

Inchoate Offences

- Attempt
- Encouraging or assisting
- Statutory conspiracy

Some statutory offences are inchoate in nature i.e. grooming offences under the Sexual Offences Act 2003

Attempt

S1(1) Criminal Attempts Act 1981

'If, with intent to commit an offence which s1 applies, a person does an act which is more than merely preparatory to the commission of the offence, is guilty of attempting to commit the offence'.

- The act is more than merely preparatory
- With intention to commit the offence

AG's Ref (no 3 of 1992) [1994] – can be reckless as to the circumstance; i.e. attempted rape where D may be reckless as to whether V is consenting

S1 does not apply to summary offences, but there are also a vast number of statutory offences where s1 does not apply e.g.

S5(1)(a) Road Traffic Act 1988 – Driving or attempting to drive with excess alcohol

S1(2) Criminal Attempts Act 1981

- Can be guilty even where the offence is impossible as in Shivpuri (1987)

Taaffe 1984 – there can be no attempt if the behaviour is not criminal in nature

More than merely preparatory

Tosti 1997 – 'essentially the first steps' taken when hidden equipment nearby and D was examining a lock

Attempted murder

Only an intention to kill will suffice, not the intention for GBH

Whybrow 1951 – attempted the murder of his wife

Theft is defined under s1(1) Theft Act 1968 as

‘A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it...’

Appropriate

Property

Belonging to another

Dishonestly

With intention of permanently depriving the other of it

Appropriation

Appropriate is defined under s3(1) of the act as,

‘An assumption by a person of the rights of the owner amounts to appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping it or dealing with it as an owner.’

Lawrence 1972 – consent of the owner is irrelevant to appropriation which does not imply the absent of consent

Gomez 1993 – the assumption of any of the rights of the owner is considered as appropriation

Hinks 2001 – receiving a valid gift is an appropriation

Property

Property is given a broad definition under s4(1) of the Theft Act 1968, as follows,

‘all things, real or personal, including money, things in action and other intangible property’.

Oxford v Moss 1978

Computer Misuse Act 1990

Communications Act 2003 s125

Belonging to another

S5(1) – extended meaning, someone in possession or control or with any proprietary right or interest falling short of complete ownership

S5(4) – property received by another’s mistake i.e. being posted duplicate items, should be restored to the owner by obligation

Walker v Northumberland CC. – when an employee has already had time off work due to illness or injury, the employer must take more care to avoid a repeat of this; in this case it was stress related

Morrell v Owen – a higher standard of care is required from organiser and coaches to disabled athletes due to their special needs

The size of the risk

The principle is that the greater the risk, the more care that needs to be taken.

Bolton v Stone – the reasonable man takes precautions against reasonable risks, not fantastic possibilities. The likelihood of a cricket ball clearing a protective fence and injuring someone is not a reasonable risk that the reasonable man would protect against

Haley v London Electricity Board – a reasonable risk to protect against is one that is statistically likely to occur; in this case a blind pedestrian was not adequately warned of a trench in the walkway

Have all practical precautions been taken?

The principle here is that the reasonable man would have taken all reasonable practical precautions as in **Bolton v Stone**.

Latimer v AEC – After a flood in a factory, all reasonable, practical precautions were made when the floor was mopped as well as it could and warning signs were present

What are the benefits of taking the risk?

This is also known as the public utility factor. The idea is that there is a lower standard of care when reacting to an emergency, consistent with the idea of a fair, just and reasonable test.

Watt v Hertfordshire CC. – the benefits of saving a woman's life outweighed the risk of injury to a fire fighter when using the best, but still unsuitable vehicle in an emergency

Day v High performance sports – the standard of care can be lower when making a rescue; in this case it was climbing a wall to save a person with brain injury frozen on an indoor climbing wall

Damage caused by D's Breach

Damage – the resulting loss to C from D's breach of duty

Damages – the amount of compensation payable to C who has proved D to be negligent

Causation in Fact

Determined using the 'but for' test i.e. but for D's actions, would C have come to injury?

Barnett v Chelsea and Kensington Hospital Management Committee – an example of no causation in fact, as the hospital could not have done anything to save V's life – the cause of death was the original poisoning, not the hospital failing to examine him properly

Revision Sheet
Liability in negligence
Law - Tort
Multiple causes

It is not always clear if it was D's act that caused C's losses. Sometime there are multiple causes. The court therefore uses modified rules on the grounds of public policy where otherwise the claim would not succeed. This is seen in...

Fairchild v Glenhaven Funeral Services – the normal rule on causation can be modified on policy grounds where there are 'special' circumstances. Here this was important when it was not possible to prove whether asbestos entered the system and caused the illness. The illness was likely caused by dust and therefore all of C's previous employers were charged proportionately to the time C served with them.

Intervening acts (novus actus interveniens)

As with criminal law, intervening acts can break the chain of causation. Where factual causation can be placed on both parts, legal causation is required to see what legally caused the injury.

Orange v Chief C. West York – there WAS an intervening act where they didn't know of suicide risk

MPC v Reeves – there WASN'T an intervening act as they did know of suicide risk

Smith v Littlewoods – vandals breaking into an unoccupied, but secured, building and setting fire to it was a new intervening act as keeping it secured was enough.

Remoteness of damage – the test of reasonable foreseeability

Remoteness of damage – the D is liable for damage only if it is a foreseeable consequence of the breach of duty

When factual causation is established, C may still fail with the case as the damage is too remote i.e. despite the breach having significant results, there may not be liability for everything that can be traced back to the act.

Therefore the D is only liable for damage that is reasonably foreseeable due to the breach of duty, as established in the Wagon Mound.

The Wagon Mound – D split a quantity of oil when fuelling a ship which spread over waters and caused damage. C was welding his ship and the oil caught fire. It was foreseeable that spilt oil could cause damage, but the fire was not foreseeable due to the breach and was therefore too remote for liability.

Remoteness of damage – the kind of damage must be reasonably foreseeable

So long as the type of damage is foreseeable, it doesn't matter the form it takes.

Bradford v Robinson Rentals – C's employer made him drive a van with no heating through cold weather when there was a clear risk of a 'cold-related' injury and therefore was liable when C got frostbite.

Hughes v Lord Advocate – Two boys took a paraffin warning lamp down a man hole and dropped it causing an explosion coming back up. As a burning type injury was foreseeable their claim succeeded.