

***Actus reus, mens rea* and evaluation**

Aims

- To introduce students to the concept of attempts.
- To consider the *actus reus* and *mens rea* of attempts.
- To discuss the main criticisms of attempts and suggestions for reform.

Materials

IS12a: The *actus reus* of attempts

IS12b: The *mens rea* of attempts

IS12c: Attempts: evaluation and reform

WS12: Attempts questions

AS12: Attempts answers

Introduction 15 minutes

Ask the students if they have ever thought about committing a crime or get them to imagine that they were going to commit one, for example robbing a bank. Ask them what stages they would have to go through before carrying it out. At what point can they be said to have attempted the crime? Allow the students to discuss this in groups and then feed back to the rest of the class.

Main lesson 90 minutes

Ask the students to consider why it is necessary to have a law that covers attempts. Distribute IS12a and explain the key points. Ensure that students understand the problem of where to draw the line and how difficult is to say exactly when a defendant moves beyond the preparatory stages. Ask the students if they think that a person can attempt the impossible.

Distribute IS12b and explain that the *mens rea* of attempts is intention. Explain the nature of conditional intent.

Distribute IS12c and explain the key criticisms of attempts. Ask the students to think of any further problems with the law on attempts and to suggest possible reforms. Discuss whether the current law is in need of reform.

Conclusion 15 minutes

Ask the students to complete WS12 and check their answers using AS12 or the corresponding PowerPoint presentation.

Extension work

Ask the students to make a list of the main cases on attempts, explaining both the facts and the law for each.

The *actus reus* of attempts

If a defendant fully intends to commit a crime but for some reason fails to complete the *actus reus*, the law on attempts is available to ensure that he or she can still be prosecuted. The rationale behind the law is that those who plan to commit an offence but fail to perform it deserve to be punished, and its existence means that if the police are aware that an offence is going to be committed, they do not have to wait until it is complete before arresting the suspects. If the defendant is found guilty, he or she will usually face the same maximum penalty that applies to the full offence.

The problem with prosecuting those who attempt crimes is where to draw the line. Should they be liable as soon as they think of committing a crime? Obviously, the law does not seek to punish those who merely think about committing an offence. After all, most people have probably thought about committing a crime but few ever would, and it would also be virtually impossible to secure a conviction in those circumstances. The difficulty is at what stage the defendant becomes criminally liable for an attempted crime.

The law on attempts is contained in s.1(1) of the **Criminal Attempts Act 1981**:

If with intent to commit an offence to which this section applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.

More than merely preparatory

Since the Criminal Attempts Act does not define the phrase 'more than merely preparatory', this is a matter for the jury to decide in each case, although the judge will first consider whether there is enough evidence to go before the jury. It is up to the jury to decide whether the defendant has progressed to something beyond the preparation stage. Clearly, this is not an easy decision to make.

R v Gullefer (1987)

The defendant had placed a bet on a greyhound at the racetrack, but it soon became obvious that his choice was not going to win. The defendant ran onto the track in order to disrupt the race, so that it would be declared void and he could then retrieve his stake money from the bookmakers. The question was whether his actions could be said to be more than merely preparatory to the commission of theft. The Court of Appeal overturned his conviction for attempted theft. It said that he had not gone beyond the preparatory stages, as he still had to go to ask for his money back from the bookmakers.

Previously, the law on attempts was covered by the common law, and a series of tests was developed by the courts to decide whether the defendant was guilty or not. Since *Gullefer*, the courts have stressed that the words of the **Criminal Attempts Act 1981** are to be followed, rather than the tests laid down in pre-statute cases.

R v Geddes (1996)

The defendant was found in the boys' toilets of a school. He ran off, leaving a rucksack containing string, tape and a knife. He was convicted of attempted false imprisonment, but on appeal this was quashed, as despite the fact that he clearly had the requisite intention, his actions were preparatory. He had not progressed beyond the preparatory stage, since he had not made contact with any of the boys. He had simply put himself in the position of being able to commit the offence and he had not moved into the implementation stage.

R v Tosti (1997)

The defendant and an accomplice had oxyacetylene equipment, which they hid in a hedge near to a barn that they planned to break into. They walked up to the barn door and examined the lock on it. When they realised that they were being watched, they ran away. On appeal, their convictions for attempted burglary were upheld, as the Court of Appeal said that there was evidence that showed that they had gone beyond the preparatory stages and had actually tried to commit the offence.

