

5.00.
MENTAL STATE, ACCOUNTABILITY, AND RESPONSIBILITY

5.01
Recklessness--Wantonness

A person [(is reckless) (acts recklessly)] when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

[An act performed recklessly is performed wantonly.]

Committee Note

720 ILCS 5/4-6 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §4-6 (1991)).

See People v. Baier, 54 Ill.App.2d 74, 203 N.E.2d 633 (1st Dist.1964).

The bracketed second paragraph is for use in conjunction with offenses including a mental state of “wantonness.” In such cases, also give the bracketed second paragraph defining that term.

When wantonness is an issue, Section 4-6 requires the trial court to determine whether the statute using that term “clearly requires another meaning.” If so, the jury should be instructed accordingly.

Use applicable bracketed material.

5.01A
Intent

A person [(intends) (acts [(intentionally) (with intent)]] to accomplish a result or engage in conduct when his conscious objective or purpose is to accomplish that result or engage in that conduct.

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/4-4 (West 2016).

The Committee takes no position as to whether this definition should be routinely given in the absence of a specific jury request. *See People v. Powell*, 159 Ill.App.3d 1005, 512 N.E.2d 1364 (1st Dist. 1987), for the general proposition that the words “intentionally” and “knowingly” have a plain meaning within the jury's common understanding. If given, it should only be given when the result or conduct at issue is the result or conduct described by the statute defining the offense.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.07.

5.01B
Knowledge--Willfulness

[1] A person [(knows) (acts knowingly with regard to) (acts with knowledge of)] the nature or attendant circumstances of his conduct when he is consciously aware that his conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists.

[2] A person [(knows) (acts knowingly with regard to) (acts with knowledge of)] the result of his conduct when he is consciously aware that that result is practically certain to be caused by his conduct.

[3] [Conduct performed knowingly or with knowledge is performed willfully.]

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/4-5 (West 2016), amended by P.A. 96-710, effective Jan. 1, 2010.

The Committee takes no position as to whether this definition should be routinely given in the absence of a specific jury request. *See People v. Powell*, 159 Ill.App.3d 1005, 512 N.E.2d 1364 (1st Dist. 1987), for the general proposition that the words “intentionally” and “knowingly” have a plain meaning within the jury's common understanding. If given, it should only be given when the result or conduct at issue is the result or conduct described by the statute defining the offense.

In cases where the instruction is given, use paragraph [1] if the offense is defined in terms of prohibited conduct. Use paragraph [2] if the offense is defined in terms of a prohibited result. If both conduct and result are at issue, use *both* paragraphs [1] and [2]. *See People v. Lovelace*, 251 Ill.App.3d 607, 622 N.E.2d 859 (2d Dist. 1993), where the trial court committed reversible error by giving the jury only paragraph [1], and not both paragraphs [1] and [2], when both conduct and result were at issue.

The bracketed third paragraph is for use in conjunction with offenses including a mental state of “willfulness”. In such cases, give the bracketed third paragraph defining that term. Also give the first or second paragraph, or both, as appropriate.

When willfulness is an issue, Section 4-6 requires the trial court to determine whether the statute using that word “clearly requires another meaning”. If so, the jury should be instructed accordingly.

The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

Use applicable paragraphs and bracketed material.

5.01C
Actual Knowledge

Actual knowledge is direct and clear knowledge, that is, knowledge of such information as would lead a reasonable person to inquire further.

Committee Note

In *People v. Hinton*, 402 Ill.App.3d 181, 931 N.E.2d 769 (3d Dist. 2010), the appellate court held that section 12-30(a)(2) of the Criminal Code of 1961 (Code) (720 ILCS 5/12-30(a)(2) (West 2010) (Violation of an Order of Protection) mandates that a defendant have acquired actual knowledge of the order of protection. Proof by the State of constructive knowledge is insufficient.

5.02

Negligence

A person [(is negligent) (acts negligently)] when that person fails to be aware of a substantial and unjustifiable risk that circumstances exist or that a result will follow, and that failure is a substantial deviation from the standard of care that a reasonable person would exercise in the situation.

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/4-7 (West 2016), amended by P.A. 96-710, effective Jan. 1, 2010.

Use applicable bracketed material.

5.02A
Other Mental States

Committee Note
Committee Note Approved October 28, 2016

In certain cases it may be appropriate to define mental states other than those defined in this Chapter. *See* 720 ILCS 5/4-4 and 4-5 (West 2016).

5.03 Accountability

A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of [(an) (the)] offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of [(an) (the)] offense.

[The word “conduct” includes any criminal act done in furtherance of the planned and intended act.]

