1) Theories of Punishment
   1. Deterrence
   2. Incapacitation
   3. Rehabilitation
   4. Retribution

2) Elements of Crime
   1. Actus Reus (S32, S33)
      - Act include omission
      - Voluntary Act
      - Omission (4)
      - Act, omission must result in harm (S44 define injury)
      - Result crime & Conduct crime
   2. Mens Rea (Guilty Mind)
      - Intention
        - S39 [Voluntarily]
        - S299 & S300(a) [With intention]
      - Knowledge
        - S202, S299, S300(d)
      - Reason To Believe
        - S26
      - Rashness
        - S304A, S279, S289
      - Negligently
        - S304A, S279
      - Fraudulently
        - S25
      - Dishonestly
        - S24, S23, S209, S415
      - Maliciously
        - S219, S210
   3. Concurrence
   4. Causation

3) Defenses
   1. Infancy [S82-S83]
   2. Unsoundness of Mind [S84]
   3. Intoxication [S85-S86]
   4. Consent [S87-S92]
   5. Duress [S94]
   6. Mistake of fact ≠ Mistake of Law [S76-S79]
   7. Private Defence [S96-S106]
   8. Accident [S80]
   9. Necessity [S81]

4) Participation
5) Attempt
6) Abetment
• **Henderickson**
  
  **F:** a husband had a violent row with his wife who ran outside. He shut the door but didn't prevent her from re-entering the house. She was found dead due to the cold
  
  **H:** there was a break in the chain of causation as the victim had a choice of options n would be regarded as having freely chose the cause of action which resulted to death

• **Egg shell skull:** if the victim suffers from an infirmity n dies from injuries which would not kill an ordinary person, the accused is considered to culpable homicide, according to Explanation 1 to s299

• But there is another view which is that since an ordinary person would not have died, the correct conviction in such case would be for voluntary causing hurt or grievous hurt n not culpable homicide, for example in the decided case of **Bharat Singh v Emperor**

• There is some victims may have certain beliefs that may lead him to refuse medical treatment

• **R v Blaue**
  
  **F:** the deceased was died because of refused to a blood transfusion. The advice of amputation of finger was rejected n she died a fortnight. The issue was whether the wound inflicted by the accused was the cause of death
  
  **H:** those who use violence on other people must take their victims as they find them. The question is what caused the girl’s death. The fact that the victim refused to stop this end coming about did not break the causal connection between the act n death

(iii) **Intervention of third party**

• This is where the harm to the victim results from an act of a 3rd party, which may be regarded as the sole cause of the victim’s death

• **R v Pagett**
  
  **F:** police was attempting to arrest A for certain serious offence. He using a girl as a shield n fired on police. The girl died from 3 bullet wounds from police guns
  
  **H:** A was convicted guilty

**Strict liability**

• It is one where the element of mens rea is dispensed with, thus it is an exception to the rule that proof of blame is a prerequisite to the imposition of criminal liability

• Thus, proof of actus reus alone suffices for a conviction, however morally free from blame the D may be

• In some cases, strict liability would promote increased care n efficiency in setting up a trade or business.

• The court need to decide whether strict liability is imposed when the statute does not require the element of mens rea

• The court would look on the statute itself n the its purpose to decide what is the Parliament’s will

**Position in Malaysia**

• If the statute is vague in its meaning, the court will take the alternative which is more reasonable

• In the case of **Mohamed Ibrahim**, the accused is charged in s292 which possessed the pornographic materials. The accused claimed that he did not understand the English, thus didn’t have the knowledge about the content of the books. The court looked on the statute which excludes the necessity of mens rea, n held that the purpose of statute was to prevent the dissemination of the pornographic materials, thus strict interpretation was needed. The accused was convicted
F: the accused killed his brother as at that time, he was suffering from delirium tremens due to acute alcoholic intoxication. He was incapable of knowing the nature of his act or what he was doing as a result.

H: not guilty. The court rather used the language of s84 of ‘unsoundness of mind’ rather than s85(2)(b), in order that he be kept in safe custody.

Voluntary intoxication and crimes of specific mens rea

- **S86(2)** deals with the accused during his state of intoxication, he had formed an intention, specific or otherwise of committing an offence.
- **S86(2)** covers situations not envisaged under s85: the state of intoxication not caused by the malicious or negligent act of a third party.
- **S86(2)** takes into account the intoxication in determining whether the accused had formed an intent, specific or otherwise, of committing an offence.
- It is wide enough to cover situations where there is involuntary or voluntary intoxication.
- It may cover situations not encompassed by s85(2), acts that r not caused by malice or negligence of a third party. For an example, the accused was given intoxicants without his knowledge, or became intoxicated by a wrongly prescribed drug.
- Under s86(2), the prosecution had to establish that the accused had the intent to commit an offence despite his intoxication.
- A person who of his own free will, becomes so drunk that he is incapable of knowing what he is doing, cannot plead the defence of intoxication.
- However, the state of drunkenness may be relevant to determine whether he had formed an intention, in the absence of which he would not be guilty of an offence.
- Drunkenness which does not prevent an accused from forming the necessary intent, but merely inflames his passion or warps his moral judgment, is no defence.
- Drink only affects the accused's mind so that he more readily give way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his act. The court must consider the intoxication as one of the circumstances in which to reach a decision as to whether he had in fact formed the intend.
- There have been cases where the courts have considered whether the accused was so intoxicated as to be incapable of forming an intention even though they have not elaborated on the issue.

