

# **CRIMINAL LAW AND PROCESS B EXAM NOTES**

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## WEEK 1

### COMPONENTS OF CRIMINAL OFFENCES

#### 3.3.5 Attempts

AR = an act/omission

Requires act + circumstance:

- Sexual assault = sexual intercourse (act) + non-consent (circumstance)
- Homicide requires a consequence requirement also
  - o Refer to tables from last semester

Penalty for attempt – max

- Crimes Act s344A = same penalty as for completed offence. (s344A, 61P)  
Eg; attempted murder penalty 25yrs (s30), murder is a life sentence.  
∴ the attempt penalty is more lenient sentence.

Attempt offence – belief of conviction even if AR fails:

1. D performed certain acts pursuing planned crime, but before completion, has been prevented to following through/interrupted/change of heart.
  - o Preventative Justification – allows police to intervene without jeopardising prospects of D's conviction.
2. D performed all acts necessary to commit planned crime, FAILS - flaws in execution/circs were not as they believed them to be.
  - o Inappropriate for D to benefit from failure, formed the requisite state of mind and manifestation of criminal intent.
    - Danger - try again and may succeed.

#### 3.3.5.1 Acts of preparation and acts of perpetration – Drawing a Distinction

Intention not = criminally liability for attempt.

- Criminal Attempt; intentions to commit completed offence, and acts undertaken in pursuance of AR.

Acts of preparation are not sufficient = attempt – McMillian v Reeves (1945).

- SUBJECTIVE: Distinction of non-criminal preparation and AR of attempt.  
DPP v STONEHOUSE (1977); Tests to distinguish preparation from criminal attempts.
  - o No evidence of any act done by D in nature of false pretence which reached the other party.
  - o 'acts remotely leading towards the commission of the offence are not to be considered as attempts to commit it, but acts immediately connected with it are' Parke B – Eagleton (1855)

#### 3.3.5.2 Proximity and equivocality

DPP v Stonehouse; Whether acts = sufficiently proximate to commission of intended crime –

Proximity Test:

1. TEMPORAL; **time** before all necessary acts for completed offence have been undertaken.

2. PHYSICAL; how **near** D was to the **physical location** of the offence to be committed.
3. TASK-RELATED; **how many** more tasks must be undertaken.

Equivocality Test – origins in *Davey v Lee* (1968)

Narrower test than Proximity Test.

*Mai* (1992); AR of attempt 'some act towards the commission of the intended crime which goes beyond mere preparation and "which cannot reasonably be regarded as having any purpose other than the commission of that crime".'

- actions being directed to that purpose.

*Inegbedion* (2013); Rothman J; "whether the act is **directed to the commission of the particular offence** or completed crime only" Act must have been unequivocal.

### 3.3.5.3 'Early intervention' offences

Enables law enforcement to intervene to prevent a more serious offence.

- Anticipatory offence;
  - o Eg: Summary Offences Act 1988 – loitering by a convicted child sex offender in a public place frequented by children => s11G

Allows authorities to intervene EARLIER than if they had to wait for planned offence or attempt to take place.

Examples of Early Intervention: s 474.29B of the Criminal Code 1(a)-(b), 3

Extended Criminal Liability to 'aiding and abetting suicide – Crimes Act s31C

Upon proving requisite intent, P don't 'prove the accused took overt steps towards the transmission or circulation of materials'. Possession, control/obtaining is enough.

### 3.3.5.3.1 Preparation for terrorism

CC = engaging in a terrorist act and activities preceding an attack.

- terrorist training (s101.2)
- possession (s101.4)
- collecting and making documents (s101.5)
- s101.6 – preparation for or planning of a terrorist attack, even if it does not occur – life imprisonment

\*Faheem Khalid Lodhi (2006) – 1<sup>st</sup> person convicted - Aus preparatory terrorism offences. 20 years imprisonment, 15 years non-parole.

### 3.4.8 Mens Rea for attempt

*Knight* (1992):

'Intention which must accompany the inchoate crime of attempt is an intention to commit the complete offence'.

### 3.4.8.1 An increased focus on MR: 'impossible attempts'

Stronger conduct threshold of D's intention (eg. admission), the lower the conduct threshold – constitution of attempt. *O'Connor v Killian* (1984), *People v Berger* (1955)

Even if physically impossible for D to commit, is attempt if P proves; (*Mai* (1992))