

Criminal Law, Fall, 2006 - Handout # 7
Inchoate Crimes

§ 705-500 Criminal attempt.

(1) A person is guilty of an attempt to commit a crime if he:

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or

(b) Intentionally engages in conduct which, under the circumstances as he believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his commission of the crime.

(2) When causing a particular result is an element of the crime, a person is guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

§ 705-510 Criminal solicitation.

(1) A person is guilty of criminal solicitation if, with the intent to promote or facilitate the commission of a crime, he commands, encourages, or requests another person to engage in conduct or cause the result specified by the definition of an offense or to engage in conduct which would be sufficient to establish complicity in the specified conduct or result.

(2) It is immaterial under subsection (1) that the defendant fails to communicate with the person he solicits if his conduct was designed to effect such communication.

§ 705-511 Immunity, irresponsibility, or incapacity of a party to criminal solicitation.

(1) A person shall not be liable ... for criminal solicitation of another if under §§ 702-224(1) and (2) and 702-225(1) he would not be legally accountable for the conduct of the other person.

(2) It is not a defense to a prosecution under § 705-510 that the person solicited could not be guilty of committing the crime because:

(a) He is, by definition of the offense, legally incapable in an individual capacity of committing the offense solicited;

(b) He is penally irresponsible or has an immunity to prosecution or conviction for the commission of the crime;

(c) He is unaware of the criminal nature of the conduct in question or of the defendant's criminal intent; or

(d) He does not have the state of mind sufficient for the commission of the offense in question.

(3) It is not a defense to a prosecution under § 705-510 that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense solicited.
§ 702-221 Liability for conduct of another:

(1) A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

(2) A person is legally accountable for the conduct of another person when,

(a) Acting with the state of mind that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or

(b) He is made accountable for the conduct of such other person by this Code or by the law defining the offense; or

(c) He is an accomplice of such other person in the commission of the offense.

§ 702-222 Liability for conduct of another; complicity. A person is an accomplice of another person in the commission of an offense if:

(1) With the intention of promoting or facilitating the commission of the offense, he:

(a) Solicits the other person to commit it; or

(b) Aids or agrees or attempts to aid the other person in planning or committing it;

or

(c) Having a legal duty to prevent the commission of the offense, fails to make reasonable effort so to do; or

(2) His conduct is expressly declared by law to establish his complicity.

§ 702-223 Liability for conduct of another; complicity with respect to the result.

When causing a particular result is an element of an offense, an accomplice in the conduct causing the result is an accomplice in the commission of that offense, if he acts, with respect to that result, with the state of mind that is sufficient for the commission of the offense.

§ 702-224 Liability for conduct of another; exemption from complicity. Unless otherwise provided by this Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(1) He is a victim of that offense; or

(2) The offense is so defined that his conduct is inevitably incident to its commission; or

(3) He terminates his complicity prior to the commission of the offense and:

(a) Wholly deprives his complicity of effectiveness in the commission of the offense; or

(b) Gives timely warning to the law enforcement authorities or otherwise makes reasonable effort to prevent the commission of the offense.

§ 702-225 Liability for conduct of another; incapacity of defendant; failure to prosecute or convict or immunity of other person. In any prosecution for an offense in which the liability of the defendant is based on conduct of another person, it is no defense that:

(1) The offense charged, as defined, can be committed only by a particular class of persons, and the defendant, not belonging to such class, is for that reason legally incapable of committing the offense in an individual capacity, unless imposing liability on him is inconsistent with the purpose of the provision establishing his incapacity; or

(2) The other person has not been prosecuted for or convicted of any offense, or has been convicted of a different offense or degree of offense, based upon the conduct in question; or

(3) The other person has a legal immunity from prosecution based upon the conduct in question.

§ 705-520 Criminal conspiracy. A person is guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a crime:

(1) He agrees with one or more persons that they or one or more of them will engage in or solicit the conduct or will cause or solicit the result specified by the definition of the offense; and

(2) He or another person with whom he conspired commits an overt act in pursuance of the conspiracy.

§ 705-530 Renunciation of attempt, solicitation, or conspiracy; affirmative defense.

(1) In a prosecution for criminal attempt, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the attempt.

(2) In a prosecution for criminal solicitation, it is an affirmative defense that the defendant, under circumstances manifesting a complete and voluntary renunciation of his criminal intent:

(a) First notified the person solicited of his renunciation,

(b) Gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result solicited.

(3) In a prosecution for criminal conspiracy, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the conspiracy.

(4) A renunciation is not “voluntary and complete” within the meaning of this section if it is motivated in whole or in part by:

(a) A belief that circumstances exist which increase the probability of detection or apprehension of the accused or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(b) A decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective.

(5) A warning to law-enforcement authorities is not “timely” within the meaning of this section unless the authorities, reasonably acting upon the warning, would have the opportunity to prevent the conduct or result. An effort is not “reasonable” within the meaning of this section unless the defendant, under reasonably foreseeable circumstances, would have prevented the conduct or result.

§ 842-1 Definitions. [Organized Crime] As used in this chapter:

“Enterprise” includes any sole proprietorship, partnership, corporation, association, and any union or group of individuals associated for a particular purpose although not a legal entity.

“Organized crime” means any combination or conspiracy to engage in criminal activity as a significant source of income or livelihood, or to violate, aid or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, drug abuse, illegal drug distribution, counterfeiting, extortion, corruption of law enforcement officers or other public officers or employers.

“Person” includes any individual or entity capable of holding a legal or beneficial interest in property and includes nonresident aliens.

“Racketeering activity” means any act or threat involving, but not limited to murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, theft or prostitution, or any dealing in narcotic or other dangerous drugs which is chargeable as a crime under state law and punishable by imprisonment for more than one year.

“Unlawful debt” means a debt incurred or contracted in an illegal gambling activity or business or which is unenforceable under state law in whole or in part as to principal or interest because of the law relating to usury.