ATTEMPTS

Introduction

Attempts is an inchoate (incomplete) offence and is concerned with the preparatory stages of a crime as circumstances beyond the control of the defendant have prevented the complete offence from taking place. It allows the police to intervene at an early stage and make arrests before a substantive crime has occurred so making a significant contribution towards public safety.

A person can be convicted of an attempt even if the main offence was never actually committed or it may be impossible to commit the complete offence. **In R v White 1910** the mother died before the son could poison her and so he was guilty of attempted murder even though it would have been impossible to commit the substantive offence of murder.

All the inchoate offences can only be charged in connection with another substantive offence e.g. attempted murder or attempted robbery.

The criminal law does not punish people just for intending to commit a crime, but it does punish those whose conduct is aimed at committing an offence but fails to commit the actual offence.

Definition

s.1 (1) Criminal Attempts Act 1981 provides

'If with intent(MR) to commit an offence to which this section applies, a person does an act (doesn't cover omission) which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.'

Actus Reus

The current test focuses on **"more than merely preparatory"** - s4 (3) Criminal Attempts Act 1981. This issue is left to the **jury** to decide but if the judge decides there is no such evidence the judge must direct them to acquit.

There have been many cases on the meaning of 'merely preparatory' and it is difficult to draw any general principles from them.

In these cases, it is also difficult to prove that the accused has done acts that are **more than merely preparatory** – i.e. embarking upon the crime proper or trying to commit the crime.

Cases of mere preparation and no attempt – not guilty, not enough for an attempt R v

Gullefer 1990

D jumped onto a racetrack in order to have the race declared void and so enable him to reclaim money he had bet on the race. His conviction for attempting to steal was quashed because his

action was merely preparatory to committing the offence

R v Campbell 1991

Tony Campbell was arrested after loitering outside a post office, wearing sunglasses and carrying something heavy, after police had been informed that a robbery was going to take place. D had been waiting outside the post office, left, and then returned 30 minutes later, at which point he was arrested and discovered to have in his possession a gun and a demand note. D was convicted of attempted robbery and appealed. D claimed that while he had intended to rob the post office, he had changed his mind and had not entered the post office but was arrested before he had a chance to leave. D claimed that he had therefore not moved from the realm of intention, preparation and planning of the offence into the area of implementation of that offence. The issue in question is when the actions of an accused become 'attempt' to commit a crime.

R v Geddes 1996

D was found in the boys' toilet block of a school, in possession of a large kitchen knife, rope and a masking tape. He had no right to be in the school. He had not contacted any of the pupils. His conviction for attempted false imprisonment was quashed

Cases of Attempt – actions were sufficient for an attempt

R v Boyle and Boyle 1987

D's were found standing by a door of which the lock and one hinge were broken, trying to break lock. Their conviction for attempted burglary was upheld. The CoA held that the test to use was whether the defendant was embarking on the crime proper. In this case, once the defendants had entered, they would be committing burglary, so trying to gain entry was an attempt

R v Jones 1990

D's partner told him that she wanted their relationship to end as she was seeing another man, V. D bought a shotgun and shortened the barrel. D then found V who was in his car. D who was wearing a crash helmet with the visor down got into V's car and pointed the gun at V. V grabbed the gun and managed to throw it out the car. D's conviction for attempted murder was upheld. D tried to argue that the safety catch was still on. He had not done the last act before the crime proper. The CoA said that buying the gun, shortening and loading it, disguising himself were preparatory acts

Attorney-General's Reference (No 1 of 1992) 1993

D dragged a girl up some steps to a shed. He lowered his trousers and interfered with her private parts. His penis remained flaccid. he argued that he could not therefore attempt to commit rape. His conviction for rape was upheld. Attempted rape can be complete before the attempt at physical penetration.

