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Inchoate Crimes

1. On this evidence the man could be convicted of

After waiting until all the customers had left, a man entered a small grocery store just before closing time. He went up to the lone clerk in the store and said, "Hand over all the money in the cash register or you will get hurt." The clerk fainted and struck his head on the edge of the counter. As the man went behind the counter to open the cash register, two customers entered the store. The man ran out before he was able to open the register drawer.

- Robbery
- Assault and robbery
- **Attempted robbery**
- Assault and attempted robbery

Note:

Robbery is the taking, by force or threat of force, of the personal property of another with the intent to permanently deprive the owner of the property.

To be guilty of attempt, a person must intend to commit the target crime and take a substantial step, which constitutes more than mere preparation, toward committing that crime. To withdraw from an attempt, the person's renunciation of the criminal purpose must be voluntary and complete, and fear of being caught is not sufficient.

To be convicted of attempted robbery, then, a person must have the intent to commit a robbery and take a substantial step toward the commission of the offense.

Assault requires the intent to create a reasonable apprehension of imminent bodily harm, or the intent to commit a battery, which is the intentional and unlawful use of force against another. Words alone are insufficient to create an apprehension of imminent harm.

C is correct. The man's threat to the clerk to either give him all of the money in the cash register or to get hurt, although insufficient to support an assault conviction, does suggest that the man entered the store with the intent to take the store's money by force or fear. Further supporting this intent is that the man went behind the counter to open the cash register and take that money instead of rendering aid to the store clerk. The fact that the man ran out before actually taking the money does not alter the fact that he intended to commit the robbery before changing his mind at the last moment. Regarding a substantial step, the man entering the store, demanding the money, threatening the clerk, and going behind the counter to take the money all move beyond mere preparation and planning and would qualify as substantial steps. Therefore, the man could be convicted of attempted robbery.

A is incorrect. The man did not commit robbery, even though he intended to. Although the man used fear to try to cause the store clerk to give him the money in the cash register, the clerk fainted before he could do so, and the man ran out of the store before actually taking and carrying away the money. Therefore, because the man did not actually take and carry away the personal property of another, he did not meet all of the elements of robbery and cannot be convicted of that crime.

B is incorrect. The man did not commit an assault because there was no overt act. Without more, such as aiming a deadly weapon at the clerk, the man's generalized threat that the clerk would "get hurt" cannot constitute criminal assault. The man did nothing more than verbally threaten the clerk, and his lack of any corresponding threatening conduct does not support that he intended to follow through with his vague threat to use force against the clerk. The man's words did not create the apprehension of imminent bodily harm, and his actions were not enough to demonstrate the intent to use unlawful force against the clerk.

D is incorrect. As explained above, the man may be convicted of attempted robbery, but his vague threat that the clerk would "get hurt," without more, is insufficient to constitute criminal assault.

2. If charged with attempted murder of the bank president, the teller should be found

A bank teller was fired by the president of a bank. The teller wanted to take revenge against the president, but decided against attempting it personally, because he knew the president was protected around the clock by bank security guards. The teller knew that a man had a violent temper and was very jealous. The teller falsely told the man that the man's wife was having an affair with the bank president. Enraged, the man said, "What am I going to do?" The teller said, "If it were my wife, I'd just march into his office and blow his brains out." The man grabbed a revolver and rushed to the bank. He walked into the bank, carrying the gun in his hand. One of the security guards, believing a holdup was about to occur, shot and killed the man.

- **Guilty, because he intended to kill the president and used the man to carry out his plan**
- Guilty, because he was extremely reckless as to the president
- Not guilty, because the president was never in imminent danger of being killed
- Not guilty, because the man, if successful, would be guilty of no more than manslaughter and an accessory cannot be guilty of a higher crime than the principal

Note:

A is correct. Attempted murder requires that a defendant have the specific intent for a murder to occur and that the defendant take a substantial step toward the commission of the murder. The teller intended that the president be murdered by the man, and by lying to the man, whom he knew to be violent and jealous, and encouraging him to kill the president, the teller took substantial steps toward the commission of murder.

B is incorrect. A charge of attempt requires that the defendant have the intent that the crime be committed; extreme recklessness is insufficient.

C is incorrect. It misstates the requirements for "substantial step" and although the man failed to murder the president, the steps the teller took in his attempt to murder the president were "substantial" and could have resulted in the murder of the president. Even if it were factually impossible for the man to murder the president, factual impossibility is not a defense to a charge of attempt, and the teller would still be convicted of attempted murder.

D is incorrect. An accessory can be guilty of a higher crime than the principal.