Committee Note

720 ILCS 5/5-2(c) (West 2023), amended by P.A. 96-710, effective Jan. 1, 2010.

Use the bracketed word “an” and use the bracketed paragraph when the offense is different than the planned and intended offense, but done in furtherance of it. *People v. Kessler*, 57 Ill. 2d 493, 315 N.E.2d 29 (1974); *People v. Terry*, 99 Ill. 2d 508, 460 N.E.2d 746 (1984). *See also People v. Fernandez*, 2014 IL 115527, for clarification of the “common design” rule.

When this instruction is given, *ordinarily* insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition of the issues instruction for the offense charged. *See also* Instructions 5.05 and 5.06.

Note, however, that for some offenses, it will be inappropriate to insert that phrase in some or all of the propositions. For instance, in a prosecution for the offense of calculated criminal drug conspiracy based upon the theory that the defendant received something of value greater than \$500 as a result of the offense, the State must prove that the defendant himself received that amount of money. *People v. Holmes*, 41 Ill.App.3d 585, 353 N.E.2d 396 (3d Dist. 1976). *See* Instruction 17.15 and Committee Note thereto. The Third Proposition in the issues instruction for that offense must read: “That the defendant obtained something of value greater than \$500 from such delivery or agreement.” It *cannot* read: “That the defendant, or one for whose conduct he was legally responsible, obtained something of value greater than \$500 from such delivery or agreement.” *See also People v. Griffin*, 247 Ill.App.3d 1, 616 N.E.2d 1242 (1st Dist. 1993), holding that accountability language should not have been inserted into the aggravated criminal sexual assault issues instruction where the age of the person who actually penetrated the victim defines whether that crime ever occurred. *See* Instruction 11.58B.

Other statutes would appear to require that particular conduct be committed by the defendant personally or that a status that is an element of the offense pertain to the defendant himself. Whenever accountability language is to be inserted in an issues instruction, caution should be exercised to assure that accountability language is not used in any proposition that involves such conduct or status. *See e.g. People v. Ulloa*, 2015 IL App (1st) 131632, ¶ 21 (error to insert “or one for whose conduct he is legally responsible” language in a criminal drug conspiracy case).

For an example of the use of this instruction, see Sample Sets 27.02 and 27.03.

In addition to Instruction 5.03, use any or all of the supplemental paragraphs below when supported by the evidence:

(1) A parent has a legal duty to aid a small child if the parent knows about a danger to the child and the parent has the physical ability to protect the child. Criminal conduct may arise by overt acts or by an omission to act where there is a legal duty to do so.

(2) Actual physical presence at the commission of a crime is not a requirement for legal responsibility. However, mere presence at the scene of a crime does not make a person accountable for an offense. You may consider a person's presence at the scene of a crime along with other circumstances when determining accountability.

(3) Intent to promote or facilitate the commission of an offense may be shown by evidence that the defendant shared a criminal intent of the principal or evidence that there was a common criminal design.

(4) A person cannot be found accountable for the conduct of another based on acts taken solely after the commission of the offense. You may consider the defendant's actions after the offense to the extent that they raise an inference of the defendant's prior or concurrent participation in the offense. However, actions taken only after the commission of the offense do not establish an independent basis to hold a defendant accountable for an offense that has already been completed.

5.03A
Accountability--Felony Murder

To sustain the charge of first degree murder, it is not necessary for the State to show that it was or may have been the original intent of the defendant or one for whose conduct he is legally responsible to kill the deceased, ____.

It is sufficient if the jury believes from the evidence beyond a reasonable doubt that the defendant and one for whose conduct he is legally responsible combined to do an unlawful act, such as to commit ____, and that the deceased was killed by one of the parties committing that unlawful act.

Committee Note
Instruction and Committee Note Approved October 28, 2016

Give this instruction only in addition to--not in lieu of--Instruction 5.03.

In *People v. Ramey*, 151 Ill.2d 498, 536-38, 603 N.E.2d 519 (1992), the supreme court approved the above instruction, which the trial court gave along with Instruction 5.03. In *Ramey*, the State charged defendant and his alleged accomplice with murder (based in part upon felony murder), home invasion, aggravated unlawful restraint, and possession of a stolen motor vehicle. The blank in the second paragraph of the above instruction read “home invasion”. The supreme court in *Ramey* upheld the use of this instruction, holding that “we agree with the State *** that the [above] instruction was explanatory and it served to clarify the concept of felony murder”. *Ramey*, 151 Ill.2d at 537, 603 N.E.2d at 535.

Insert in the blank in the first paragraph the name of the alleged victim.

Insert in the blank in the second paragraph the felony offense(s) that the evidence shows the defendant or his accomplice may have committed in order to come within the forcible felony murder rule.

