

Answers to self-test questions

Chapter 15

1. What does “inchoate” mean?

“Inchoate” means incomplete or undeveloped. Where the defendant does not commit the full criminal offence, he may be liable for an inchoate offence.

2. Why does the law seek to criminalise inchoate offences?

The law seeks to criminalise inchoate offences in order to prevent harm. The criminal law does not require a police officer to wait for an offender to complete the full offence before he can carry out an arrest. Inchoate liability enables the punishment of offenders if their conduct reaches such a degree that criminalisation is justified in order to protect society and prevent harm.

3. How might a defendant be liable for an inchoate offence?

A defendant might be liable for encouraging or assisting the commission of an offence under the Serious Crime Act 2007, conspiracy to commit a criminal offence under the Criminal Law Act 1977, or for an attempt to commit a criminal offence under the Criminal Attempts Act 1981.

4. Identify the three new offences found under the Serious Crime Act 2007.

The first offence is found under s.44 of the Act and is intentionally encouraging or assisting an offence. The second is the offence of encouraging or assisting an offence believing that the offence will be committed under s.45 and the final offence is encouraging or assisting the commission of offences, believing that one or more offences will be committed under s.46.

5. What was the purpose of Part 2 of the Serious Crime Act 2007?

The purpose of Part 2 of the Serious Crime Act 2007 was to close a loophole in the law which allowed a person who assisted an offence which did not take place, i.e., assisting an inchoate offence. Prior to the Act, a defendant who assisted an offence which did not actually take place could not be convicted of any offence unless the offence was completed.

6. When will there be no conspiracy despite an agreement by two people to commit a criminal offence?

There will be no conspiracy where a husband and wife agree to commit an offence: s.2(2)(a), Criminal Law Act 1977. However, a husband and wife may conspire together with a third person to commit an offence. This principle has also been extended to civil partnerships. Under s.2(2)(b), it is not possible to conspire with a child under the age of 10 years old to commit an offence. Under s.2(2)(c), the intended victim of a conspiracy may not be guilty of the conspiracy.

7. What is the *mens rea* of statutory conspiracy?

The defendant must:

- (i) intend to enter into the agreement,
- (ii) intend that the agreement be carried out and the substantive offence be committed, and
- (iii) intend or know that the facts or circumstances which constitute the *actus reus* of the offence do or will exist.

8. What is the *mens rea* of an attempt?

Intention to commit the full offence: s.1(1), Criminal Attempts Act 1981.

9. When does preparation turn into an attempted offence? Refer to case law in your answer.

Under s.1(1), Criminal Attempts Act 1981, the defendant has the *actus reus* of an attempt if he takes steps that are more than merely preparatory towards the commission of an offence.

In *Boyle and Boyle* (1987), by breaking down the door the defendants did more than a merely preparatory act towards committing burglary.

In *Jones* (1990), Taylor LJ held that the defendant's "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, ...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 those acts were more than merely preparatory".

In *Tosti* (1997), examining the padlock on a barn door was sufficient evidence of an attempt, despite the fact that the defendants had not got as far as trying to commit the burglary.

However, there will be no attempt if the defendant still has a number of steps to take.

In *Gullefer* (1990), by jumping on the track the defendant had not gone beyond mere preparation. Lord Lane CJ stated that an attempt “begins when the merely preparatory acts come to an end and the defendant embarks upon the crime proper”. There were still more steps which had to take place before the defendant could get his money back.

In *Geddes* (1996), there was not sufficient evidence for the judge to leave the charge of attempted false imprisonment to the jury. This decision was largely based upon the fact that the defendant “had never had any contact or communication with any pupil; he had never confronted any pupil at the school in any way”. The Court paraphrased the statutory test:

“Does the available evidence demonstrate that the defendant has done an act which shows that he has actually tried to commit the offence in question or has he merely got ready or put himself in a position or equipped himself to do so?”

10. When is impossibility a defence to an inchoate offence?

Impossibility is a defence to the offences under ss.44-46, Serious Crime Act 2007.

Under s.1(1)(b), Criminal Law Act 1977, impossibility is no defence to the statutory offence of conspiracy.

According to s.1(2), Criminal Attempts Act 1981, impossibility is no defence to an attempt. This applies whether the impossibility is due to inadequate means, factual impossibility or legal impossibility. However, if the defendant wrongly believes that he is committing a crime, when in fact he is not, he is not guilty of attempting to commit any offence: *Taaffe* (1984).