3. The defendant is

A defendant wanted to kill his neighbor because the defendant believed his neighbor was having an affair with his wife. Early one morning, armed with a pistol, he crouched behind some bushes on a park hillside overlooking a path upon which his neighbor frequently jogged. On this morning, however, the defendant saw his neighbor jogging on another path about a half mile away. Unaware of the limited range of his pistol, the defendant fired five shots at his neighbor. None of the five shots came anywhere close to the neighbor as he was well out of the range.

- **Guilty of attempted murder, because he was not aware of the limited range of his pistol**
- Guilty of attempted murder, because a reasonable person would not have been aware of the limited range of his pistol
- Not guilty of attempted murder, or any lesser included offense, because, under the circumstances, it was impossible for him to have killed his neighbor
- Not guilty of attempted murder, but guilty of assault

Note:

A is correct. To be found guilty of attempted murder, a defendant must have the intent to commit murder and take a substantial step toward the commission of murder. In this question, the defendant had, prior to the shooting, the intent to kill his neighbor, and took the substantial step of firing the weapon at the neighbor. He is thus guilty of attempted murder. However, if the defendant was aware that it was impossible for his shots to actually reach his neighbor, it cannot be said that the defendant, by shooting at his neighbor, had the intent and took a substantial step to kill the neighbor. Nevertheless, because the defendant was unaware of the limited range of his pistol, he can be convicted of attempted murder.

B is incorrect. The standard applied is the actual intent of the defendant and the substantiality of the step taken; it does not matter what a reasonable person would know with respect to the range of the pistol.

C is incorrect. Only legal impossibility, not factual impossibility, is a defense to an attempt charge. Although it was impossible for the defendant to kill his neighbor, he still had the intent to kill him and took a substantial step toward doing so. This is a case of factual impossibility and is not a defense to an attempt charge.

D is incorrect. The defendant is guilty of attempted murder, as well as assault.

4. If the man is guilty of any crime, he is most likely guilty of

A man walked into a store that had a check-cashing service and tried to cash a \$550 check which was payable to him. The attendant on duty refused to cash the check because the man did not have two forms of identification, which the store's policies required. The man, who had no money except for the check and who needed cash to pay for food and a place to sleep, became agitated. He put his hand into his pocket and growled, "Give me the money or I'll start shooting." The attendant, who knew the man as a neighborhood character, did not believe that he was violent or had a gun. However, because he felt sorry for the man, he handed over the cash. The man left the check on the counter and departed. The attendant picked up the check and found that the man had failed to endorse it.

- Robbery
- **Attempted robbery**
- Theft by false pretenses
- Larceny by trick

Note:

Attempt requires a person to take a substantial step beyond mere preparation to commit a crime, with the intent that the crime takes place.

Robbery requires the taking and carrying away of the personal property of another with the intent to permanently deprive accomplished by means of force or fear. The taking must be achieved as a result of violence or intimidation.

At common law, the crime of false pretenses requires obtaining possession and title of property of another through fraud or misrepresentation of a material fact.

At common law, larceny by trick requires obtaining possession of the property of another, with the owner's consent, by fraud or misrepresentation, with the intent to permanently deprive the owner of that property.

B is correct. The man's intent to commit a robbery is demonstrated by his simulating a gun in his pocket and threatening to shoot the attendant if the attendant did not give him the money despite the man not having the proper identification. The man also moved beyond mere preparation and closer to robbery perpetration by pretending to have a gun, making that threat to the attendant, and then taking the money. The only thing preventing the man from having completed a successful robbery is the fact that the attendant was not actually afraid, and rather, gave the man the money out of sympathy instead of fear. Because the man did everything possible to effectuate a robbery other than actually frightening the attendant, with the requisite intent, the man is most likely guilty of attempted robbery.

A is incorrect. The man did take and carry away the money, which was the personal property of the check-cashing service, when he took the cash from the attendant and departed. The man also intended to permanently deprive the check cashing service of the money because he left with it and offered no indication that he only meant to borrow the money and return it later. He also tried to use fear in order to get the attendant to disregard the rule requiring two forms of identification by simulating a gun in his pocket and threatening to shoot the attendant. But to be guilty of robbery, the victim must actually experience force or fear and the defendant must take the property as the result of such force or fear. The attendant did not believe that the man was violent or had a gun, so the attendant was not actually afraid, and only gave the man the cash out of sympathy. Because the man does not meet the force or fear element required by robbery, the man cannot be guilty of that crime.