Attempting the impossible

Section 1(2) of the **Criminal Attempts Act 1981** states:

A person may be guilty of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.

Thus, the person who puts his or her hand into an empty pocket can be found guilty of attempted theft, even though it would be impossible for him or her to be convicted of the full offence as there was nothing to steal. Here, the crime is physically impossible, but in other circumstances, the crime may be legally impossible, for example if the defendant attempts to handle what he or she thinks are stolen goods but the goods are not in fact stolen.

Anderton v Ryan (1985)

The defendant bought a video recorder that she believed to be stolen. After confessing this to the police, they found no evidence to show that the equipment had actually been stolen but the defendant was nonetheless charged with attempting to handle stolen goods. She was convicted, but on appeal, the House of Lords quashed her conviction, despite the fact that the wording of s.1(2) of the Act clearly made her guilty.

This was an unexpected result and one that was to be changed only a year later.

R v Shivpuri (1986)

The defendant was arrested after being found carrying a suitcase that he believed contained either heroin or cannabis. In fact, the substance was merely dried cabbage leaves. The defendant was convicted of attempting to be knowingly concerned in dealing in controlled drugs. His conviction was upheld by the Court of Appeal. On appeal to the House of Lords, it took the opportunity to correct the mistake made a year earlier in *Anderton v Ryan*. It used the 1966 Practice Statement to depart from its previous decision. The defendant was held to be guilty, since he had clearly intended to commit the offence and had carried out an act that was more than merely preparatory to the commission of the offence.

If conviction of a crime is impossible because there is no such offence, the defendant cannot be guilty of attempting it.

R v Taaffe (1984)

The defendant's luggage was searched by customs on arrival into the UK and a number of packages were found in his luggage. He was asked what they contained and replied that it was money. He thought that he was committing a crime by importing currency into the UK. In fact, there is no such crime, so the defendant could not be guilty of attempting it. It was irrelevant that he thought that he was actually committing a crime.

The *mens rea* of attempts

Intention

In order to be liable for an attempted offence, the statute states that the defendant must act with intent to commit an offence. Therefore, the *mens rea* for an attempted offence is intention. Thus, for example, the *mens rea* for attempted murder is an intention to kill; an intention to cause GBH, which would be sufficient for a murder conviction, is not enough to make the defendant liable for attempted murder.

R v Mohan (1976)

The defendant refused to stop when a police officer signalled for him to do so. Instead, he drove towards the officer who managed to move out of the way in time. The defendant's conviction for attempted GBH was quashed owing to an error by the trial judge. The Court of Appeal stated that the *mens rea* for an attempted offence was satisfied by a decision to bring about the commission of the offence — in other words, only intention would suffice.

Conditional intent

A conditional intent may arise if, for example in the offence of theft, instead of having a specific object in mind, the defendant intends to take anything worth stealing. This may be enough to make him or her liable for an attempted offence.

R v Husseyn (1977)

The defendant and another man were seen standing by the back of a van containing diving equipment. They had intended to take anything worth stealing but ran off when the police approached them. The defendant was convicted of attempting to steal the diving equipment but this was quashed on appeal — he had been charged specifically with attempting to steal the diving equipment when, in fact, his true intention was to steal *anything*.

This case appeared to leave a gap in the law, which posed a problem for the courts, since a defendant could simply claim that he or she was not intending to steal whatever specific item was detailed in the charge, and, following *Husseyn*, he or she would be acquitted. The problem was resolved in the following case.

Attorney General's References (Nos 1 and 2) (1979)

The Court of Appeal held that a conditional intent was enough to impose liability for an attempted offence if the charge does not refer to specific items. In *Husseyn*, the defendant could have been found guilty if he had been charged with attempted theft of anything from the van instead of being charged specifically with attempted theft of the diving equipment, as there was no evidence that this was his intention.

Attempts: evaluation and reform

Sentence

Some people argue that the person convicted of an attempted offence should not face the same maximum penalty as someone who has actually committed the full offence, since he or she is not as blameworthy. Those in favour of the current system argue that often a person will only fail to commit the full offence because he or she is caught beforehand or because something beyond his or her control occurs to prevent him or her. They claim that if the defendant intended to commit the crime, he or she is as blameworthy as the defendant who actually committed it and should therefore face the same sentence.

