

Video transcript
Video Tutorial (I): Inchoate liability (chp 11)

Hi! In this video I want to talk to you about inchoate liability and particularly the general inchoate offences of attempts conspiracy in assisting and encouraging under the Serious Crime Act. Now, we detail these offences within Chapter 11 of the textbook and I'm not going to a lot of detail about the elements of the crimes but rather to give an overview of how you should think about and how you should apply these offences in practice, because, they are relatively complicated and so it is necessary to try and think carefully about the route your analysis will take in order to make that analysis as clear as possible.

So essentially for all these general inchoate offences the common factor is the defendant is doing something that makes a future offence, a principal offence more likely to come about. For an attempt it's the defendant trying to commit a principal offence. For a conspiracy, the defendant and at least one other are agreeing to commit a principal offence. And for assisting and encouraging the defendant is of course assisting or encouraging another party to complete a principal offence. Now, in each of these cases our defendant is liable if they satisfy the elements to the offence at the point of that conduct, as long as they have the required mens rea, whether the principal offence comes about or not is entirely irrelevant to the defendant's liability; we're purely talking here about inchoate offences.

Okay, so when we're looking at these offences we need to think about how we're going to apply them in practice and as with all the offences we generally begin with the actus reus. Now the detail exactly the actus reus which these offences can be somewhat fiddly but what we're requiring is broadly straightforward within the attempt with looking to find out - did the defendant's conduct go beyond the preparation towards the commission of a crime? For conspiracy, did the defendant and at least one other agree to commit a crime or make an agreement which will necessarily result in the commission the crime? And for assisting and encouraging did our defendant do something positively or negatively which would either assist or encourage someone to commit a crime or if our is capable of doing that? If any of those are satisfied then we have our actus reus of the offence. We then move on to the mens rea and I think most usefully when we're thinking about the mens rea of an offence of the general inchoate offences, is to think of mens rea in terms of inward-looking type of mens rea and outward looking mens rea. First of all in terms of the inward looking mens rea, by that I mean what mens rea is required of our defendant in relation to their own conduct. So for attempt the defendant must intend to act in a way that is beyond the preparation, they must intend to conduct. For conspiracy, likewise the defendant must have intended to form the agreement and for assisting and encouraging this vary slightly between three offences within part 2 the Serious Crime Act within Section 44 the defendant must intend that his behavior, the defendant's behavior, will assist or encourage another party. And for sections 45 and 46 the defendant must at least believe that their conduct will have some kind of assisting or encouraging impact.

Now, beyond that inward-looking part of mens rea we must also consider the outward-looking part of the mens rea and this is the defendant's mens rea in relation to the actions either of a different principle offender or in relation to attempt their own future actions. And so in that sense we're looking not as to what the defendant's done but we're looking to that future principal offence and what mens rea they must have in relation to that future principal offence. Now, when looking at that mens rea as to a future principal offence we often need to separate that principal offence whatever it might be into conduct, circumstances, and results. Now, for the sake of example of course the general inchoate offences can apply broadly across the criminal law let's use the example of criminal damage. So we're talking here about potential attempt first of all to commit criminal damage and we need to think about if the defendant has intentionally gone beyond the preparation towards committing criminal damage, what mens rea do they need in relation to that future principal offence? Now, the case law here tells us the defendant must always intend a conduct and they must always intend the result. This is regardless of the fact that principal offence in criminal damage you don't require an intention as to causing damage whereas for the attempt to commit criminal damage it must be that at that point of preparation, our defendant did intend it. Whatever the principal offence requires in terms of mens rea when it comes to the result element that future offence the defendant must intend it for attempt liability to apply. We then have what is required of our defendant in relation to the circumstance element.

So for criminal damage the circumstance element for criminal damage is if the property damage belongs to somebody else, doesn't belong to the defendant. The principal offence itself simply requires a defendant to be reckless as to that fact. Now within the current state of the law in terms of attempts we have to make the distinction here between possible and impossible attempts. For possible attempts we're told we can mirror whatever the mens rea is for the principal offence so that which would require recklessness but for impossible attempt we're told the intention must apply. So this is a difference between the case of Khan on one hand and a case of Pace and Rogers on the other. It's not an ideal state for the law but rather than go in to detail about the point here is simply it's important and necessary to look at that principal offence, think about what the conduct circumstance and result parts are of that principal offence, and then think about what mens rea the defendant requires in relation to each part of that principal offence.

If we were thinking about conspiracy this is actually mercifully simple, rather than having to separate the elements of the offence rather if we have a conspiracy to commit criminal damage it simply requires intention across-the-board. Whatever that principal offence itself requires to be liable for a conspiracy to commit that principal offence you have to intend every part of that principal offence and so therefore there's no real requirement to separate the elements.

Lastly though are the offences assisting and encouraging and here again it is necessary to separate the elements. Let's look at Section 44 as an example. So Section 44 is the intentional basis this is encouraging an offence. So let's say we're charging a Section 44 offence in relation to assisting and encouraging criminal damage. Now here, in relation to the conduct part of the offence we must intend, so

the defendant must intend that the principal offender will go on to complete the conduct part of the offence, though we're told within section 47 subsection 5 we're told the defendant must at least be reckless as to the circumstances and results coming about and also reckless as to whether the principal offender is going to act with the required mens rea.

So again, it's important and necessary to separate the elements of that principle offence the defendant is assisting or encouraging criminal damage. In order to be liable for that offence the defendant must intend that that principal offender will complete the conduct element. But they only actually have to foresee a risk that in doing so the defendant is going to cause damage to property and property that doesn't belong to the defendant and with the required mens rea for that criminal damage offence. So again, the important thing to take from this is that step-by-step analysis - actus reus, mens rea in relation to my own conduct the inward looking part, and then mens rea relation to the principal offender or the future conduct the outward looking part where often it will require this separation of elements.

Thank you!