

Attempt, Conspiracy, and Imputed Liability

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WHAT'S COVERED

In this lesson, you will learn about additional factors that constitute criminal acts. Specifically, this lesson will cover:

1. Attempt
 - a. Impossibility as a Defense
2. Conspiracy
3. Imputed Liability

1. Attempt

It is not necessary to commit the intended crime to be found guilty of a criminal offense. An **attempt** to commit the crime is punishable as well, though usually not as severely.

IN CONTEXT

Brett points a gun at Ashley, intending to shoot her dead. He pulls the trigger, but his aim is off— he misses her heart by four feet. He is thus guilty of an attempt to murder. Suppose, however, that earlier in the day, when he was preparing to shoot Ashley, Brett had been overheard in his apartment muttering to himself of his intention, and a neighbor called the police. When the police arrived, he was just snapping his gun into his shoulder holster.

At that point, courts in most states would not consider him guilty of an attempt because he had not passed beyond the stage of preparation. After having buttoned his jacket, he might have reconsidered and put the gun away.

Determining when the accused has passed beyond mere preparation and taken an actual step toward perpetrating the crime is often difficult and is usually for the jury to decide.



TERM TO KNOW

Attempt

In criminal law, an effort to accomplish a crime that, if not prevented, would have been completed. In order to be convicted of attempt, the defendant must have intended to commit the crime, made an overt act towards its commission, and failed to complete the crime.

1a. Impossibility as a Defense

What if a defendant is accused of attempting a crime that is factually impossible?

↪ **EXAMPLE** Suppose that a husband intended to poison his wife with strychnine in her coffee, but put sugar in the coffee instead? The *mens rea*, or criminal intent, was there, but the act itself was not criminal (murder by poisoning requires the use of poison).

States are divided on this, but most states have ruled out **factual impossibility** as a defense to the crime of attempt.

Legal impossibility is different, and is usually acknowledged as a valid defense. If the defendant completes all of his intended acts, but those acts do not fulfill all the required elements of a crime, there could be a successful “impossibility” defense.

↪ **EXAMPLE** If Barney (who has poor sight) shoots at a tree stump, thinking it is his neighbor, Ralph, intending to kill him, has he committed an attempt? Many courts would hold that he has not.

But the distinction between factual impossibility and legal impossibility is not always clear, and the trend seems to be to punish the intended attempt. Some states, including Colorado and Georgia, do not recognize an impossibility defense of any kind.



TERM TO KNOW

Impossibility

A defense to attempt to commit a crime in some states, consisting of two types: factual impossibility and legal impossibility. Factual impossibility exists where the actions taken could not have resulted in completion of the crime (as in an attempt to poison someone with a non-poisonous substance). Legal impossibility exists when a person believes she is committing a crime, but the act she is performing is not a crime.

2. Conspiracy

Under both federal and state laws, it is a separate offense to work with others toward the commission of a crime. When two or more people combine to carry out an unlawful purpose, they are engaged in a **conspiracy**.

The law of conspiracy is quite broad, especially when it is used by prosecutors in connection with white-collar crimes. Many people can be swept up in the net of conspiracy, because it is unnecessary to show that the actions taken were sufficient to constitute either the crime or an attempt.

Usually, the prosecution needs to show only:

1. An agreement, and
2. a single overt act in furtherance of the conspiracy.

↪ **EXAMPLE** If three people agree to rob a bank, and if one of them goes to a store to purchase a gun to be used in the holdup, the three can be convicted of conspiracy to commit robbery. Even the purchase of an automobile to be used as the getaway car could support a conspiracy conviction.

The act of any one of the conspirators is imputed to the other members of the conspiracy.

↪ **EXAMPLE** It does not matter if only one of the bank robbers fired the gun that killed a guard. All can be convicted of murder. That is so even if one of the conspirators was stationed as a lookout several blocks away and even if he specifically told the others that his agreement to cooperate would end “just as soon as there is shooting.”



TERM TO KNOW

Conspiracy

An agreement between two or more people to commit a crime. The conspiracy itself is a separate crime from the crime planned. The crime does not have to be completed in order for a conspiracy conviction to result; agreement and intent alone are sufficient.

3. Imputed Liability

A person can be guilty of a crime if he acts through another. Again, the usual reason for “imputing” the guilt of the actor to another is that both were engaged in a conspiracy.

But **imputed liability** is not limited to a conspiracy. The agent may be innocent even though he participates.

↪ **EXAMPLE** A corporate officer directs a junior employee to take a certain bag and deliver it to the officer’s home. The employee reasonably believes that the officer is entitled to the bag. Unbeknownst to the employee, the bag contains money that belongs to the company, and the officer wishes to keep it. This is not a conspiracy. The employee is not guilty of larceny, but the officer is, because the agent’s act is imputed to him.

Since intent is a necessary component of a crime, an agent’s intent cannot be imputed to his principal if the principal did not share the intent.

↪ **EXAMPLE** The company president tells her sales manager, “Go make sure our biggest customer renews his contract for next year”— by which she means, “Don’t ignore our biggest customer.” Standing before the customer’s purchasing agent, the sales manager threatens to tell the purchasing agent’s boss that the purchasing agent has been cheating on his expense account, unless he signs a new contract. The sales manager could be convicted of blackmail, but the company president could not.

Can a corporation be guilty of a crime? For many types of crimes, the guilt of individual employees may be imputed to the corporation. Thus, the antitrust statutes explicitly state that the corporation may be convicted and fined for violations by employees. This is so even though the shareholders are the ones who ultimately must pay the price— and who may have had nothing to do with the crime and had no power to stop it.

The law of corporate criminal responsibility has been changing in recent years, and the trend is to hold the corporation liable under criminal law if the act has been directed by a responsible officer or group within the corporation (e.g., the President or Board of Directors). The corporation can be punished with heavy fines, and

individuals found guilty can be imprisoned and fined.



TERM TO KNOW

Imputed Liability

Where an actor uses an innocent person or people to carry out a crime, and an element of the offense was done by an innocent person, that person's innocent act may be imputed (assigned to) to the actor to prove his guilt.



SUMMARY

In this lesson, you learned about circumstances that affect criminal liability. A crime need not be completed for a wrongdoer to be liable; an **attempt** also carries penalties. In most states, factual **impossibility is not a defense** to the crime of attempt.

The crime of **conspiracy** occurs when two or more people plan an unlawful act. The existence of an agreement and an act by one of the parties in furtherance of the conspiracy is sufficient for holding all parties liable. Others, such as corporate officers, may not directly commit criminal acts but may still be held criminally responsible for the acts of others through **imputed liability**. The guilt of individual employees may also be imputed to corporations.

Best of luck in your learning!

Source: This content has been adapted from Lumen Learning's "Criminal Acts" tutorial.



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