

**criminal attempts:** trying but failing to commit crimes

**criminal conspiracy:** making an agreement to commit a crime

**criminal solicitation:** trying to get someone else to commit a crime

**inchoate offenses:** from the Latin "to begin"; crimes that satisfy the mens rea of purpose, or specific intent, & the actus reus of taking some steps toward accomplishing the criminal purpose, but not enough steps to complete the intended crime

The law of inchoate crimes resolved the dilemma by three means:

- (1) requiring a specific intent, or purpose, to commit the crime or cause a harm
- (2) requiring some action to carry out the purpose
- (3) punishing inchoate crimes less severely than completed crimes

## Attempt

The crime of attempt

consists of two elements:

- (1) intent/purpose to commit a specific crime
- (2) act(s) to carry out the intent

There are two types of

intent statutes: general

& specific.

**general attempt statute:** single statute that applies to the attempt to commit any crime in the states criminal code

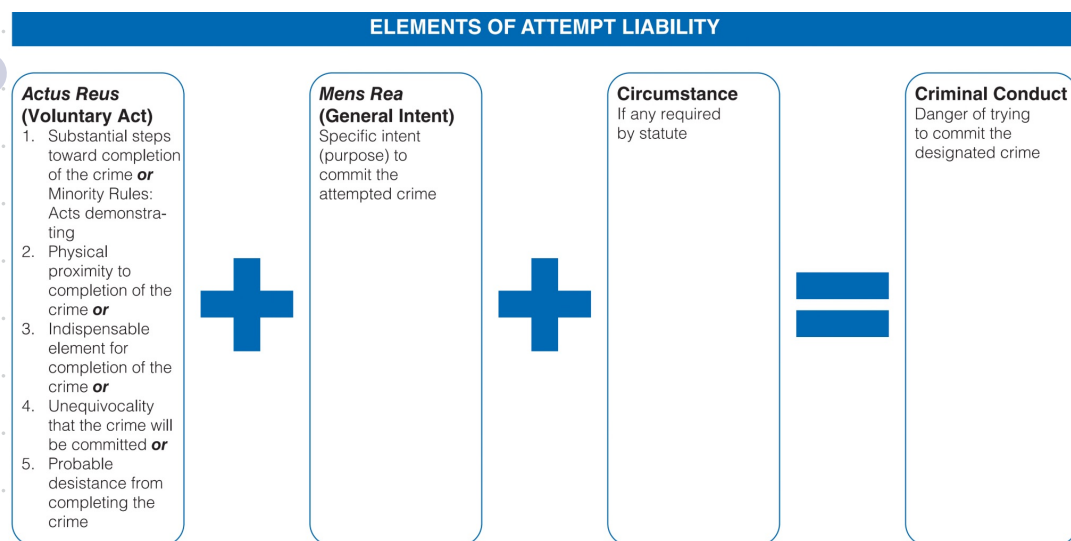
**specific attempt statutes:** separate statutes that define attempts in terms of specific crimes in the criminal such as attempted murder, attempted robbery, & attempted rape — crimes that involved a specific intent

### ATTEMPT MENS REA

**attempt mens rea:** specific intent to commit a crime

### ATTEMPT ACTUS REUS

**attempt actus reus:** taking steps toward completing a crime



**last act rule:** attempt actus reus requires all but the last act needed to complete crime

- most real cases fall somewhere between mere intent & "all but the last act"

**proximity tests:** help courts decide when defendants' acts have taken them further than just getting ready to attempt & brought them close enough to completing crimes to qualify as attempt actus reus

**dangerous proximity tests:** focus on dangerous conduct; they look at what remains for actors to do before they hurt society by completing the crime

**dangerous person tests:** looks at what actors have already done to demonstrate that they are a danger to society, not just in this crime but, more important, in crimes they might commit in the future if they're not dealt with now

**Look at six tests that try to answer the question, "how close is close enough?"**

- (1) all but the last act
- (2) dangerous proximity to success
- (3) indispensable element test
- (4) unequivocally test
- (5) probable resistance test
- (6) substantial steps test

### **ALL BUT THE LAST ACT TEST**

- problem with this strict test is that it excludes dangerous conduct that fall short of the last approximate act that should be included