- **Ismail bin UK Abdul Rahman v PP**
  - H: the court considered the accused was drunk at the time of the attack accordingly, was incapable of forming the intent to kill. Thus, the appeal was allowed.

- **PP v Kenneth Fook Mun Lee**
  - F: the accused was in a state of self-induced intoxication. He was charged with murdering of a woman.
  - H: the court must determine whether the accused had the requisite specific intent in the light of his intoxication in cases where intoxication is in issue.

Voluntary intoxication not giving rise to a defence

- **S86(2)** will not provide a defence where: (a) the accused has formed the offence; (b) so that he will more readily give way to some violent passion.
- This is because he has formed the intention before the drink. Thus, he may not be able to avail the defence of intoxication under s86(2).
• If the order is unlawful, it will depend on two situations where: (i) he believe by mistake the order was lawful, then he is entitled to the protection; (ii) he might have been aware of the illegality, but he obeyed it out of fear, then the only application is the defence of duress under s94

Mistake of fact, justified by law (s79)
• S79 deals with the situation where a person thinks that he is justified by the law to do the act, and it must be legal
• An mistake of fact consists of unconsciousness, ignorance or forgetfulness of a fact past or present material to the transaction
• For mistake of fact, there is 3 things need to be proven:
  ✓ If the mistaken thing is to be true, then the act of the accused is reasonable
  ✓ The misunderstood must be reasonable
  ✓ The misunderstood must be relevant to the facts, but not the law

• **Waryam Singh**
  F: the accused killed a man with several blows from a stick because he believed in good faith at the time of the attack that the object of his assault was not a living being, but a ghost
  H: the court acting on s79 made it clear that means to do wrong did not exist

• **Bonda Kui**
  F: a woman saw a form apparently human, dancing with a broomstick in the middle of night. She was a superstitious woman, believing that it was an evil spirit, killed a human being
  H: the woman was protected by s79, as she thought that she was, by a mistake of fact, justified in killing the deceased as she did not consider it to be a human being

• **Chirangi v State of Nagpur**
  F: A killed his son by mistake thinking he was a tiger. He was suffering from disease, which affecting his vision
  H: his existing physical ailments could have produced a state of mind in which he in good faith thought that the object of his attack was a tiger n was not his son. It was no reason why he should have attacked his son. Because of mistake of fact, he was justified to destroy the deceased whom he did not regard to be a human being

Good faith
• In s52, it said that nothing is said to be done or believed n good faith which is done or believed without due care n attention
• A person must show that he acted advisedly n that the had reasonable grounds for believing that he ought to do what he did

**Private Defence**
• The right of private defence is a justificationary defence
• **S96**: nothing is an offence which is done in the exercise of the right of private defence
• **S97**: every person has the right to defend: (a) his own body, and the body of any other person against any offence affecting the human body; (b) the property, whether moveable or immovable
• **S98**: provides private defence if there is reason as mentioned
**Necessity- S81**

- **S81**: nothing is an offence merely by reason of its being done (a) with the knowledge it is likely to cause harm; (b) if it is done without any criminal intention to cause harm; (c) in good faith for the purpose of preventing or avoiding other harm to person or property
- It must also consider: (a) there was situation of threatened harm to person or property; (b) that it was such a nature; (c) it was so imminent as to justify the accused’s action
- The basis of **S81** is that it is permissible to cause harm in order to avoid other harm to person or property, n the harm avoided must be so nature n imminent
- It is to prevent greater evil, n saving of property can never be a justification for the taking of human lives
- **PP v Ali b Umar**
  - **F**: R had been charged for carrying tin-ore in a local craft without the permission of customs. R claimed that they had a broken rudder forcing them in distress to enter Malaysian waters
  - **H**: it was justified for R to enter the Malaysian waters as they were traveling in distress due to the fact that the rudder of the boat was broken in international waters. It would be necessary for R to seek shelter to preserve the lives
- **R v Dudley and Stephens**
  - **F**: 2 accused, with a third man n a boy were cast away on the high seas in an open boat. They had been 8 days without water n fearing that they would soon die, D killed the boy who was likely to die first. The men ate his flesh n drunk his blood for a few days
  - **H**: they were later commuted to 6 months imprisonment from death sentence
- **United States v Holmes**
  - **F**: the accused fearing that the boat would sink, had threw 16 passengers overboard. There were no other principles of selection except not to throw over any women
  - **H**: self-preservation is not a defence of necessity as no man has a right to take another’s life to preserve his own. Some more, there is no necessity that can justify homicide

**Chapter 8 Attempt**

**Provisions**

- A person who tries to cause a specific forbidden harm will also be punished. The person who tries to commit a crime is also blameworthy as the person who succeeds from a retributive standpoint
- There are 4 stages in every crime, explained in **Thiangiah v PP**:
  1. an intention to commit the offence
  2. the preparation for its commission
  3. attempt to commit it
  4. actual commission of the offence
- The mere forming of an intention n preparation r not criminal acts n not punishable
- There must be some further overt act which is directed towards the actual commission of the crime which is immediately n not remotely connected with the crime in order to constitute an attempt
- A crime is not complete if something happen when the attempt to commit it is being made, n breaking the chain of events. If not for the intervening interruption, consummation of the crime will be completed
- 3 different manner to deal with liability for attempts to commit offences: