

Crim. Law ATTACK Outline – Alschuler – Spring 2009

Checklist

- I. Is there an attempt?
 - A. Is there a substantial step?
 - B. Is there renunciation?
- II. Is there an agreement that might imply conspiracy?
- III. Can a party be made accessorially liable?
- IV. Did a Death Occur?
 - A. What/who caused it?
 - B. Was it in the middle of a felony
- V. Is there a Defense available
 - A. Self-defense?
 - 1. Is there deadly force?
 - B. Defense of Property?
 - C. Law Enforcement?
 - D. Duress?
 - E. Necessity?
 - F. Insanity

Actus Reus

- VI. Basic Policy: Liability ONLY IF based on conduct that includes a voluntary act.
 - A. Omissions: Omission + physically possible for actor to perform + Element 3 → liability
 - 1. Element 3: Either below
 - a) expressly made sufficient by substantive law OR
 - b) duty to perform imposed by law
 - B.

Mens Rea

- VII. Purposely:
 - A. Nature of conduct/result → “conscious object to engage in conduct of that nature or to cause such a result”
 - B. Circumstance:
 - 1. Aware of existence
 - 2. Believes/hopes it exists

VIII. Knowingly:

- A. Nature of conduct/circumstances → “aware that conduct is of that nature”
- B. Attendant circumstances → aware that such circumstances exist
- C. Causing result → aware that it is practically certain conduct will cause the result
 - 1. Typically must be combined with 1 or 2
 - 2. **WILLFULLY = KNOWINGLY**
 - 3. E+E: purposeful actor desires a result, but a knowing actor does not care whether it occurs or not
 - 4. Willful blindness → knowingly

IX. Recklessly: “consciously disregards” a substantial and unjustifiable risk that the element exists or will result

- A. Disregard must involve “gross deviation from the standard of conduct” of a law abiding person
- B. E+E: requires actual subjective recognition of danger and conscious disregard
 - 1. Drive 90 mph on crowded street but did not consider possibility of death → not reckless

X. Negligently: “should be aware” of substantial and unjustifiable risk

- A. Failure to perceive must involve a “gross deviation” from reasonable person

Mistake of Fact/Law

I. Mistake of fact/law → Defense IF

- A. Negatives the mens rea required to establish offense OR
- B. Law provides it as a defense

II. Defendant’s belief about fact/law would be a crime → act as if world was as defendant believed

- A. Grade punishment according to supposition

III. Belief that conduct isn’t illegal → Defense IF

- A. Two ways to get Defense
 - 1. Statute not known to D + not published/reasonable available OR
 - 2. Reasonable reliance on official (but wrong) statement of law IN
 - a) Statute
 - b) Judicial decision
 - c) Administrative order
 - d) Official interp by public officer/body charged w/ interpreting law
- B. Std of proof for Defendant: preponderance of the evidence

IV. COMMON LAW

- A. Don’t think it’s a crime: Wrong about fact where you believe you aren’t committing crime → no crime b/c negatives mens rea

B. Know it's a crime: Wrong about fact when you KNOW it's a crime → go with objective reality

Causation

V. Basic Rule: but-for cause + element 2 → causation

A. Element 2

1. Purpose/knowing → must be within purpose/contemplation of actor

a) EXCEPTIONS

(1) Only difference btw. purpose and result is different person/property injured

(2) Injury desired would have been worse than it was

(3) Actual result is same harm as designed + not too remote in occurrence to make a difference for gravity

2. Reckless/Negligent → must be within risk of which actor is/should be aware

a) EXCEPTIONS

(1) Only difference btw. purpose and result is different person/property injured

(2) Injury desired would have been worse than it was

(3) Actual result is same harm as designed + not too remote in occurrence to make a difference for gravity

3. Strict liability → probable consequence of the conduct = causation

Attempt

XI. Basic Rule: Mens Rea for crime + Element 2 → Attempt

A. Element 2

1. Conduct = crime IF circumstances are as he thinks

2. Causing result is element + takes act/omission with purpose/knowledge of causing result w/o further conduct

3. Substantial step in conduct planned to culminate in crime

a) MUST be strongly corroborative of actor's criminal purpose

b) Sufficient actions

(1) Lying in wait

(2) Enticing victim to place for commission

(3) Reconnoitering place for crime

(4) Unlawful entry where crime to be committed

- (5) Possession of materials + specifically designed for unlawful use/
serve no lawful purpose under circumstances
- (6) Possession of materials + proximity to place + serves no lawful
purpose under circumstances
- (7) Soliciting innocent agent

XII. Remember!!!

- A. Preparation vs Attempt!!!
- B. Renunciation

Impossibility

I. Basic Rule: Legal impossibility precludes attempt conviction, but factual impossibility does not.

- A. Legal impossibility: Belief that conduct is criminal does not make it so.
 - 1. What defendant wanted to do isn't illegal even though defendant thinks it is
 - a) E.g thinks it's not hunting season even though it is, but goes hunting anyway
 - 2. Element required for an attempt not satisfied
 - a) Firing an unloaded gun at someone where crime requires gun be loaded
- B. Factual Impossibility: B/c of non-legal facts beyond D's knowledge something isn't a crime → convictable for attempt
 - 1. Trying to pick an empty pocket

Accomplice Liability

XIII. MPC § 2.06

- A. Legally accountable for other's conduct IF
 - 1. Mens rea for crime + causes innocent to engage in conduct OR
 - 2. Made accountable by code OR
 - 3. "Accomplice": purpose of promoting + Element 2
 - a) Element 2
 - (1) Solicits other to commit it
 - (2) Aids/agrees/attempts to aid other person in planning/committing
 - (3) Legal duty to prevent + failure to make proper effort to prevent

Conspiracy

I. Establishing a Conspiracy

- A. Basic Rule: Purpose of facilitating + agrees to participate/agrees to aid + conduct equaling crime/attempt/solicitation
- B. Scope of conspiracy: extends to parties conspirator has himself conspired with, even if you don't know them
- C. Multiple objectives → ONE conspiracy IF
 - 1. object of the same agreement OR
 - 2. continuous conspiratorial relationship
- D. Overt act requirement: Conviction ONLY IF one member has done an overt act in pursuance of the conspiracy
 - 1. Exception: 1st/2nd degree felony

II. Length of Conspiracy

- A. Ends When:
 - 1. Crime/crimes that are its object are committed OR
 - 2. Agreement is abandoned by defendant + those with whom he conspired
 - a) No overt act during period of limitation → presume abandonment
 - b) Ways for individual to abandon
 - (1) Advises conspirators of abandonment
 - (2) Informs law enforcement authorities

Self-Defense

XIV. Self Defense

- A. Self-Defense Generally [MPC §3.04]
 - 1. Basic Rule: Use of force + **immediately necessary** to protect self + against **unlawful force** + on the **present occasion** → justifiable
 - 2. Limitations
 - a) Resisting arrest EVEN IF unlawful
 - b) Being used against you to protect property
 - (1) Exceptions to this exception → use of force OK
 - (a) Public officer in performance of duties
 - (b) Person assisting public officer
 - (c) Person making/assisting a lawful arrest
 - (d) Unlawful dispossession of property + making a reentry
 - (e) Necessary to protect self against death/serious bodily harm
 - 3. Deadly Force
 - a) justifiable ONLY IF protect against:
 - (1) Death
 - (2) Serious bodily harm
 - (3) Kidnapping

- (4) Sexual intercourse compelled by force/threat
 - b) NOT justifiable IF
 - (1) Purpose to cause death/serious bodily harm + provoked use of force against self
 - (2) Can avoid with complete safety by [retreat OR surrendering possession OR complying with demand of non-action + no duty to take]
 - (a) Exceptions → use of force OK
 - (i) No obligation to retreat from place of work/dwelling UNLESS
 - (a) Initial aggressor
 - (b) Attacked by another who works there
 - (ii) Public officer + performance of duties
 - (iii) Person using force in assistance of public officer
 - (iv) Person justified in using force in making arrest/prevent escape
4. Confinement: acceptable as protective force ONLY IF terminate ASAP unless arrested

B. Use of Force For Protecting Others [MPC §3.05]

- 1. Justified to protect third party IF
 - a) 3 Items
 - (1) Justified to use force if protecting self [see above]
 - (2) Person would be justified in using protective force
 - (3) Intervention is necessary for protection of other
 - b) Vantage point: circumstances as he believes them to be
- 2. No obligation to retreat/surrender possession UNLESS he knows other person's complete safety will be secured
- 3. Person obligated to retreat → force-user must try and cause person to do so before using force
- 4. No obligation to retreat in other's dwelling/place of work

C. Use of Force Protecting Property

- 1. Use of force justified IF immediately necessary TO
 - a) Prevent/terminate unlawful entry or carrying of possession
 - b) Effect re-entry PROVIDED
 - (1) believes unlawful dispossession
 - (2) immediately or on fresh pursuit of dispossession
 - (3) believes other has no claim + circumstances make "exceptional hardship" to postpone entry/re-entry
- 2. Limitations
 - a) Request to desist required
 - (1) Exceptions

- (a) Request would be useless/dangerous/substantial harm would come to the property before request would be made
- b) Exclusion of trespasser would cause trespasser serious harm
- c) Believes entry re-entry is unlawful + made on behalf of person who was actually dispossessed + re-entry is compliant with provisions above
- 3. Deadly Force: justifiable ONLY IF
 - a) Attempting to dispossess of dwelling otherwise than claiming possession OR
 - b) Person trying to consummate arson/burglary/robbery/other felonious theft
 - AND
 - (1) Employed/threatened deadly force in presence of actor OR
 - (2) Use of other force would expose actor to substantial danger of serious bodily harm

Law Enforcement

XV. Use of Force in Law Enforcement

- A. Basic Rule: Making/assisting arrest + believes immediately necessary to effect arrest → use of force is justifiable
 - 1. Limitations – Must be fulfilled
 - a) Actor makes known purpose of arrest OR believes it is otherwise known OR cannot reasonably make it known AND
 - b) Valid warrant/believed to be valid warrant
- B. Deadly Force → Justifiable ONLY IF
 - 1. Felony arrest AND
 - 2. Arrestor authorized to act as peace officer OR assisting person s/he believes to be a peace officer
 - 3. Believes that force creates no substantial risk to innocents
 - 4. Believes that the crime involved use/threat of deadly force OR believes there is a substantial risk person will cause death/serious bodily harm if apprehension is delayed
- C. Escape from Custody
 - 1. Justifiable when it could have been used to effect the arrest
 - a) Exception
 - (1) Peace officer + immediately necessary + prevent prison escape → any force, including deadly force
- D. Assisting Arrest
 - 1. Person called to assist unlawful arrest → use any force necessary to effect a lawful arrest PROVIDED believes arrest to be lawful
 - 2. Private person helping private person OR entering unassisted → any force necessary to effect a lawful arrest PROVIDED

- a) Believes arrest is lawful AND
 - b) Arrest would be lawful if the facts were as intervenor believed
- E. Preventing Suicide/Commission of a crime
1. Use of force justified IF immediately necessary to prevent suicide/commission of a crime EXCEPT
 - a) Limitations elsewhere in chapter apply AND
 - b) Deadly force never justified UNLESS
 - (1) Substantial risk to another + no risk to innocent persons OR
 - (2) Necessary to suppress riot
 2. Extends to use of confinement as preventive force ONLY IF termination ASAP

Necessity

XVI. Necessity Generally [MPC §3.02]

- A. Necessary to avoid harm/evil → Justifiable IF
 1. Avoided harm is greater than law-breaking done to avoid
 2. Code does not have exceptions/defenses on point
 3. Legislative purpose to exclude justification does not already appear
- B. Creating situation: Reckless/negligent in creating situation + recklessness/negligence sufficient for culpability in offense being defended against → No defense
- C. Appraising situation: Reckless/negligent in appraising situation + recklessness/negligence sufficient for culpability in offense being defended against → No defense

Duress

XVII. MPC § 2.09

- A. Coerced by use/threat of unlawful force against person or other + person of reasonable firmness couldn't resist → affirmative defense
 1. Exception:
 - a) recklessly placed self in situation making duress probable
 - b) negligently placed self in situation + negligence sufficient for crime
- B. No defense that woman acted at command of husband
- C. No prejudice to necessity defense

Insanity

XVIII. MPC § 4.04

- A. Lack capacity to understand proceedings/assist in defense → NO trial/conviction/sentencing as long as capacity endures