C is incorrect. The man did not attempt to forge the \$550 check, but rather, to cash it without the necessary two forms of identification. Although he did not properly endorse the check, he still did not attempt to use fraud to obtain the cash; rather, the store attendant gave him the cash because the attendant felt sorry for the man. The man did fraudulently simulate having a gun when he threatened the attendant, but that was not the reason the attendant gave him the money; the attendant gave the man the money out of sympathy, not as a result of a misrepresentation. Because the man did not obtain the cash through the misrepresentation of a material fact, he cannot be guilty of false pretenses.

D is incorrect. As described above, the attendant gave the money to the man out of sympathy, not because the man misrepresented any material past or present fact. Even though the man did falsely represent that he had a gun in his pocket, this misrepresentation did not cause the attendant to give the cash to the man. Because the man did not obtain the cash through the misrepresentation of a material fact, he cannot be guilty of larceny by trick.

5. That conviction should be

The boyfriend was convicted of both charges and given consecutive sentences. On appeal, he contends that his conspiracy conviction should be reversed. In the jurisdiction, the age of consent is 15, and the law of conspiracy is the same as at common law. An eighteen-year-old boyfriend and his 14-year-old girlfriend made plans to meet in the boyfriend's apartment to have sexual intercourse, and they did so. The girlfriend later told her mother about the incident. The boyfriend was charged with statutory rape and conspiracy to commit statutory rape.

- Affirmed, because he agreed with the girlfriend to commit the crime
- **Reversed, because the girlfriend could not be a conspirator to this crime**
- Reversed, because the crime is one that can only be committed by agreement and thus Wharton's Rule bars conspiracy liability
- Reversed, because one cannot conspire with a person too young to consent

Note:

Conspiracy at common law requires an agreement, the intent to agree, and the intent to commit the underlying crime (and in some jurisdictions, an overt act). Implied in this rule is that the agreeing parties are capable of committing the offense to which they are agreeing.

Statutory rape laws exist to protect underage victims from harm. Moreover, victims cannot be convicted of participating in the crimes that victimize them.

It is possible to conspire with a minor to commit a crime. For example, the boyfriend and girlfriend could have conspired to burglarize a neighboring home, and if so, both could be convicted of conspiracy to commit burglary.

Wharton's Rule only applies in cases where the underlying crime is one that, by definition, requires the voluntary, collaborative criminal participation of two persons. For example, dueling requires two individuals to agree to walk a certain distance from each other, turn, and shoot at one another until one person is killed. One person alone cannot participate in a duel. Compare this to murder, which also requires two parties, a killer and a victim, but the parties do not act together to achieve the killing. A more modern example of a crime to which Wharton's Rule may apply is bribery, where one person intentionally provides something of benefit to another, and the other willingly accepts it in exchange for doing something favorable for the person offering the bribe (e.g., a politician voting a certain way in exchange for money). A single person cannot commit bribery without the participation of another.

B is correct. The girlfriend is a member of the protected class that the law was designed to protect. She was the victim here, and that is true even if she voluntarily engaged in sexual intercourse with her 18-year-old boyfriend. This is the very type of scenario that gave rise to statutory rape laws in the first place. Further, because victims cannot be convicted of participating in the crimes that victimize them, the girlfriend cannot be a conspirator to statutory rape. Because common law conspiracy requires an agreement between two or more people and the girlfriend could not be a conspirator to this crime, the boyfriend's conspiracy conviction should be reversed.

A is incorrect. Regardless of whether underage victims participate in the crime voluntarily, they are considered the victims of statutory rape. Victims (here, the girlfriend) cannot be convicted of the crime that victimizes them (here, statutory rape). In this hypothetical, it may be true that the girlfriend agreed with her boyfriend to engage in sexual intercourse, but she is a member of the class that the statutory rape law was enacted to protect, and therefore, she cannot be convicted of that crime or of conspiring to commit that crime. Thus, even though the boyfriend agreed with the girlfriend to commit the crime, the minor girlfriend was the victim and was not actually capable of committing - or agreeing to commit, for conspiracy purposes - statutory rape.

C is incorrect. It is possible for a person to commit statutory rape without the voluntary criminal participation of the minor victim. Because statutory rape can be committed by only one of the participants, Wharton's Rule does not apply, and the boyfriend's conviction should not be reversed on this basis.

D is incorrect. As explained above, the reason the girlfriend cannot be a conspirator in this hypothetical is because she is the underage victim that statutory rape laws exist to protect. It is not because she is presumed incapable of consenting, but because she is the victim, and a victim cannot be convicted of committing (or conspiring to commit) the crime that victimizes her. Because the boyfriend was convicted of conspiring with someone who is incapable of committing the underlying crime of statutory rape, his conviction should be reversed.