### **"DANGEROUS PROXIMITY TO SUCCESS" TEST**

- asks whether defendants have come "dangerously close" to completing crime
- test focuses on what actors still have to do to carry out their purpose to commit crimes, not on what they've already done to commit them

### **"INDISPENSABLE ELEMENT" TEST**

- asks whether defendants have reached a point where they've gotten control of everything they need to complete the crime

### **"UNEQUIVOCALITY" TEST (the res ipsa loquitur test)**

- examines whether an ordinary person who saw the defendants acts without knowing their intent would believe they determined to commit intended crime

## "PROBABLE DESISTANCE" TEST

- determines if defendants have gone far enough toward completing the crime that it's unlikely they'll turn back

## THE MODEL PENAL CODE (MPC) "SUBSTANTIAL STEPS" TEST

- test that requires that attempters taking enough steps toward completing the crime to prove that they're determined to commit it

## Defenses to Attempt Liability

Failure can be due to several causes:

- police officers might not show up
- might resist & escape
- passerby may appear

## LEGAL IMPOSSIBILITY

**legal impossibility:** occurs when actors intend to commit crimes & do everything they can to carry out their criminal intent but criminal law doesn't ban what they did

- legally impossible to commit a crime that doesn't exist

**factual impossibility:** occurs when actors intend to commit a crime & try to but it's physically impossible because some fact/circumstance unknown to them interrupts/prevents the completion of the crime

- legal impossibility requires different law to make conduct criminal; factual impossibility requires different facts to complete the crime
- in most jurisdictions, legal impossibility is defense to criminal attempt; factual impossibility isn't
- factual impossibility would allow chance to determine criminal liability

## VOLUNTARY ABANDONMENT

**extraneous factor:** a "stroke of luck" — namely, circumstance beyond attempter's control that prevents the completion of the crime

voluntary abandonment defense (also called voluntary renunciation defense):

defendants who voluntarily & completely renounce their criminal purpose can avoid criminal liability

Supporters of the voluntary abandonment defense favor it for two reasons:

(1) those who voluntarily renounce their criminal attempts in progress, especially during the first act following preparation, aren't the dangerous people the law of attempt is designed to punish; they probably weren't even bent on committing the crime in the first place

(2) at the end of the progress to completing the crime, it prevents what we most want — harm the completed crime is about to inflict on victims

- counterargument: defense may "embolden" those who are thinking about committing a crime to take the first steps towards committing the crime when they know they can withdraw without negative consequences

## Conspiracy

**conspiracy**: crime of agreeing with 1+ people to commit a crime

There are two public policy justifications for attaching criminal liability to actions further away from completion than attempts:

(1) conspiracy works hand in hand with attempts to nip criminal purpose in the bud

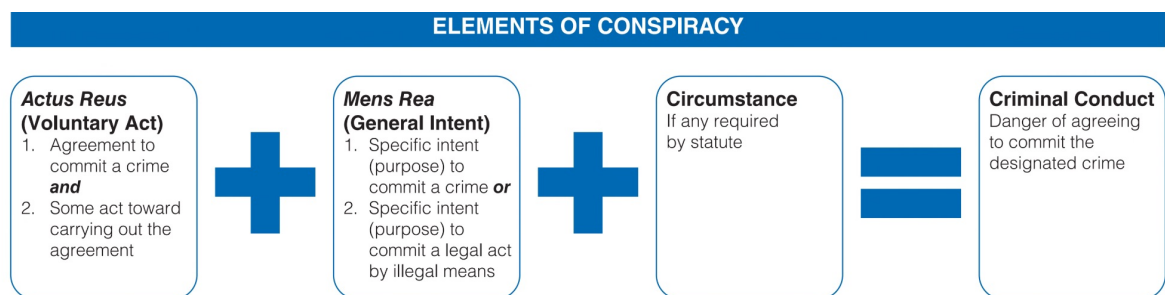
(2) conspiracy strikes at special danger of criminal group activity

## Conspiracy Actus Reus

**conspiracy actus reus**: consists of two parts: an agreement to commit a crime & an overt act in furtherance of the agreement

### THE AGREEMENT

- facts & circumstances that point to an unspoken



understanding between the conspirators are good enough to prove the conspirators agreed to commit a crime