R v Tosti 1997

D intended to burgle premises. He took metal cutting equipment with him and hid it behind a hedge near to the premises. He then examined the padlock on the door. He did not damage the padlock. He was found guilty of attempted burglary. The difference from the case of Campbell is that burglary is committed the moment the D enters as a trespasser with intent to steal. Robbery is not committed until D uses his force in order to steal

Attempting the Impossible

Before the **Criminal Attempts Act 1981** impossibility was a defence to a charge of attempts. This was as a result of the case of **Houghton v Smith 1975.**

A van containing stolen goods was stopped by the police. It transpired that the van was proceeding to Hertfordshire where the defendant was to decide for the disposal of the goods in the London area. In order to trap the defendant, the van could proceed on its journey with policemen concealed inside. The van was met by the defendant who began to play a prominent role in assisting in the disposal of the van and its load. Finally, the trap was sprung, and the defendant was arrested. The prosecutor believed, once the police had taken charge of the van, the goods had been restored to lawful custody, and were therefore, no longer stolen goods. Accordingly, the defendant was not charged with handling 'stolen goods', contrary to s22 Theft Act 1968, but with attempting to handle stolen goods.

However, **s. 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.' This section has caused problems for the courts.

Anderton v Ryan 1985

Mrs. Ryan bought a video recorder very cheaply. She thought it was stolen. Later she admitted this to the police who were investigating a burglary at her home. her conviction was quashed because the video recorder was not stolen. the HoL held that even though she had gone beyond merely preparatory acts, all her acts were innocent. The video recorder was not stolen therefore she wasn't guilty

R v Shivpuri 1987

D agreed to receive a suitcase which he thought contained prohibited drugs. The suitcase was delivered to him, but it contained only snuff and harmless vegetable matter. D was convicted of attempting to be knowingly concerned in dealing with prohibited drugs.

Mens Rea

Case law has made it clear that a defendant can only be liable for an attempt if they act with the **intention** of committing the complete offence -- recklessness as to the consequences of the act is

not enough.

In this respect the mens rea is stricter than the full offence. i.e. intent is harder to prove than recklessness. For example, attempting criminal damage the mens rea would be intent rather than recklessness.

This means for an attempted offence if the full offence can be committed recklessly there will be no liability unless intent is proven.

Furthermore, for attempted murder it must be proven there was an intention to kill (express malice) and an intention to cause GBH (implied malice) would not be sufficient. This means the mens rea of attempted murder is harder to prove than murder.

R v Whybrow 1951

The D wired up his wife's bath and caused her an electric shock. he was convicted of attempted murder. When he appealed, the court, although upholding his conviction, criticised the trial judge's summing up and stressed that only an intention to kill was sufficient for the mens rea of attempted murder

Relevance of Recklessness

R v Millard and Vernon 1987

D's repeatedly pushed against a wooden fence on a stand at a football ground. The prosecution alleged that they were trying to break it and they were convicted of attempted criminal damage. The Court of Appeal quashed their convictions

Recklessness is not normally sufficient for an attempt.

Attorney – General's References (No 3 of 1992) 1994

D threw a petrol bomb towards a car containing four men. The bomb missed the car and smashed harmlessly against a wall. D was charged with attempting to commit arson with intent to endanger life. D was acquitted. The CoA held that the trial judge was wrong. It was necessary to prove that D intended to damage property, but it was only necessary to prove that he was reckless as to whether life would be endangered

Tried to commit arson with the intent to endanger life

Conditional Intention

This has caused the courts problems and arises where a person intends to do something if a certain condition is satisfied. The difficulties have arisen in attempted theft and burglary offences.

R v Easom 1971

D picked up a woman's handbag in a cinema, rummaged through it, then put it back on the floor

without removing anything. His conviction for theft of the bag and its contents was quashed. The CoA also refused to substitute a conviction for attempted theft of the bag and specific contents as there was no evidence that D intended to steal the items. In this case there was no evidence that rhe D had intended to permanently deprive the owner of the bag or items in it. A sa result he couldn't be guilty of attempted theft

R v Husseyn 1977

D and another man were seen loitering near the back of a van. When the police approached, they ran off. D was convicted of attempting to steal some sub-aqua equipment that was in the van. The CoA quashed his conviction.

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

The above two cases can be criticised. Surely the D did intend to steal something. These problems were resolved in Attorney – General References where the CoA decided that if the D had a conditional intent, D could be charged with an attempt to steal some or all the contents

Sentence

Under s.4. (1) of the Criminal Attempts Act 1981, the maximum sentence that can be imposed for an attempt is usually the same as that for the main offence.