Determining when an act is 'more than merely preparatory'

As statute gives no definition of what is meant by the phrase 'more than merely preparatory', it is left to juries and appeal courts to decide. This creates uncertainty and can allow defendants who are clearly a danger to avoid liability, as in *Geddes*.

No opportunity to withdraw

Once the defendant has performed an act that is more than merely preparatory, there is no opportunity or incentive for him or her to withdraw, since he or she will be liable for the attempted offence. As this carries the same maximum penalty as the full offence, he or she might as well continue, since there is nothing to be gained by withdrawal.

Attempts questions

(1) Why is it necessary for the criminal law to cover attempts?

(2) How is an attempt defined?

(3) Who decides whether an act is 'more than merely preparatory'?

(4) What happened in *R v Tosti* (1997)?

(5) What is the *mens rea* of attempts?

(6) Can a person attempt the impossible?

(7) What happened in *Anderton v Ryan* (1985)?

(8) How was the outcome of *Anderton v Ryan* rectified a year later?

(9a) What is the maximum sentence that a person convicted of an attempted crime can receive?

(9b) Do you think it is fair that the defendant can receive this penalty?

Attempts answers

- (1) If a defendant fully intends to commit a crime but for some reason fails to complete the *actus reus*, the law on attempts is available to ensure that he or she can be prosecuted. The rationale behind the law is that those who plan to commit an offence but fail to perform it deserve to be punished, and its existence means that if the police are aware that an offence is going to be committed, they do not have to wait until it is complete before arresting the suspects.
- (2) The law on attempts is contained in s.1(1) of the **Criminal Attempts Act 1981**:

If with intent to commit an offence to which this section applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.
- (3) Since the Criminal Attempts Act does not define the phrase, this is a matter for the jury to decide in each case, although the judge will first consider whether there is enough evidence to go before the jury. It is up to the jury to decide whether the defendant has progressed to something beyond the preparation stage. Clearly, this is not an easy decision to make.
- (4) The defendant and an accomplice had oxyacetylene equipment, which they hid in a hedge near to a barn that they planned to break into. They walked up to the barn door and examined the lock on it. When they realised that they were being watched, they ran away. On appeal, their convictions for attempted burglary were upheld, as the Court of Appeal said that there was evidence that showed that they had gone beyond the preparatory stages and had actually tried to commit the offence.
- (5) In order to be liable for an attempted offence, the statute states that the defendant must act with intent to commit an offence. Therefore, the *mens rea* for an attempted offence is intention. Thus, for example, the *mens rea* for attempted murder is an intention to kill; an intention to cause GBH, which would be sufficient for a murder conviction, is not enough to make the defendant liable for attempted murder.
- (6) Yes. Section 1(2) of the Criminal Attempts Act 1981 states that:

A person may be guilty of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.
- (7) The defendant bought a video recorder that she believed to be stolen. After confessing this to the police, they found no evidence to show that the equipment had actually been stolen but the defendant was nonetheless charged with attempting to handle stolen goods. She was convicted, but on appeal, the House of Lords quashed her conviction, despite the fact that the wording of s.1(2) of the Act clearly made her guilty.
- (8) In the case of *R v Shivpuri* (1986), the defendant was arrested after being found carrying a suitcase that he believed contained either heroin or cannabis. In fact, the substance was merely dried cabbage leaves. The defendant was convicted of attempting to be knowingly concerned in dealing in controlled drugs. His conviction was upheld by the Court of Appeal. On appeal to the House of Lords, it took the opportunity to correct the mistake made a year earlier in *Anderton v Ryan*. It used the 1966 Practice Statement to depart from its previous decision. The defendant was held to be guilty, since he had clearly intended to commit the offence and had carried out an act that was more than merely preparatory to the commission of the offence.
- (9a) If the defendant is found guilty, he or she will usually face the same maximum penalty that applies to the full offence.

(9b) Some people argue that the person convicted of an attempted offence should not face the same maximum penalty as someone who has actually committed the full offence, since he or she is not as blameworthy. Those in favour of the current system argue that often a person will only fail to commit the full offence because he or she is caught beforehand or because something beyond his or her control occurs to prevent the act. They claim that if the defendant intended to commit the crime, he or she is as blameworthy as the defendant who actually committed it and should therefore face the same sentence.