### THE OVERT ACT

- in about half states, agreement alone satisfies actus reus of conspiracy
- overt act requirement**: requirement of an act that further the agreement in conspiracy

## Conspiracy Mens Rea

**conspiracy mens rea**: mental element in conspiracy, frequently identified as specific intent by authorities, but it's not defined clearly in statutes & it's defined inconsistently by courts

- authorities frequently call conspiracy specific-intent crime

**criminal objective**: criminal goal of an agreement to commit a crime

## Parties to Conspiracy

**unilateral approach to conspiracy parties**: the rule that not all conspirators have to agree with-or even know-the other conspirators

## The Criminal Objective of the Conspiracy

**criminal objective of the conspiracy**: the object of conspiracy agreement has to be to commit crimes

The objective could be as narrow as an agreement to commit a felony, or as broad as agreements to

- commit "any crime"
- do "anything unlawful"
- commit any act in interest to the public health, or for the perversion of / obstruction of justice, or due administration of the laws"
- do even "lawful things by unlawful means"

## Large-Scale Conspiracies

Most-Large scale conspiracies fall into two major patterns: "wheel" & "chain" conspiracies.

**wheel conspiracies**: 1+ defendants participate in every transaction (the hub of the wheel) & others participate in only one transaction (the spokes of the wheel)

**chain conspiracies**: participants at one end of the chain may know nothing of those at the other end, but every participant handles the same commodity at different points, such as manufacture, distribution, & sale

- chain conspiracies often involve distribution of some commodity, such as illegal drugs

# The Racketeer Influenced & Corrupt Organizations Act (RICO)

Racketeer Influenced & Corrupt Organizations Act (RICO): imposes enhanced penalties for "all types of organized criminal behavior, that is, enterprise criminality—from simple political to sophisticated white-collar schemes to traditional mafia-type endeavors"

racketeering: original meaning was the extortion of money/advantage by threat/source; now the meaning has expanded to include a pattern of illegal activity, such as extortion & murder, carried out in the furtherance of an enterprise owned/controlled by those engaged in the activity

RICO's broadest & most often prosecuted crime consists of three elements:

- (1) conducting the affairs of "enterprise" (just about any form of human endeavor)
- (2) by means of a "patterns of racketeering activity" (defined as committing 2+ of a huge list of related crimes)
- (3) that do/threaten to continue for a period of time

## Solicitation

solicitation: the crime of trying to get someone else to commit a crime

- crime is complete the instant solicitor communicates solicitation to other person

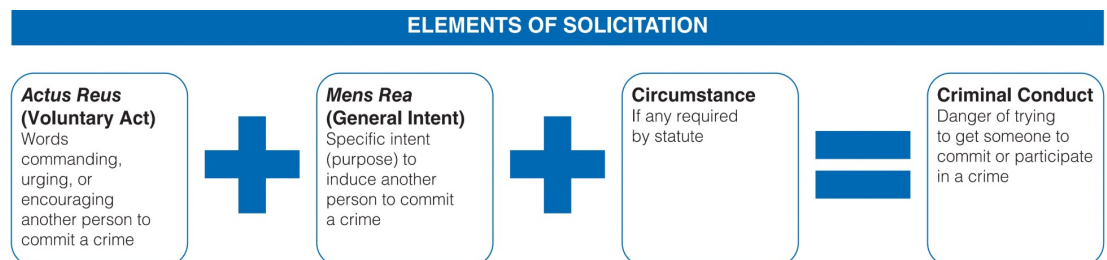
## Solicitation Actus Reus

solicitation actus reus: acts that include some kind of inducement to commit the solicited crime

- typical words in statutes & court opinions in accomplice liability:

"advises," "commands," "counsils," "encourages," "entices," "entreats," "importunes," "incites," "induces," "instigates," "procures," "requests," "solicits," "urges"

## Solicitation Mens Rea



solicitation mens rea: requires words that convey that their purpose is to get someone to commit a specific crime

## Solicitation Criminal Objective

criminal objective of the solicitation: circumstance element that the objective of the solicitation is lawbreaking; seriousness varies by jurisdiction from any violation to violent felony