

W201 The Individual and the State

Study notes on attempt

Attempt

Definition

“If with intent to commit an offence ... a person does an act which is more than merely preparatory to the commission of an offence he is guilty of attempting to commit the offence” Section 1(1) Criminal Attempts Act 1981.

Exceptions

You can not attempt for example

- conspiracy
- aiding and abetting.

Limitations

You can only attempt **indictable** offences (ie indictable only or either way). For summary offences you have to look at the statute creating the offence and see if it makes attempt an offence. Some statutes do eg attempting to drive whilst over the limit under Sections 4 and 5 of the Road Traffic Act 1988.

Actus reus

Doing “an act which is more than merely preparatory to the commission of an offence”. If there is sufficient evidence in law to support such a finding then whether it qualifies as an attempt is up to the jury.

Over the years courts have tried different tests for what acts amount to an attempt.

The choice the courts faced was adopting either a rigid predictable test ie the ‘last act’ test **R v Eagleton** 1855 or has the accused reached the ‘point of no return’ or a more flexible test which gave more scope to the jury but could result in inconsistent decisions.

Eventually parliament legislated in 1981 (on the recommendation of the Law Commission) for a flexible test and courts have decided that the old tests which existed prior to 1981 are not relevant **R v Jones** 1990 C A (accused buys gun shortens barrel disguises himself gets in rear seat of victim’s car points gun at victim - victim grabs gun and escapes - held judge was right to let the case go to the jury - the ‘last act’ test (which in this case could be pulling the trigger) no longer applies).

If the accused has “only got ready” and not “actually tried to commit the offence” this is

not enough for attempt **R v Geddes** 1996 C A (accused went to school with rucksack containing kitchen knife rope and masking tape but was disturbed and ran off - he was convicted of attempted false imprisonment and appealed - held although intent was not in doubt the accused had not gone far enough eg he had not come face to face with his victim and tried to commit the offence).

Mens rea

There must be intent to commit the offence attempted.

Intent here means **intent** (and not recklessness) **R v Millard** 1987 C A (accused attempted to damage wooden wall at stadium - held for attempt criminal damage intent and not recklessness was required).

The offence means the full offence (in result crime) **R v Whybrow** 1951 C A (accused wired up soap dish to kill his wife - held for attempt murder intent to kill not intent to cause GBH was required).

Intent as to every element of the offence is **not** required. Eg in arson with intent to endanger life:

It is sufficient to prove an intent to damage by fire and recklessness only as to whether life is endangered **AG Reference (No 3 of 1992)** 1994 C A.

Impossibility

Distinguish between an accused who makes a mistake as to **law** and one who makes a mistake as to **facts**.

Law

If an accused thinks the law makes his behaviour illegal when it doesn't there is no offence of attempt eg man who commits adultery believing it is a crime - no offence of attempt.

Facts

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

“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”

This section means the confusing case law prior to 1981 is no longer relevant **R v Shivpuri** 1987 Lords (accused arrested in possession of suitcase he believed contained heroin or cannabis - in fact it was snuff which was not illegal - attempt conviction upheld even though the fact it was snuff made the commission of the offence impossible).