OCR
Oxford Cambridge and RSA

To be opened on receipt

A2 GCE LAW

G154/01/RM Criminal Law Special Study

PRE-RELEASE SPECIAL STUDY MATERIAL

JUNE 2019

7639220196

INSTRUCTIONS TO TEACHERS

- This Resource Material **must** be opened and given to candidates on receipt.

INSTRUCTIONS TO CANDIDATES

- This copy may **not** be taken into the examination room.

INFORMATION FOR CANDIDATES

- This document consists of **8** pages. Any blank pages are indicated.

G154 CRIMINAL LAW

SPECIAL STUDY MATERIAL

SOURCE MATERIAL

SOURCE 1

Extract adapted from the judgment of Watkins L.J. in *R v Campbell* (1991) 93 Cr.App.R.350 (Court of Appeal, Criminal Division).

Looking at the circumstances here it was beyond dispute that the appellant, at the material time, was carrying an imitation firearm which he made no attempt to remove from his clothing. […] He was not, as he had done previously that day, wearing, as a form of disguise, sunglasses. It was not suggested that he had, in the course of making his way down the road […] moved towards the door of the post office so as to indicate that he intended to enter that place.

In order to effect the robbery it is equally beyond dispute it would have been quite impossible unless obviously he had entered the post office, gone to the counter and made some kind of hostile act – directed, of course, at whoever was behind the counter and in a position to hand him money. A number of acts remained undone and the series of acts which he had already performed – namely, making his way from his home […] dismounting from the cycle and walking towards the post office door – were clearly acts which were, in the judgment of this court, indicative of mere preparation […]. If a person, in circumstances such as this, has not even gained the place where he could be in a position to carry out the offence, it is extremely unlikely that it could ever be said that he had performed an act which could be properly said to be an attempt.

SOURCE 2

Extract adapted from Criminal Law. Michael Jefferson. 10th edition. 2011. Pearson Education Limited. Pp 431–432, 438–439.

Attempt is a crime where principles of criminal law collide. First, people who are dangerous should be restrained. A person who shoots and misses is just as culpable as one who shoots and hits. His actions demonstrate a criminal intent. The law should prevent future misconduct as well as punish past misbehaviour. Both are dangerous. Moreover, the line between success and failure may be slight. In both eventualities the accused must be deterred. Secondly, people should not be penalised for simply thinking about committing crimes. Balancing these principles leaves the police in an invidious position. They have to hold back until the moment when the accused is well on his way towards committing the offence, even though it is certain that a crime will be performed. The Law Commission Report No. 102, 1980, on *Attempt, and Impossibility in Relation to Attempt, Conspiracy and Incitement* […] said that the rationale of the offence was to stop persons from committing the full offence. The law adopts the view that attempt is an offence where the accused both has the intent of carrying out the full offence and he has put that intention partly into effect: in the words of the Act he must have done a 'more than merely preparatory' act. Both firmness of purpose and antisocial behaviour are looked at.

[…] The *actus reus* is defined in s 1(1) of the 1981 Act as doing 'an act which is more than merely preparatory to the commission of the offence'. […] 'An act' is wide. It need not be a dangerous act. It is the *mens rea* which converts the act into a crime. […] By s 4(3) the question whether the accused committed an attempt is for the jury, provided that there is sufficient evidence in law to support that finding: that is, the judge can rule that the act may be an attempt but it is for the jury to determine that it was so. The judge cannot instruct the jury that a situation amounts to a more than merely preparatory act. However, he or she may tell the jury that there is no evidence that what the accused has done amounts to a more than merely preparatory act, and the issue can be withdrawn from the jury: **Campbell** (1991) 93 Cr App R 350. On the facts the accused was not guilty of attempted robbery even though he had reconnoitred a sub-post office he had intended to rob and he had an imitation gun (and he was convicted of possessing an imitation firearm) and a threatening note. He was arrested near to the office door. He said he was going back to his motorcycle, having decided not to rob. Presumably he would not on his approach have been guilty until he had crossed the threshold of the sub-post office – not a helpful decision in the prevention of crime.

[…] Present law does little to encourage the prevention of crime, for preparations to commit offences are not attempts, though there is the possibility that other crimes may have been committed […]. In **Gullefer** [1990] 3 All ER 882, which has come to be seen as the leading authority, the accused backed a greyhound which was going to lose. He jumped onto the track trying to distract the dogs so that the stewards would call 'no race' and bookmakers would return stake money. He failed. The Court of Appeal held that he was not guilty of attempt. There was no evidence to go to the jury. His acts were preparatory. The position would have been different if the stewards had called 'no race'. In that eventuality there would have been evidence for the jury. The jury might have, however, held that the accused was guilty only when he had presented his betting slip, or perhaps when he joined the queue. The court said that the accused was guilty only when he had embarked on the 'crime proper'. On the facts juries might have different views as to when the accused did that. After all, he did not have to do anything more. It was for the stewards to declare the race void.

SOURCE 3

Extract adapted from the judgment of Taylor L.J. in *R v Jones* (Kenneth) (1990) 91 Cr.App.R.351 (Court of Appeal, Criminal Division).

[The defence had argued] that since the appellant would have had to perform at least three more acts before the full offence could have been completed, ie remove the safetycatch, put his finger on the trigger and pull it, the evidence was insufficient to support the charge.

[…] Section 1(1) of the 1981 Act provides as follows:

> '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.'

[…] The 1981 Act is a codifying statute. It amends and sets out completely the law relating to attempts and conspiracies. In those circumstances the correct approach is to look first at the natural meaning of the statutory words, not to turn back to earlier case law and seek to fit some previous test to the words of the section. […] This approach was adopted by Lord Lane CJ presiding over this court in **R** *v* **Gullefer** (1986) [1990] 3 All ER 882 at 884.

[…] We respectfully adopt those words. We do not accept counsel's contention that s 1(1) of the 1981 Act in effect embodies the 'last act' test […]. Had Parliament intended to adopt that test, a quite different form of words could and would have been used.

It is of interest to note that the 1981 Act followed a report from the Law Commission on *Attempt, and Impossibility in Relation to Attempt, Conspiracy and Incitement* (Law Com no 102). At para 2.47 the report states:

> 'The definition of sufficient proximity must be wide enough to cover two varieties of cases; first, those in which a person has taken all the steps towards the commission of a crime which he believes to be necessary as far as he is concerned for that crime to result, such as firing a gun at another and missing. Normally such cases cause no difficulty. Secondly, however, the definition must cover those instances where a person has to take some further step to complete the crime, assuming that there is evidence of the necessary mental element on his part to commit it; for example, when the defendant has raised the gun to take aim at another but has not yet squeezed the trigger. We have reached the conclusion that, in regard to these cases, it is undesirable to recommend anything more complex than a rationalisation of the present law.'

[…] Clearly, the draftsman of s 1(1) must be taken to have been aware of […] the Law Commission's report. The words 'an act which is more than merely preparatory to the commission of the offence' would be inapt if they were intended to mean 'the last act which lay in his power towards the commission of the offence'.

[…] 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. In our judgment, therefore, the judge was right to allow the case to go to the jury, and the appeal against conviction must be dismissed.

SOURCE 4

Extract adapted from Unlocking Criminal Law. Jacqueline Martin and Tony Storey. 5th edition. 2015. Routledge. Pp 146–147.

The essence of the *mens rea* in attempt cases is D's intention. In **Whybrow** (1951) 35 Cr App R 141, the Court of Appeal held that, although on a charge of murder, an intention to cause grievous bodily harm (GBH) would suffice, where attempted murder was alleged, nothing less than an intent to kill would do: 'the intent becomes the principal ingredient of the crime'. […] [A] jury may find that D intended a result based on D's foresight of virtually certain consequences […].

Attempted theft and burglary cases have caused difficulties when it comes to framing the indictment. The problem is that most burglars, pickpockets, etc. are opportunists who do not have something particular in mind. […] In **Attorney-General's Reference** *(Nos 1 and 2 of 1979)* [1979] 3 All ER 143, the Court of Appeal provided a solution to the problem: in such cases D should be charged with an attempt to steal 'some or all of the contents' of the handbag.

Where an attempt is charged, it may be possible to obtain a conviction even though D was reckless as to some of the elements of the *actus reus*. This is illustrated in **Attorney-General's Reference** *(No 3 of 1992)* [1994] 2 All ER 121.

A petrol bomb had been thrown from a moving car, narrowly missing a parked car in which four men were sitting and two other men standing nearby, and smashing into a wall. Those responsible for throwing the bomb were charged with attempted aggravated arson, the court alleging that, while the criminal damage was intentional, they had been reckless as to whether life would be endangered. At the end of the Crown case, the judge ruled no case to answer. He ruled that an attempted crime could not be committed without intent. It was impossible to intend to be reckless; therefore it had to be shown that D both intended to damage property and to endanger life. The Court of Appeal held this was wrong: it was enough that D intended to damage property, being reckless as to whether life would be endangered.

