**Inchoate Crimes (Incomplete)**

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HIGH-STAKES TAX DEFENSE & COMPLEX CRIMINAL DEFENSE

* 1. Attempt
		1. Attempt consists of two elements:
			1. A specific intent to bring about a criminal result, and
				1. There is no such thing as an attempt to commit criminal-negligence involuntary manslaughter: D is driving his car recklessly at 90 MPH. D’s car goes out of control and strikes pedestrian who is lawfully crossing the street at a crosswalk. Pedestrian is killed. D is charged w/ attempted involuntary manslaughter. Since attempt requires an “intent-type” mental state, recklessness or negligence will n/ suffice for attempt liability
			2. A significant act in furtherance of that intent – which goes beyond mere preparation – or a substantial step toward the commission of the offense. Mere preparation for crimes cannot ground liability for attempt
		2. Merger: Once the target crime is committed, the attempt merges into the target crime. But note: Many recent cases have held that D may be convicted of the attempt even if the completed crime is proved
		3. Specific intent crime: Attempt is a specific intent crime. D must have the specific intent to commit the designated crime. The specific intent for attempt can apply to both specific and general intent crimes (e.g. although rape is a general intent crime, attempt to commit rape is a specific intent crime)
		4. Attempt defenses
			1. Abandonment: At CL, abandonment is no defense to attempt once the attempt is complete. Under the MPC, a voluntary and complete abandonment can operate as an affirmative defense of renunciation
			2. Legal impossibility: A defense to attempt at CL. Involves the situation where D did all those things he intended to do, but these acts did n/ constitute a crime
				1. Example: Wright decided to set fire to his own home intending to collect the insurance proceeds. He put together an explosive device and lit the fuse that was supposed to detonate after a ten minute period. Unknown to W, the fuse became disjointed and did n/ trigger the explosive device. In fact, none of the structure was burned or damaged. When W carried out his plan, he believed that setting fire to one’s home constituted arson. W is charged w/ attempted arson. Even if W had succeeded in burning down his own home, he would n/ be guilty of arson which requires the burning of the dwelling of another
				2. Legal impossibility precludes a D from being guilty of the attempted sale of heroin which turned out to be a non-narcotic substance. Therefore, Blake would only be guilty of false pretenses if he intended to defraud Yosi by selling him oregano instead of marijuana
			3. Factual impossibility: No defense to attempt. Involves the situation where D intends a criminal act but cannot accomplish it b/c of facts unknown to him at the time of the act
				1. Examples:

Shuf was dancing w/ his girlfriend S at a disco when S collapsed in his arms. Shuf then carried S back to his car and engaged in intercourse w/ her. Although Shuf believed that S was intoxicated, she had, in fact, actually died of a heart attack while dancing. Shuf is charged w/ attempted rape. The mere fact that D mistakenly believed that the girl w/ whom he had intercourse was alive would constitute factual impossibility. And factual impossibility is n/ a defense to attempted rape

Where D shot w/ intent to kill a certain person but failed b/c the intended victim was n/ where D believed he was or b/c the victim was too far away to be killed by the weapon employed

Where D attempted to kill w/ an unloaded or defective gun

Where D attempted rape but was impotent

* + - 1. Inherent impossibility
				1. Where D uses means that a RP would view as being extremely inadequate to fulfill the requisite criminal act, inherent impossibility may be used as a valid defense to attempt
	1. Solicitation
		1. Specific intent crime: The person soliciting must specifically intend the other party to commit the crime and n/ merely show approval
		2. Elements
			1. D must entice, advise, incite, order or otherwise encourage another person to commit a crime,
			2. W/ the intent that the crime be committed
		3. Timing of crime: The offense is complete at the time the solicitation is made
		4. Underlying crime: The crime solicited need n/ be committed
		5. Agreement unnecessary: It is unnecessary that the person solicited enter into an agreement to commit the requested crime
		6. Merger: Solicitation – unlike conspiracy – merges w/ the target felony upon completion of the latter (e.g. solicitation merges into conspiracy)
		7. Example: If A solicits someone to commit a crime and the actual crime occurs, A is charged with the conspiracy to commit the crime and not with the solicitation. Solicitation merges with the conspiracy and the only crime that A can be charged with is conspiracy to commit the predicate offense
		8. Defenses
			1. At CL there were no defenses to solicitation
				1. Withdrawal: B/c the crime of solicitation is complete as soon as the solicitation is made, withdrawal can be no defense to the crime of solicitation
				2. It is not a defense to a solicitation charge that, unknown to the solicitor, the person solicited could not commit the crime. Similarly, it is no defense that the person solicited is an undercover agent and under no circumstances would have committed the crime solicited

