

Topic 2: Inchoate offences & Key principles

Section 4:

When a person, intending to commit an offence, begins to put his intention into execution by doing an act that is more than merely preparatory to the commission of the offence but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence.

It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

It is immaterial that by reason of circumstances not known to the offender, it is impossible in fact to commit the offence. The same facts may constitute one offence and an attempt to commit another offence.

552. Attempt to commit indictable offence

(1) Any person who attempts to commit an indictable offence (the principal offence) is guilty of a crime.

(2) A person guilty of a crime under subsection (1) is liable —

(a) if the principal offence is punishable on indictment with imprisonment for life — to imprisonment for 14 years;

(b) in any other case — to half of the penalty with which the principal offence is punishable on indictment.

Summary conviction penalty: for an offence where the principal offence may be dealt with summarily, the lesser of —

(a) the penalty with which the principal offence is punishable on summary conviction; or

(b) the penalty that is half of the penalty with which the principal offence is punishable on indictment.

(3) The summary conviction penalty in subsection (2) does not apply to an offence to which section 426 applies.

553. Incitement to commit indictable offence

(1) Any person who, intending that an indictable offence (the principal offence) be committed, incites another person to commit the principal offence, is guilty of a crime.

(2) A person guilty of a crime under subsection (1) is liable —

(a) if the principal offence is punishable on indictment with imprisonment for life — to imprisonment for 14 years;

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(b) the penalty that is half of the penalty with which the principal offence is punishable on indictment.

(3) The summary conviction penalty in subsection (2) does not apply to an offence to which section 426 applies.

Elements of inchoate liability

1. Intention to commit an offence
2. Conduct shows that the intention is more than mere preparatory
 - Attempt - accused pursues the intention but doesn't fulfil the intention to an extent as to commit the offence (more than mere preparatory)
 - Voluntary desistance is immaterial but affects sentencing (onus on accused)

3. Did not fulfil intent to the extent of committing the crime.

It is immaterial that the offender did not know that the offence is factually impossible:

- a person may be convicted of an attempt to commit an offence notwithstanding that completion of the intended acts would not have resulted in a substantive offence being committed - *R v English*

Attempt vs preparatory: tests

- Last step (*DPP v Stonehouse*) - accused must take the last step towards commission of the offence
- On the job - Accused must be at the scope of the completed offence
- Proximity (*R v Eagleton*)- Accused must act close to the completed offence
- Substantial step - substantial progress made towards execution of the criminal design

CONSPIRACY

S. 558

(1) Any person who conspires with another person—
(a) to commit an indictable offence (the principal offence); or
(b) to do any act or make any omission in any part of the world which, if done or made in Western Australia, would be an indictable offence (the principal offence) and which is an offence under the laws in force in the place where it is proposed to be done or made is guilty of a crime.

Conspiracy is the act of the agreement, not the act itself.

- Conspiracy parties must agree about what they are about to do & what they agree to do is unlawful
- Conspirators must possess a shared intention that a particular act is unlawful - *Trudgeon*
- Conspirators must intend that the unlawful act is the subject of the conspiracy be committed
- Conspiracy exists as soon as the agreement has been made - they are continuing as long as the agreement remains in force
- There's no need that the specific details be finalised if the parties have agreed to commit an offence - *Bolus*
- Tentative discussion won't amount to agreement

Topic 4 - Homicide

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S.268 - Killing a person is unlawful

It is unlawful to kill any person unless such killing is authorised or justified or excused by law.

S.269 - Persons capable of being killed

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

S.270 - Definition of kill

Any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that other person.

- *Interpretation Act 1984 s.13 C* -> irreversible cessation of all person's brain functions, irreversible cessation of blood circulation
- Criminal responsibility will arise if the cause is direct or indirect

S.279 - Wilful murder

(1) If a person unlawfully kills another person and