

Attempt at Common Law

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Attempt -

- Actus Reus - w/intent to commit an offense, performs "**some act done towards carrying out the intent**"
 - *Objectivism* - (harm-based)
 - Significance **independent** of mens rea
 - **Act** itself must be dangerous - must "manifest criminality" - independent of actor's intent
 - *Tests*
 - Complete attempt - actor does everything possible for crime but unsuccessful in producing intended result
 - Last Act
 - Incomplete attempt - actor does some acts toward completing the crime but either desists or is prevented from continuing to completion due to some extraneous factor
 - Physical proximity
 - ◆ Close proximity
 - Dangerous physical proximity
 - ◆ 3 factors to consider:
 - ◇ Nearness of harm
 - ◇ Greatness of danger
 - ◇ Degree of apprehension
 - Indispensable element
 - ◆ Proximity lacking if D lacks an indispensable element to commit crime
 - ◆ I.e., intent to shoot but don't have gun, need the gun
 - Probable desistance
 - Unequivocality or res ipsa loquitur
 - ◆ Conduct manifests an intent to commit crime
 - Focus on dangerousness of the **act**
 - Acts important **independent** of intent
 - Must be conduct beyond the mere act of preparation

- Mens Rea - Two "intents"
 - *One* - "Intent" to engage in the conduct constituting the attempt
 - I.e., conduct by which actor crosses the line from "preparation" into "attempt"
 - *Two* - Intent to commit the crime that is the object of the attempt
 - *Elements*
 - Conduct
 - Intent = Purpose
 - Result
 - Intent = Purpose
 - Knowledge in some jurisdictions
 - Attendant Circumstance
 - As required by substantive offense

Solicitation - intentionally inviting, requesting, commanding, or encouraging another person to engage in conduct constituting a felony

- Level of crime
 - Misdemeanor
 - Today - felony w/less penalty than target crime
 - Merges w/target crime (**accomplice**)
- Actus Reus
 - Complete upon communication or other conduct of request
- Mens Rea
 - Specific intent that other person commits target crime

Conspiracy - two or more people agree (expressed or implied) to commit an unlawful act or acts or a lawful act by unlawful means

- Level of crime
 - Separate felony punished in proportion to target crime(s)
 - Does NOT merge w/completed target crime
 - Separate theory to establish complicity among parties

- "Darling of Prosecutor's nursery"
 - Separate crime PLUS complicity in all crimes committed by any co-conspirator w/in scope of conspiracy or reasonably foreseeable consequence of conspiracy
 - Allows "hearsay" evidence
 - Allows joint trial
 - Offers jurisdictional flexibility
- Actus Reus
 - Agreement of parties to commit a crime
 - Meeting of the minds
 - Need not be in writing
 - Most jurisdictions do NOT require overt act in furtherance of conspiracy
- Mens Rea
 - Dual (Specific) Intent crime
 - Intent to agree
 - Intent that target of agreement be achieved
- General Principles
 - No need for Conspirator to know identity of ever other co-conspirator, however:
 - Must prove **general awareness** of both scope and objective of conspiracy
 - Must be a "community of interest" among the parties, **OR**
 - Must be a reason to know of each other's existence

Accomplice Liability - derivative liability

- Parties
 - Principal or primary party
 - Accomplice or secondary party
- Actus Reus
 - "mere presence" **insufficient** to establish actus reus of accomplice liability
 - Solicitation (request or command)
 - Encouragement
 - Active assistance (aid)
 - Omission

- Mens Rea - two "intents"
 - *One* - "intent" **to engage in conduct** - generally described as "aiding" - required for accomplice liability
 - *Two* - intent that primary party commits target offense
 - MAJORITY - accomplice must have *mens rea* required for crime being committed
- Agency theory
 - All accomplices responsible for actions of other agents to the crime.
- Proximate cause
 - Is the death foreseeable?