Example: Wife solicits a hitman to kill her husband but the hitman is really an FBI agent investigating organized crime. A day later Wife learns that the hitman was really an FBI agent. Fearful that she might be prosecuted for planning her husband’s murder, Wife contacts the police and renunciates her participation in the criminal endeavor

* + - 1. Under the MPC, renunciation is an affirmative defense
	1. Conspiracy
		1. Conspiracy is a specific intent crime
		2. Elements
			1. An agreement between two or more persons to commit a crime (which constitutes the act), and
				1. Essence of the conspiracy is the agreement: Feigned agreement is insufficient. Actual agreement is required:

Example: A wants to burglarize a store and approaches B to solicit his assistance in the commission of the crime. Upon hearing A’s plan, B manifests his complete concurrence in the scheme and expresses his willingness to participate. However, B secretly intends n/ to go through w/ the plan and has merely feigned agreement b/c he wishes to trap A.

Under these circumstances, there is no conspiracy. There is no agreement since B obviously does n/ have the required intent-to-burglarize mental state. Although A has the requisite mental state, he may n/ be convicted of conspiracy b/c there has been no agreement and thus no criminal act

* + - * 1. Meeting of the minds: To form a conspiracy, the parties must act together and agree to accomplish the same crime. An express agreement is not required. In other words, written or spoken words are not required. Various people can be part of a conspiracy even if they don’t know each other
				2. Co-conspirators must agree to the same target offense
				3. The agreement itself constitutes a crime: Unlike attempt, a substantial step in furtherance of the crime is not required
				4. Plurality requirement: K, R and E went to W’s house. K intended to take a jazz album that he believed was his and that W was keeping unlawfully. R believed that the album was W’s but intended to help K take it. When E learned that K and R were going to break into W’s home, he decided to accompany them. He planned to find some items inside which might be worth taking. Upon entering, E went to W’s bedroom and found a Rolex watch which he took. K and R went into the living room and seized the album. The three men then left W’s home. The plurality requirement is n/ satisfied b/c K is an innocent party who believed that he was the true owner of the album. In addition, E never entered into an agreement w/ R or K but rather intended individually to commit a theft inside W’s home
			1. An intent to achieve a criminal or unlawful objective
				1. Be sure that the individuals are pursuing an unlawful objective. Slick and Joe agree to meet at Slick’s house to take the silverware 🡪 no conspiracy b/c one can’t commit a burglary in his own house
			2. Overt act
				1. The minority rule and the CL rule say conspiracy is committed upon agreement. Majority rule requires an agreement and an overt act. The smallest overt act is sufficient. Showing up at the location to rob, calling up other conspirator.
		1. Timing of crime: The conspiracy is complete as soon as the parties have agreed to commit the crime. Therefore, no subsequent action can exonerate the conspirator of the crime
			1. Example: D approached I and told him about a scheme to rob a bank. D asked I to assist him in the robbery by driving the getaway car. Although initially hesitant, I changed his mind and agreed to participate in the bank robbery.
		2. Merger: Unlike attempt, conspiracy is a separate and distinct offense that does n/ merge with the substantive offense upon completion of the target crime. Effect: If the conspiracy is successful, a conspirator may be subject to conviction for both the conspiracy and the completed crime
		3. Scope of the conspiracy: Each co-conspirator is liable for the crimes of all the other co-conspirators where the crimes were (1) a foreseeable outgrowth of the conspiracy and (2) were committed in furtherance of the conspiratorial goal
		4. Termination: Once the target crime has been committed, the conspiracy terminates. The timing of termination is very important b/c statements of co-conspirators made after a conspiracy terminates are inadmissible
		5. Defenses (Withdrawal)
			1. CL Rule
				1. Withdrawal is not a valid defense to conspiracy because conspiracy is formed at the moment of agreement: On the day appointed for the commission of the crime, D instructed I to drive to the bank where the holdup was to take place. On the way to the bank, I decided to stop at 7-11 to buy cigarettes. While D waited in the car, I went inside the store and started having second thoughts about his involvement in the robbery. He then decided to withdraw from the crime and hurried to a pay telephone in the back of the store. I called the dispatcher to tell him about the robbery but the dispatcher did n/ take him seriously. I then decided to call the police but he didn’t have any additional change to make another call
				2. Withdrawal is a defense to subsequent crimes committed by the other conspirators if notice is given to all of the other conspirators: While I was inside, D went to the bank and carried out the robbery. After collecting his booty, D fled the crime scene in I’s car. W/ the police in hot pursuit, D ran through a red light, crashed into a truck, and killed both the truck driver and himself. Since I did n/ give notice to D, his withdrawal was ineffective. As a result, he will be guilty for conspiracy, robbery, and felony-murder
			2. MPC Rule: Withdrawal is an affirmative defense if D thwarted the success of the conspiracy
		6. Impossibility: No defense to conspiracy