5.04
Responsibility For Act Of Another--Withdrawal

A person is not legally responsible for the conduct of another, if, before the commission of the offense charged, he terminates his effort to promote or facilitate the commission of the offense charged and [(wholly deprives his prior efforts of effectiveness in the commission of that offense) (gives timely warning to the proper law enforcement authorities) (makes proper effort to prevent the commission of that offense)].

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-2(c)(3) (West 2016)

Give in conjunction with Instruction 5.03 when there is evidence of withdrawal.

Use applicable bracketed material.

5.05

Defendant's Responsibility For Act Of Another--Actor Not Legally Responsible

A person who causes another person to perform a criminal act is legally responsible for that act although the person who actually performed the act was not legally responsible because he was [(intoxicated) (in a drugged condition) (insane) (an innocent agent) (an infant) (____)].

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-2(a) (West 2016)

See Chapter 720, Articles 6 and 7 for defenses and justifications.

Insert in the blank any other appropriate term.

Use applicable bracketed material.

5.06

Defendant's Responsibility For Act Of Another--Actor Not Prosecuted, Etc.

A person who is legally responsible for the conduct of another may be convicted for the offense committed by the other person even though the other person, who it is claimed committed the offense, [(has not been prosecuted) (has not been convicted) (has been convicted of a different offense) (is not amenable to justice) (has been acquitted)].

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-3 (West 2016).

Give Instruction 5.03.

See also Standefer v. United States, 447 U.S. 10, 14-20, 100 S.Ct. 1999, 2003-06, 64 L.Ed.2d 689, 695-98 (1980) (permitting the conviction of accessories to federal criminal offenses despite the prior acquittal of the actual perpetrator of the offense).

Use applicable bracketed material.

5.07

Corporate Responsibility--Act Of Agent

A corporation is legally responsible for conduct which an agent of the corporation performs while acting within the scope of his office or employment and on behalf of the corporation.

The word “agent” means any director, officer, servant, employee, or other person who is authorized to act on behalf of the corporation.

Committee Note

Instruction and Committee Note Approved October 28, 2016

This instruction is based upon Section 5-4. It is applicable to misdemeanors and prosecutions under Chapter 720, Section 24- 720 ILCS 5/24-1(Weapons) or any other statute which clearly indicates a legislative purpose to impose liability on a corporation.

5.08

Corporate Responsibility--Authorized Acts

A corporation is legally responsible for conduct which is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of his employment on behalf of the corporation.

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-4(a)(2) (West 2016).

Give Instruction 5.10, defining the term “high managerial agent”.

5.09
Corporate Responsibility--Defense

If the corporate defendant proves by a preponderance of the evidence that a high managerial agent, having supervisory responsibility over the conduct which is the subject matter of the offense charged, exercised due diligence to prevent the commission of the offense charged, you should find the corporate defendant not guilty.

Committee Note

720 ILCS 5/5-4(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §5-4(b) (1991)).

Give Instruction 4.18, defining the phrase “preponderance of the evidence.”

Give Instruction 5.10, defining the term “high managerial agent.”

This instruction should be given under Section 5-4(b) and should not be given except when appropriate and then in conjunction with Instruction 5.07. It is not applicable to Instruction 5.08 and is not applicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of Section 5-4(b) or if the offense is one for which absolute liability is imposed.

5.10
Definition Of High Managerial Agent

The term “high managerial agent” means an officer of the corporation, or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

Committee Note
Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-4(c)(2) (West 2016).

Give whenever Instructions 5.08 or 5.09 are given.

5.11

Personal Responsibility Of Corporate Agent

A person is legally responsible for conduct which he performs or causes to be performed in the name of or on behalf of a corporation to the same extent as though the conduct were performed in his own name or behalf.

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-5(a) (West 2016).

Give when an individual is jointly charged with his corporate employer or is charged individually for conduct committed on behalf of his corporate employer.

5.12

Definition Of Digital Signature

The phrase “digital signature” means an encrypted electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.

Committee Note

205 ILCS 705/5 (West 2013).

5.13

Definition Of Electronic Signature

The phrase “electronic signature” means a signature in electronic form attached to or logically associated with an electronic record.

Committee Note

5 ILCS 175/5-105 (West 2013).

5.14

Definition Of Signature Device

The phrase “signature device” means unique information, such as codes, algorithms, letters, numbers, private keys, or personal identification numbers (PINs), or a uniquely configured physical device, that is required, alone or in conjunction with other information or devices, in order to create an electronic signature attributable to a specific person.

Committee Note

5 ILCS 175/5-105 (West 2013).

5.15
Definition Of “False Document” Or “Document That Is False”

[Reserved.]

Committee Note

The Committee moved and renumbered this Instruction as Instruction 13.42A.