

OXFORD CAMBRIDGE AND RSA EXAMINATIONS

A2 GCE

G154/01/RM

LAW

Criminal Law Special Study

SPECIAL STUDY MATERIAL

WEDNESDAY 25 JANUARY 2012: Morning

DURATION: 1 hour 30 minutes

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G154 CRIMINAL LAW

SPECIAL STUDY MATERIAL

SOURCE MATERIAL

SOURCE 1

EXTRACT ADAPTED FROM *CRIMINAL LAW*. CATHERINE ELLIOTT AND FRANCES QUINN. 7TH EDITION. 2008. PEARSON LONGMAN. PP 245-247.

The criminal law does not punish people just for intending to commit a crime, but it recognises that conduct aimed at committing an offence may be just as blameworthy if it fails to achieve its purpose as if it had been successful – the person who tries to kill someone but for some reason fails is as morally guilty as someone who succeeds in killing, and possibly is just as dangerous. 5

The difficulty for the law on attempts is to determine where to draw the line – how far does someone have to go towards committing an offence before his or her acts become criminal? Over the years the common law proposed various tests to answer this question, but all have been problematic... . 10
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Section 1(1) of the Criminal Attempts Act 1981 provides: *‘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.’* 20

The question of whether an act is ‘more than merely preparatory’ is a matter of fact and, in a trial on indictment, will be for the jury to decide. The judge must consider whether there is enough evidence to leave this question to the jury, but section 4(3) of the Act states that, the judge having concluded that there is, the issue should be left completely to the jury. 25

What the jury have to ask themselves is whether the accused was simply preparing to commit the offence or whether the accused had done something that was more than merely preparatory to the commission of the offence. Clearly, there will be many cases where it is difficult to prove that the accused has crossed this line. In *Campbell* (1991) 93 Cr App Rep 350, the accused[’s] ... conviction for attempted robbery was quashed because, rather surprisingly, it was held that there was no evidence on which a jury could safely find that his acts were more than merely preparatory to committing the offence. 30 35 40

Similarly in *Gullefer* [1990] 3 All ER 882, ... The Court of Appeal held that there was no evidence that this act was more than merely preparatory, as the accused had clearly not started on ‘the crime proper’ – the offence consisted not of stopping the race, but of using that disruption to get his money back, and he had not yet started to get that money back. In *R v Geddes* [1996] 160 JP 697, ... He [the appellant] was found not to have committed an attempted false imprisonment because he had not approached a child before he was apprehended. 45 50

SOURCE 2

EXTRACT ADAPTED FROM THE JUDGMENT OF BINGHAM CJ IN *R v GEDDES* [1996] 160 JP 697.

The background to the case may be shortly summarised. On 20 July 1994 the appellant went into the boys' lavatory block at Dorothy Stringer School, Brighton. He had no connection with the school and had no right to be there. At about midday a teacher saw him in the boys' lavatory and spoke to him. He had a rucksack with him. A woman police officer, who by chance was on the premises, saw him and shouted at him, but he left. In a cubicle in the lavatory block there was a cider can which had belonged to the appellant. In the course of leaving the school the appellant discarded his rucksack which was found in some bushes. Its contents included several articles: a large kitchen knife, some lengths of rope and a roll of masking tape. The appellant was arrested three days later. The teacher and some pupils from the school identified him... .

In the present case ... there is not much room for doubt about the appellant's intention.... [T]he evidence is clearly capable of showing that he made preparations, that he equipped himself, that he got ready, that he put himself in a position to commit the offence charged.... [B]ut was the evidence sufficient in law to support a finding that the appellant had actually tried or attempted to commit the offence of imprisoning someone? Had he moved from the realm of intention, preparation and planning into the area of execution or implementation?... [T]he appellant had entered the school; but he had never had any

contact or communication with any pupil; he had never confronted any pupil at the school in any way. We accept, as the judge did, that the evidence of Nicola Green must be treated as irrelevant. 35

So, for this purpose, must the contents of the rucksack, which give a clear indication as to what the appellant may have had in mind, but do not throw light on whether he had begun to carry out the commission of the offence. On the facts of this case we feel bound to conclude that the evidence was not sufficient in law to support a finding that the appellant did an act which was more than merely preparatory to wrongfully imprisoning a person unknown... . 40 45

SOURCE 3

EXTRACT ADAPTED FROM THE JUDGMENT OF TAYLOR LJ IN *JONES (KENNETH)* [1990] 3 ALL ER 886.