SOURCE 5

Extract adapted from the judgment of Lord Bridge in *R v Shivpuri* [1987] AC 1 (House of Lords)

[…] [T]he first question to be asked is whether the appellant intended to commit the offences […]

[…] did the appellant intend to receive and store (harbour) and in due course pass on to third parties (deal with) packages of heroin or cannabis which he knew had been smuggled into England from India? The answer is plainly yes, he did.

Next, did he in relation to each offence, do an act which was more than merely preparatory to the commission of the offence? The act relied on in relation to harbouring was the receipt and retention of the packages found in the lining of the suitcase. The act relied on in relation to dealing was the meeting at Southall station with the intended recipient of one of the packages. In each case the act was clearly more than preparatory to the commission of the intended offence; it was not and could not be more than merely preparatory to the commission of the actual offence, because the facts were such that the commission of the actual offence was impossible.

Here then is the nub of the matter. Does the 'act which is more than merely preparatory to the commission of the offence' in section 1(1) of the Act of 1981 (the actus reus of the statutory offence of attempt) require any more than an act which is more than merely preparatory to the commission of the offence which the defendant intended to commit?

Section 1(2) must surely indicate a negative answer; if it were otherwise, whenever the facts were such that the commission of the actual offence was impossible, it would be impossible to prove an act more than merely preparatory to the commission of that offence and subsections (1) and (2) would contradict each other.

This very simple, perhaps over simple, analysis leads me to the provisional conclusion that the appellant was rightly convicted of the two offences of attempt with which he was charged. But can this conclusion stand with **Anderton** *v* **Ryan**? The appellant in that case was charged with an attempt to handle stolen goods. She bought a video recorder believing it to be stolen. On the facts as they were to be assumed it was not stolen. By a majority the House decided that she was entitled to be acquitted. I have re-examined the case with care. If I could extract from the speech of Lord Roskill or from my own speech a clear and coherent principle distinguishing those cases of attempting the impossible which amount to offences under the statute from those which do not, I should have to consider carefully on which side of the line the instant case fell. But I have to confess that I can find no such principle.

[…] I am thus led to the conclusion that there is no valid ground on which **Anderton** *v* **Ryan** can be distinguished. I have made clear my own conviction, […] that the decision was wrong.

SOURCE 6

Extract adapted from Criminal Law. Catherine Elliott and Frances Quinn. 9th edition. 2012. Pearson Education Limited. Pp 272–273.

Before the Criminal Attempts Act 1981, impossibility was a defence to a charge of attempts […] which effectively meant that if an accused reached into someone's bag, intending to steal a purse, but found no purse in there, they were not guilty of attempted theft. Many commentators found this ridiculous, and now s. 1(2) of the Act 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.'

Though generally viewed as more sensible than the position prior to the Act, this concept has caused some problems for the courts. In **Anderton** *v* **Ryan** (1985), the defendant bought what she thought was a stolen video recorder, and then went and confessed as much to the police. She was charged with, among other things, attempted handling of stolen goods, but when the evidence was examined, there was no proof that the video recorder had in fact been stolen. The Divisional Court held that the Act indicated that although the facts meant it was impossible for the full offence to have been committed, this was not a defence to the charge of attempted handling. The House of Lords reversed the decision, which they considered absurd, and the conviction was quashed, thus rendering impossibility a defence despite the apparently clear wording of the Act.

However, their Lordships swiftly (by legal standards) overruled their own decision. In **Shivpuri** (1987), the accused was arrested by customs officers and confessed that there was heroin in his luggage. After forensic analysis, it transpired that in fact the substance was only harmless ground vegetable leaves, but Shivpuri was nevertheless convicted of attempting to be knowingly concerned in dealing with a controlled drug. The House of Lords held that on accurate construction of s. 1(1) of the Criminal Attempts Act 1981 Shivpuri was guilty. Lord Bridge, who had also been a judge in **Anderton** *v* **Ryan**, admitted that he had got the law wrong in that case. He said that if the accused intended to commit the offence he was charged with attempting, and had done an act that was more than merely preparatory to committing the intended offence, he was guilty of attempt, even if the offence would be factually or legally impossible for any reason. It was stated that **Anderton** *v* **Ryan** had been wrongly decided.