even where the victim was contributorily negligent.

      ii. Coincidental (Independent) Intervening Causes—an act that does not occur in response defendant's conduct may break the causal chain.

   (e) Apparent-safety doctrine—once the victim has reached a place of apparent safety, defendant's prior wrongful act is no longer causally operative.

   (f) Voluntary human intervention—victim's deliberate, informed intervention may break the causal chain.

2.3.2.2 *Velazquez v. State*

1. The defendant and the victim were drag racing. After the race, the victim spun around his car, raced back to the starting line, and careened over a guardrail, dying instantly. The trial court found that the defendant's participation in the drag race was a cause-in-fact of the victim's death. The appellate court found that the drag race had already ended when the

victim decided to spin around and race back to the finish line—an act that superseded the defendant's cause-in-fact.

3 Homicide

1. Homicide is a neutral term. It is not necessarily a crime.

3.1 Intentional Killing

3.1.1 Murder

1. Premiditation is usually the distinction between first- and second-degree murder.
2. The MPC does not distinguish between first- and second-degree. Culpability is evaluated at sentencing.
3. There are four common law definitions of murder:[12]
   (a) Intent to kill.
   (b) Intent to cause grevious bodily harm.
   (c) "Depraved-heart murder" (i.e., extreme recklessness regarding homicidal risk).
   (d) Intent to commit a felony.
4. In 1794, Pennsylvania introduced the idea of degrees.
5. The MPC recognizes three kinds of criminal homicide: murder, manslaughter, and negligent homicide.

3.1.1.1 Premeditation and deliberation: *State v. Guthrie*

1. What facts establish premeditation and deliberation?
2. The defendant stabbed and killed a coworker after the coworker taunted him and snapped him in the nose with a towel. The trial court found him guilty of first degree murder. The defendant argues that the trial court's instructions to the jury were improper because "the terms wilful, deliberate, and premeditated were equated with a mere intent to kill." The appellate court agreed that "premeditation" cannot be synonymous with intent—rather, it must be long enough for the defendant to be "fully conscious of what he intended." Reversed and remanded for a new trial.

[12] Casebook p. 236.

3.1.1.2 *Midgett v. State*

1. The defendant repeatedly abused his young son, who died from the injuries. The trial court found him guilty of first degree murder, which required premeditation and deliberation. The defendant argues that there was no premeditation, and the Supreme Court of Arkansas agreed. The dissent argued that symptoms of malnourishment indicated starvation, but the majority argued that the evidence did not prove starvation.

2. Shortly after this case, the Arkansas legislature amended its criminal code to broaden first degree murder to include "extreme indifference to the value of human life" of people fourteen years old or younger.

3.1.1.3 *State v. Forrest*

1. The defendant shot and killed his terminally ill father in the hospital. The trial court convicted him of first degree murder. The defendant argued that there was no premeditation or deliberation, and therefore no evidence to prove first-degree murder. The appellate court upheld the conviction, noting that premeditation must be proved by circumstantial evidence, including provocation from the victim, the defendant's conduct and statements, ill will between the parties, lethal blows after the victim was rendered helpless, and evidence of an especially brutal killing. In this case, the court found that the victim was laying helpless and did nothing to provoke the defendant, and that the defendant had earlier made statements about "putting his father out of his misery."

2. Premeditation/deliberation: in cold blood.

3. Provocation: in hot blood.

3.1.2 Manslaughter

1. Provocation can mitigate murder to manslaughter. Common law and the MPC diverge on what constitutes provocation.

2. Common law rule of provocation:[13]

   (a) There must have been adequate provocation.

   (b) The killing must have been in the heat of passion.

   (c) There must not have been a cooling off period.

   (d) There must have been a causal connection between the provocation, the passion, and the fatal act.

   (e) (The sorts of provocations that courts have allowed as defenses at common law are the sort of actions that have offended traditional notions of a man's honor—e.g., catching a wife in the act with another man.)

[13] Casebook p. 267.

3. The MPC replaces the provocation defense with an "emotional disturbance" test.[14] Under the MPC, homicide constitutes manslaughter when:
   (a) The homicide is committed "under the influence of extreme mental or emotional disturbance."
   (b) There is a reasonable explanation or excuse for the mental or emotional disturbance under the circumstances as the defendant believed them to be. In other words, the excuse is reasonable if a reasonable person in the defendant's situation would have been disturbed.
   (c) (The cooling off period is not an issue under the MPC definition.)
4. For a critique of the MPC's rules of provocation in terms of gender discrimination, see Victoria Nourse, "Passion's Progress."
5. Words are usually not enough to constitute provocation. Words can be sufficient if they accompany a threat of intent and ability to cause bodily harm.[15] Some jurisdictions allow "informative words" (e.g, "your husband is having an affair with ...") to constitute provocation.

3.1.2.1 Verbal Provocation: *Girouard v. State*

1. Are words enough to satisfy the provocation requirement for reducing murder to manslaughter?
2. The defendant stabbed and killed his wife after she taunted him relentlessly. The trial court, in a bench trial, convicted him of second degree murder. He argued on appeal that the rule of provocation should be expanded to include verbal provocation. The appellate court relied on the rule that for provocation to mitigate a charge of murder, it must be "calculated to inflame the passion of a reasonable man and tend to cause him to act for the moment from passion to reason." The standard is objective. The court found that words can constitute adequate provocation if they accompany intent and ability to cause bodily harm. That was not the case in this scenario, however. The court upheld the second degree murder conviction.

3.1.2.2 *People v. Casassa*

1. The defendant stabbed and killed his neighbor out of jealousy. The trial court found him guilty of second degree murder. The defendant argued he was acting under "extreme emotional disturbance," which would reduce the charge to manslaughter. The appellate court reasoned that the emotional disturbance must meet an objectively reasonable standard. In this case, the disturbance was a result of the defendant's unique mental state—i.e., a reasonable person would not have been so emotionally disturbed under the circumstances.

[14] MPC 210.3(1)(b) at Casebook p. 1000.
[15] Casebook pp. 267–68.

3.2 Unintentional Killing

3.2.0.3 *People v. Knoller*

3.2.0.4 *State v. Hernandez*

3.2.0.5 *State v. Williams*

3.3 Felony Murder

3.3.0.6 *People v. Fuller*

3.3.0.7 *People v. Howard*

3.3.0.8 *People v. Smith*

3.3.0.9 *State v. Sophophone*

3.3.0.10 Misdemeanor Manslaughter