[The victim] took his daughter to school by car as usual. After the child left the car, the appellant appeared, opened the door and jumped into the rear seat. He was wearing overalls, a crash helmet with the visor down, and was carrying a bag. 5
He and the victim had never previously met. He introduced himself, said he wanted to sort things out and asked the victim to drive on. When they stopped on a grass verge ... the appellant took the sawn-off shotgun from the bag. It was loaded. 10
He pointed it at the victim at a range of some ten to twelve inches. He said, 'You are not going to like this' or similar words.

Looking at the plain natural meaning of section 1(1) in the way indicated by Lord Lane CJ [in *Gullefer*] the question for the judge in the present case was whether there was evidence from which a reasonable jury, properly directed, could conclude that the appellant had done acts which were more than merely preparatory. Clearly his actions in obtaining the gun, in shortening it, in loading it, in putting on his disguise and in going to the school could only be regarded as preparatory acts. But, in our judgment, once he had got into the car, taken out the loaded gun and pointed it at the victim with the intention of killing him, there was sufficient evidence for the consideration of the jury on the charge of attempted murder. It was a matter for them to decide whether they were sure that those acts were more than merely preparatory. 20 25 30

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SOURCE 4

**EXTRACT ADAPTED FROM THE JUDGMENT OF HILBERY
LCJ IN *WHYBROW (ARTHUR GEORGE)* (1951)
CR. APP. R. 141 (CA).**

**On the night of the alleged crime the wife was
taking a bath ... The wife was heard to call out,
and she complained of having received an electric
shock while in the bath. The next day it came to
light that an apparatus had been connected with
the soap dish, the bath being a porcelain bath
and either the soap dish itself or its support
being made of metal. An apparatus was found
connected with this soap dish which, if prepared
intentionally, showed a deliberate, cold-blooded
resolve to administer a shock of 230 volts of
electricity to a woman in her bath... .**

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**In murder the jury is told – and it has always
been the law – that if a person wounds another
or attacks another either intending to kill or
intending to do grievous bodily harm, and the
person attacked dies, that is murder, the reason
being that the requisite malice aforethought,
which is a term of art, is satisfied if the attacker
intends to do grievous bodily harm. Therefore, if
one person attacks another, inflicting a wound in
such a way that an ordinary, reasonable person
must know that at least grievous bodily harm
will result, and death results, there is the malice
aforethought sufficient to support the charge
of murder. But, if the charge is one of attempted
murder, the intent becomes the principal
ingredient of the crime. It may be said that the
law, which is not always logical, is somewhat
illogical in saying that, if one attacks a person**

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intending to do grievous bodily harm and death results, that is murder, but that if one attacks a person and only intends to do grievous bodily harm, and death does not result, it is not attempted murder, but wounding with intent to do grievous bodily harm. It is not really illogical because, in that particular case, the intent is the essence of the crime while, where the death of another is caused, the necessity is to prove malice aforethought, which is supplied in law by proving intent to do grievous bodily harm.

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SOURCE 5

EXTRACT ADAPTED FROM *CRIMINAL LAW*. ALAN REED AND BEN FITZPATRICK. 3RD EDITION. 2006. SWEET AND MAXWELL. PP 276-277, 279 AND 281.

In many respects it might be thought desirable in the interests of simplicity to require that the *mens rea* for the attempted offence should be the same as that for the completed offence. On the other hand that might lead to odd results. If a terrorist who is torturing a prisoner shoots him in the kneecaps, he clearly intends to cause him serious bodily harm and if the victim dies there is nothing wrong in holding that the terrorist should be guilty of murder. However, if the victim does not die, it might sound odd to hold the terrorist liable for attempting to murder him because this would imply that the terrorist was trying to kill the victim, which he was not. In other words if you say that someone is attempting to bring about a result you are saying that he intends to achieve that result.

