

Chapter 11: General inchoate offences

Problem Questions

Below is an example of a problem question and a worked answer. The answer is written in bullet-point form, highlighting how the structure for answering problem questions (discussed in the 'eye on assessment' section of every chapter) can be applied in this area. Remember that when you write your essays, you should use full prose (i.e., not bullet-points).

Andreas and Martin work together on a building site. Andreas always seems to be damaging the equipment. On one occasion Andreas left Martin's drill outside overnight even though he knew that it might break as a result. Luckily it was ok. On another occasion, after being told off by Martin, Andreas left another drill out, this time hoping to cause damage. When Andreas did so, he was not sure to whom the drill belonged. Again, luckily, no damage was caused.

Martin is so angry with Andreas that he decides to kill him. He writes his plans down in his diary and tells a number of his friends about it. In the week leading up to the planned killing, Martin starts going to the gym to get fitter in preparation. The day of the planned killing, Martin buys a gun from a criminal friend and travels for three hours to Andreas' house. Martin waits in the back garden of Andreas' house in the hope that he might come out. In the end, Martin breaks in to search for him. Martin hears voices coming from the sitting room. He flings open the door and fires several shots into the room. The room is empty. Andreas and his family have gone out for a meal and did not switch off the television.

Discuss the potential liability of Martin and Andreas for criminal attempts.

Introduction: Your introduction, as with the question, should focus on criminal attempts alone. You may provide a brief overview of the offence, but this should be kept to a minimum (two sentences at the most). You should then indicate how you are going to structure your analysis – a chronological approach seems most appropriate.

Step 1: The first potential criminal event arises where Andreas (A) leaves Martin's (M's) drill out overnight for the first time.

Step 2: The most likely offence would be attempted criminal damage (section 1 of the Criminal Attempts Act 1981).

Step 3:

- **Actus reus:** Does A go beyond mere preparation towards the commission of criminal damage?
- This is clearly satisfied on the facts by A leaving the drill outside overnight.
- **Mens rea:** Does A intend to commit criminal damage (ie, intend to cause damage, and know that the property belongs to M)?
- The facts indicate that A did not intend to cause damage (ie, A merely foresaw damage as a possibility). Therefore, this element is likely to be missing.

Step 4: There are no applicable defences, and so no discussion is required.

Step 5: A is not likely to be liable for attempted criminal damage due to a lack of mens rea.

Step 1: The second potential criminal event arises where Andreas (A) leaves Martin's (M's) drill out overnight for the second time.

Step 2: The most likely offence would be attempted criminal damage (section 1 of the Criminal Attempts Act 1981).

Step 3:

- **Actus reus:** Does A go beyond mere preparation towards the commission of criminal damage?
- This will be satisfied on the facts if the drill belongs to M, and potentially as an impossible attempt where A simply believes it belongs to M.
- **Mens rea:** Does A intend to commit criminal damage (i.e., intend to cause damage, and know that the property belongs to M)?

- Although A intends to cause damage (the result element of criminal damage), she is only reckless as to the ownership of the drill (the circumstance element of criminal damage). In this case, the current case law says we must distinguish between possible and impossible attempts. Thus, if the drill is found to belong to A (impossible attempt) then recklessness will not be sufficient; if the drill does not belong to A (possible attempt) then recklessness will be sufficient.

Step 4: There are no applicable defences, and so no discussion is required.

Step 5: If the attempt is 'possible' then A will be liable for attempted criminal damage, if it is 'impossible' A will not be liable.

Step 1: The final potential criminal event relates to M's conduct in trying to kill A.

Step 2: The most likely offence is attempted murder.

Step 3:

- **Actus reus:** Does M go beyond mere preparation towards the commission of murder?
- It is clear on the facts that when firing the gun M has gone beyond mere preparation on the facts as he believes them to be (i.e., M believes that A is in the room). Thus, although an impossible attempt, the actus reus is satisfied.
- The length and detail of the facts concerning M's preparation should also lead you to discuss some of this earlier conduct. From the current case law, could we say that D has gone beyond mere preparation at any of the earlier stages?
- **Mens rea:** Does A intend to commit murder? ie intend to kill.
- This is clear on the facts.

