

Suggested Reading:

Intro stuff: 708-11

Intro to Attempt: 711-712

People v. Gentry: 717-721 A finding of specific intent to kill is a necessary element of the crime of attempted murder.

United States v. Mandujano: 724-729 There must be some appreciable fragment of the crime committed for an act to qualify as an "attempt." 4. Commonwealth

Commonwealth v. Peaslee: 729-732 A defendant cannot be convicted of criminal attempt where he has taken preparatory steps to fulfilling a crime, but changes his mind before committing the last act necessary to effect the crime.

Solicitation Intro: 772-773

State v. Cotton: 733-777 Because NM rejected the part of the MPC that accepts uncommunicated solicitations as completed solicitations; the offense of solicitation required some form of actual communication from the defendant to the person intended to be solicited.

Conspiracy Intro: 777-780

Pinkerton v. United States 780-785 (I suggest reading the Wikipedia article first) As long as a conspiracy continues, the overt act of one partner may be the act of all without any new agreement specifically directed to that act.

People v. Foster: 804-809 A person commits conspiracy when, with intent that an offense be committed, he agrees with another to the commission of that offense.

Iannelli v. United States: 818-825 According to Wharton's Rule, one cannot be convicted for conspiracy if there has been a conviction for the substantive crime which is its target if that crime, by definition, requires the participation of two or more persons and the participation of all those who were actually participants, therein. This rule functions as an aid to determining legislative intent, and in the face of evidence

Attempt:

Mens Rea: Specific Intent (CL)/ Purpose (MPC) to commit the underlying act

Actus Reus: How far must the actor go to qualify as an attempt:

Common Law: 4 Tests

- 1) Physical proximity test: Actor must have apparent power to complete the crime immediately.
- 2) Dangerous proximity test: Consider how close actor physically is to committing the crime, how close actor is temporally, and how serious the crime is. The more serious the crime, the less physically and temporally close actor has to be.

3) Equivocality: Looking at actor's conduct alone, at what point can you unequivocally tell what he is about to do?

4) Probable desistance test: When would a normal citizen think better of his actions and desist? When has an ordinary person gone to the point of no return?

MPC 5.01 Test:

Short: (1) Criminal Purpose + (2) A Substantial step towards accomplishing criminal result + (3) That step is strongly corroborative of criminal purpose

Long: An actor is guilty of attempt if she purposefully takes a "substantial step" in direction of committing the crime. Conduct shall not be held to constitute a substantial step unless it is strongly corroborative of the actor's criminal purpose (e.g. lying in wait, following the intended victim, enticing the victim to "get in the van", reconnoitering the location, unlawful entry, possessing of materials for the crime (that can serve no lawful purpose of the actor under the circumstances, soliciting)

Defenses to attempt:

Legal Impossibility (common law & vast minority only): Too complex and most states have abolished it (and the ones that haven't do not have a uniform rule), so know it exists, but don't think about it; just apply what we know about mistakes of law and fact and you'll be fine.

Renunciation of Criminal Purpose – MPC Only (Defense to all inchoate crimes): Even though Δ has gone past the point of being guilty of attempt, an abandonment can exculpate; BUT it must be a voluntary reconsideration (not due to police intervention, the crime becoming too difficult) and permanent (cannot be a mere postponement).

Renunciation vs. Withdrawal

Withdrawal: Relieves responsibility for SUBSEQUENT CRIMES if Δ; (1) renounces voluntarily and communicate such to co-conspirators, (2) uses his best efforts to undo whatever assistance he rendered toward the target crime or reports it.

Renunciation: Relieves liability for PREVIOUS crimes (attempt, solicitation, and conspiracy). With attempt, Δ just needs to voluntarily reconsider, but with solicitation and conspiracy, because other people are involved, Δ must actually prevent the target crime.

Solicitation

CL v. MPC 5.02: 2 Differences: (1) Punishment. The CL punished solicitation at a level lower than that for the crime itself while the MPC punishes both equally. (2) The common law does not require that the communication be received; (3) No defense of renunciation under CL.

Definition: If an actor requests, encourages, or asks another to commit a crime with the intention of getting that person to commit the crime, he is guilty of solicitation at the moment he makes the request without regard to whether the party receiving the communication agrees ([MPC only] or even receives) the communication.

Renunciation of Criminal Purpose – MPC only: Accomplice Liability: Attempting to prevent the crime is sufficient renunciation.

Conspiracy

Common law:

1. Definition: An agreement between two or more persons (who have the requisite mens rea) to commit a specific unlawful act.
2. Multiple conspiracies: If a person conspires to commit a number of crimes, he is guilty of multiple conspiracies
3. Unilateral conspiracy problem: Under the old common law, one person could not conspire with an undercover cop because there were not two people with the requisite mens rea, however two people could conspire with an undercover cop.
4. Wharton's Rule: There is no conspiracy if there are no more people than necessary to commit the crime. E.g.
 - a. It only take one person to commit murder (victims don't count), so if two people agree to commit murder, then there is a conspiracy.
 - b. But, if two people agree to have a drug transaction, that requires both a buyer and a seller, so wharton's rule applies.
 - c. However, if A & B conspire for A to sell drugs to C, but C never finds out, there is still a conspiracy, because even though there were only two people, they were not both necessary to the underlying crime
5. Pinkerton Doctrine: Once a defendant's participation in a conspiracy is established beyond a reasonable doubt, he may be held criminally liable for all of the criminal acts of the other coconspirators that are within the scope of and in furtherance of the conspiracy (even if he is in jail at the time).
6. Hearsay exception: prosecutors can use hearsay in conspiracy trials
7. Victims cannot be conspirator's nor can a minor in a statutory rape case be guilty of conspiracy to commit statutory rape
8. Cannot circumvent legislative intent: Conspiracy cannot be used to punish a party that the law itself intended not to punish – so if solicitation of prostitution is a crime, but prostitution is not, the prostitute cannot be convicted of conspiracy to solicit prostitution.
9. N=no defense of renunciation

MPC 5.03

1. Definition: A person is guilty of conspiracy if, with the purpose of promoting or facilitating a crime he: (a) agrees w/ the commission of the crime; or solicits it; or agrees to aid (also an accomplice at that point). (Δ does not need to know the identities of his coconspirators.)
 - a. Note: Mentally agreeing is both the Actus Reus and Mens Rea
2. One conspiracy: If a person conspires to commit a number of crimes, he is guilty of only one conspiracy.
3. Unilateral Conspiracy: you CAN conspire with an undercover cop.
4. Wharton's Rule: Rejected entirely
5. Pinkerton Doctrine: Rejected entirely; You are guilty for your own personal conspiracy - People low on the totem pole are only guilty for the part of the conspiracy they have participated in, they cannot be charged with the entire organization's activity.

6. Hearsay exception: Abolished
7. Victims cannot be conspirator's nor can a minor in a statutory rape case be guilty of conspiracy to commit statutory rape (same as CL)
8. Cannot circumvent legislative intent: Conspiracy cannot be used to punish a party that the law itself intended not to punish – so if solicitation of prostitution is a crime, but prostitution is not, the prostitute cannot be convicted of conspiracy to solicit prostitution (same as CL).
9. Renunciation of Criminal Purpose – MPC only: this is a defense to conspiracy liability, but Δ must actually prevent the crime.