Section 1(1) of the Criminal Attempts Act 1981 says that the prosecution must prove that the accused did the act with the 'intention' to commit an offence to which the section applies. This will clearly be interpreted to mean that, for example, in the crime of attempted murder, the prosecution must prove that the accused intended to kill the victim; proof that he intended to cause the victim serious bodily harm will not suffice. This principle was enunciated at common law by the appellate court in *Whybrow* ... When the charge is one of attempt, "the intent becomes the principal ingredient of the crime"

The crime of attempted offences, thus, inevitably confronts the trial judge with the meaning of intention. In straightforward cases it will probably be simplest to ask the jury if the prosecution has satisfied them that the accused was trying to bring about the prohibited result. This was expressed at common law by the Court of Appeal in *Mohan* [1976] QB 1 in the following terms, “a decision to bring about, in so far as it lies within the accused’s power, the commission of the offence which it is alleged the accused attempted to commit, no matter whether the accused desired that consequence of his act or not”. However, problems have been encountered over the adoption of suitable directions that trial judges ought to make for attempted murder ... [I]ntention for murder itself may be either *direct intention* or *oblique intention*. *Direct intention* applies where it is the defendant’s objective, aim or purpose to bring about the death of V ... Only in exceptional cases, involving *oblique intention*, where the defendant’s ultimate purpose, desire or aim was something other than the prohibited consequence which he had brought about, should further explanation or elaboration be presented to the jury... .

The Court of Appeal had another chance to review this area of law in *Att.-Gen.’s Reference (No.3 of 1992)* [1994] 2 All ER 121 and appeared to find yet another way to identify the *mens rea* in attempted crime ... The defendants were charged, *inter alia*, with the offence of attempted aggravated arson contrary to section 1, subsections (2) and (3) of the Criminal Damage Act 1971. To gain a conviction for the completed offence the prosecution has to prove that the defendant intentionally or recklessly damaged or destroyed property ... with intent to

endanger life or being reckless as to whether life was thereby endangered ... The trial judge had directed the jury that for the prosecution to succeed on the attempted offence [in this case] they must prove not only that the defendant *intended to damage or destroy property*, but also that the defendant *intended to endanger life*. In other words, recklessness was insufficient on any limb of the attempted offence... . 70
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[The Court held] it was sufficient that the prosecution could prove that the defendants *intended or were reckless as to endangering life*... .

It is suggested that the preferred solution should be to require the same *mens rea* for the attempt and the completed offence. It would make it far easier for trial judges in their directions to juries and it can surely not be thought to operate unfairly against the accused. 80

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SOURCE 6

EXTRACT ADAPTED FROM *CRIMINAL LAW*. MICHAEL JEFFERSON. 9TH EDITION. 2009. PEARSON LONGMAN. PP 432-433.

[The common law has] laid down a rule that a person was not guilty of attempt ... where the facts were such that it was impossible to commit the full offence. For instance, if the accused had put his hand into a pocket, having made up his mind to steal, he was not guilty of attempted theft if there was nothing in the pocket. Though this statement of law, which has been simplified for present purposes, had its defenders, most commentators thought it ludicrous, and the Law Commission and Parliament agreed. After all the accused had demonstrated an intent to break the law. The law is now stated in section 1(2) of the Criminal Attempts Act 1981: 5

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. 10

Section 1(2) states '*may be*'. '*Is*' was meant. The Court of Appeal in *Shivpuri* [1985] QB 1029 thought that '*may be*' was used to emphasise the requirements of *actus reus* and *mens rea*. On the pickpocket facts, the accused is now guilty... . 20

The House of Lords applied section 1(2) in *Shivpuri* [1987] AC 1. The accused was charged with attempting to be knowingly concerned in dealing with a controlled drug, heroin. He was found carrying a package containing a powdered 25

substance and more was found in his flat. He thought the substance was heroin, but in fact it was not. The House of Lords dismissed his appeal. Lord Bridge said that the accused had intended to commit the offence and he had performed a more than merely preparatory act. Though he could not have committed the full offence, section 1(2) deems him to be guilty ... The law is plainly stated in section 1(2). To argue differently is to go against the words of the statute, which represents the intention of Parliament. One can nowadays be guilty of attempting to steal property which one already owns. Whether one should be guilty is a matter of policy, and should not be left to the discretion of the prosecution... .

Many cases will not give rise to problems. If the accused fires a gun at a pillow intending to kill someone, he is guilty of attempted murder. If the accused puts potassium cyanide into his mother's drink, intending to kill her, but the dose is too weak, he is guilty of attempted murder. If the accused tries to open a safe with the wrong tools, intending to steal, he is guilty of attempted theft. A slightly more difficult case is the well-known example of the accused who takes an umbrella from a London club, believing he has stolen it from another member. In fact it belongs to him. Because it does not belong to another, he is not guilty of theft. He is, however, guilty of attempting theft. It does not matter that the property in fact belongs to him. Leaving the solution to the discretion not to prosecute seems weak, but the law is clear.

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