Step 4: There are no applicable defences, and so no discussion is required.

Step 5: M is very likely to be liable for attempted murder.

Conclusion: Your conclusion should briefly summarise your findings of likely liability. You may also briefly comment on the state of the law in this area, not least the mens rea distinction between possible and impossible attempts.

Essay Questions

There are several areas of interest for essay-type questions in relation to the general inchoate offences. For example, identifying the fair boundaries of the criminal law, specific debates and uncertainties within each offence, impossibility, mens rea, and so on.

Below is an example of an essay-type question, and a bullet-point plan for a possible answer. This is for illustration purposes only. When writing an essay of this kind yourself, there will usually be alternative ways you could structure your answer, alternative points of discussion that could be raised, and you would certainly be expected to write in full prose (ie, not in bullet-point form). The most important point to take from these plans is how they focus on identifying and discussing the subject matter of the debate within the question, not simply listing information about the relevant topic.

One of the chief virtues of inchoate offences is that it enables crime to be “nipped in the bud”, but determining the point at which liability should be imposed is problematic and carries the potential for injustice. Discuss.

Introduction:

- This question is about the rationale of inchoate offences, and you should highlight your understanding of this from the very start of your essay.
- As will most essays of this kind (a controversial statement followed by ‘discuss’), your essay needs to explore reasons in favour of and against the statement. However, to do this, you need to think about what the debatable issues are within the question. For example:

- One of the chief virtues of inchoate offences is that it enables crime to be “nipped in the bud”. This part of the statement is simply true, and not subject for debate.
- ‘determining the point at which liability should be imposed is problematic and carries the potential for injustice.’ This is controversial, and should be the focus of your discussion.
- Having identified the debate, you should now tell your reader how you are going to structure your essay. Two examples would be:
 - Perhaps the most obvious structure for this essay would be to separate issues of ‘determining the point of intervention’, and ‘potential for injustice’.
 - An alternative would be to discuss each of the general inchoate offences in turn, discussing the statement in relation to each in turn. Remember, whichever structure is employed, to consider these issues in relation the actus reus and the mens rea of the offences discussed.

Body of the essay:

- ‘determining the point at which liability should be imposed is problematic’
 - In favour of the statement: This part of the statement is most clearly evident in relation to the actus reus of criminal attempts, where courts have struggled over many years to identify the legal threshold. Although less apparent in relation to conspiracy and assisting or encouraging, similar issues can be discussed (eg, when is an omission capable of assisting or encouraging). Issues relating to mens rea can also be discussed here (eg, should be intervene where D foresees, but does not intend, that their conduct will lead to a principal offence being committed?).
 - Against the statement: Most of your discussion will focus on the problematic nature of the current test, as this reflects the current reality. However, where possible, try to provide some discussion on the other side. For example, you could contend that although such a determination is problematic under the

current law, this is because the current law lacks a clear rationale. If we equated the release of a risk with an attempt; if we created statutory examples; if we changed the wording of the statute; etc., then the determination could be much more straightforward.

- 'determining the point at which liability should be imposed ... carries the potential for injustice.'
 - It is always unjust for like cases to be treated differently, and so you can highlight inconsistency within the current case law as a clear example of injustice.
 - Beyond this, in order to engage with the 'justice' of the current law, you need to discuss which approach to inchoate liability you find most convincing. For example, if we believe that the main purpose of inchoate liability is to allow early intervention to prevent harm, then we would highlight as unjust any rule that delays such intervention.

Conclusion:

- Your conclusion should summarise your discussion, and make clear (in general terms) whether you agree with the statement or not.
- You may also want to consider the desirability and likelihood of potential reforms in this area.