

|    |                         |                          |    |  |    |                                 |                                   |
|----|-------------------------|--------------------------|----|--|----|---------------------------------|-----------------------------------|
| 1  | <b>ATTEMPTS</b>         | Intent                   | // | More than merely prep                    |    |                                 |                                   |
| 2  | <b>CONSPIRACY</b>       | Conspires                |    |  |    |                                 |                                   |
| 3  | <b>BURDEN OF PROOF</b>  | Reasonable Doubt         |    |  |    |                                 |                                   |
| 4  | <b>PARTIES</b>          | <b>b. Purpose</b>        | // | Aiding                                   | // | Intention                       | // <b>d. Counsels or procures</b> |
| 5  | <b>COMMON PURPOSE</b>   | Probable consequence     |    |  |    |                                 |                                   |
| 6  | <b>HOMICIDE</b>         | Unlawfully               | // | Causes                                   | // | Death                           | // Person                         |
| 7  | <b>MURDER</b>           | Homicide                 | // | Intends death                            | // | or bodily injury                | // Felony murder                  |
| 8  | <b>MANSLAUGHTER</b>     | Homicide                 | // | Negligence                               | // | Intentional Act                 |                                   |
| 9  | <b>ASSAULT</b>          | Applies force            | // | Directly, Indirectly                     | // | Intent                          | // Without Consent                |
|    | <b>OR</b>               | Words alone              | // | Words Negating threat                    | // | Capacity                        |                                   |
|    |                         | <b>c. Common assault</b> |    | <b>d. Assault causing bodily harm</b>    |    | <b>e. Assault causing death</b> |                                   |
| 10 | <b>WOUNDING</b>         | Unlawfully               | // | Wounds                                   |    |                                 |                                   |
| 11 | <b>GBH</b>              | Unlawfully               | // | Does                                     | // | GBH                             |                                   |
| 12 | <b>STALKING</b>         | Pursue                   | // | Intent to/or actually cause intimidation |    |                                 |                                   |
| 13 | <b>THREATS</b>          | Threat                   |    |  |    |                                 |                                   |
| 14 | <b>SEX PEN</b>          | Sex pen                  | // | Another person                           | // | Absent consent                  |                                   |
| 15 | <b>INDECENT DEALING</b> | Indecently               | // | Deals with or records                    |    |                                 |                                   |
| 16 | <b>CRIMINAL DAMAGE</b>  | Wilfully                 | // | Unlawfully                               | // | Destroy or damage               | // Property                       |
| 17 | <b>STEALING</b>         | Fraudulently             | // | Takes/converts                           | // | Property                        | // Capable of being stolen        |
| 18 | <b>INTOXICATION</b>     | Intoxication             | // | Removes ability                          | // | Specific Intention              |                                   |
| 19 | <b>MISTAKE OF FACT</b>  | Honest                   | // | Reasonable                               | // | State of things                 |                                   |
| 20 | <b>SELF – DEFENCE</b>   | Necessary resp           | // | Harmful Act                              | // | Reasonable resp                 | // Reasonable grounds             |

1. **ATTEMPTS** – (1) Any person who **(a) attempts** to commit an indictable **(b) offence**<sup>1</sup>/simple offence<sup>2</sup> is guilty of a crime/simple offence. (2) Attempts to unlawfully kill another is guilty of a crime.<sup>3</sup> (3) Attempts to obstruct course of justice is guilty of a crime.<sup>4</sup>
  - a. **Attempts** – When a person, **(i) intending** to commit an offence, begins to put his intention into execution by doing an act that is **(ii) 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.<sup>5</sup>
    - i. **Intent** – Judged subjectively, see **MURDER**. But intent alone is not enough.<sup>6</sup>
    - ii. **Merely Preparatory** – means acts ‘which are seen to be sufficiently proximate to the commission of the said crime and are not seen as merely preparatory to it’.<sup>7</sup>
      - a. Merely means that not all preparatory acts are excluded.<sup>8</sup>
      - b. The difference between merely preparatory acts and more than that is a fine line decided on individual facts but can be decided particularly by considering the relative temporal and spatial proximity to acts which would complete the offence.<sup>9</sup>
    - iii. It is immaterial except so far as punishment whether:<sup>10</sup>
      - a. The offender has done all that is necessary on his part for completing the commission of the offence;<sup>11</sup>
      - b. The complete fulfilment of his intention is prevented by circumstances independent of his will;
      - c. Whether he desists of his own motion from the further prosecution of his intention;
      - d. That by reason of circumstances not known to the offender, it is impossible in fact to commit the offence.<sup>12</sup>
  - b. **Offence** – means an act or omission which renders the person doing the act or making the omission liable to punishment.<sup>13</sup>
2. **CONSPIRACY** – Any person who **(a) conspires** with another to commit an indictable/<sup>14</sup>summary offence<sup>15</sup> is guilty of a crime/offence.
  - a. **Conspires** – means ‘an agreement by two or more people to commit a crime’.<sup>16</sup>
  - b. The two must intend to do the act but need not do the act.
3. **BURDEN OF PROOF**
  - a. *Woolmington v DPP* [1935] AC 462 – ‘One golden thread is always to be seen – that it is the duty of the prosecution to prove the prisoner’s guilt subject ... to the defence of insanity and subject also to any statutory exception. If at the end of and the whole of the case, there is a reasonable doubt ... the prosecution has not made out the case’.
  - b. *R v Menniti* [1985] 1 Qd R 520 – Evidential burden is as below:
    - i. Whether there is evidence fit to go before a jury is a question of law. If it is not raised on the evidence, the judge does not allow it before the jury.
    - ii. If there is such evidence, the jury is told so, and given appropriate directions on the law of that defence.
    - iii. The jury is told that the onus is on the prosecution to exclude the defence beyond all reasonable doubt.

<sup>1</sup> Code s 552.

<sup>2</sup> Code s 555A.

<sup>3</sup> Code s 283.

<sup>4</sup> Code s 143.

<sup>5</sup> Code s 4.

<sup>6</sup> Code s 4; *Hope v Brown* [1954] 1 All ER 330.

<sup>7</sup> *Britten v Alpogut* [1987] VR 929.

<sup>8</sup> *Weggors v Western Australia* [2014] WASCA 57, [95] (McLure P).

<sup>9</sup> *Ibid*, [158] (Buss JA).

<sup>10</sup> Code s 4.

<sup>11</sup> Abolishes the last act rule from *Robinson* [1915] 2 KB 342.

<sup>12</sup> *R v English* (1993) 68 A Crim R 96 (attempting to receive a stolen car that wasn’t actually stolen); *Abone n 7* (attempting to import cannabis that was actually procaine); *R v Donnelly* [1970] NZLR 980, 990-991 (attempting to steal a diamond ring that had been taken safely to the bank).

<sup>13</sup> Code s 2.

<sup>14</sup> Code s 558.

<sup>15</sup> Code s 560.

<sup>16</sup> *Mulcahy* (1868) LR 3 HL 306; see also *R v Hoar* (1981) 148 CLR 32, [17] (it is practice to not charge with conspiracy if the full offence has been committed).