Model Answers to Potential Exam Questions

Chapter 15

1) ‘Intent is the principal ingredient in the offence of attempt.’ Discuss.

The criminal law also deals with attempts to commit crime and conspiracies to commit crime. Making an attempt at a criminal offence is governed by statute law under section 1(1) of the Criminal Attempts Act 1981:

“If, with intent to commit an offence to which this section applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.”

Intention is vital to the offence of attempt. Proof of intention will be found in the defendant’s behaviour and how far his preparatory acts went. Burglars and thieves have been charged with attempting to steal some or all of another person’s belongings when breaking in as held in Attorney-General’s Reference (No 1 of 1979) (1979). Lord Diplock confirmed in DPP v Stonehouse (1978) that the defendant must do something:

“Acts that are merely preparatory to the commission of the offence are not sufficiently proximate to constitute an attempt. [D] must have crossed the Rubicon and [done an act].”

Regarding the element of intention, in Whybrow (1951) it was held that even though a murder charge requires only intention of grievous bodily harm, an attempted murder charge requires an intention to kill. The mens rea threshold for attempted murder is therefore higher than the offence of murder itself. In Attorney-General’s Reference (No 3 of 1992) (1994) it was enough that the defendant’s intended to damage property at the same time as being reckless as to whether life would be endangered, allowing recklessness to be accepted alongside intention.

Section 1(2) of the Criminal Attempts Act 1981 planned to make all impossible criminal attempts blameworthy and punishable in criminal law:

“A person may be guilty of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.”

Impossibly, attempts are still illegal because the defendant showed a maliciousness by trying to commit an offence.
2) Critically analyse the physical and mental elements of the offence of conspiracy.

A conspiracy is where two or more people agree to commit a crime and it occurs as soon as an agreement has taken place. This area of law is mainly governed by section 1(1)(a) of the Criminal Law Act 1977, which states that a person is guilty of conspiracy if he:

“...agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement.”

The actus reus of conspiracy is an agreement with any other person. A defendant may be charged with the lesser offence if he has made a slight mistake. In Barnard (1980) it was held that when a defendant agrees to assist with a theft (a less serious offence), he has not taken part in a conspiracy to commit a robbery (a more serious offence). Similarly, an agreement to import class B drugs was not equivalent to the actual conspiracy to import Class A drugs as seen in Taylor (2002). Mistakes about minor details will be overlooked by the courts as held in Broad (1997). A conspiracy continues to exist and additional parties may join the conspiracy for as long as it exists until it is performed, abandoned or frustrated as seen in DPP v Doot (1973). The individuals involved in a conspiracy do not have to meet each other but there must at least be a common purpose between all members. The alleged conspirator must have communicated with at least one other member as held in Scott (1979). The conspirator can make an agreement with another unidentified person according to Philips (1987). The courts have not ruled on social networking sites yet, but it is almost certain that they can be a platform for forming a conspiracy to commit crime.

The mens rea of conspiracy is contained within section 1(1)(a) of the Criminal Law Act 1977 (above) and requires: an agreement on a course of conduct; in accordance with their intentions; that one or more of the parties will commit the offence. A person will be a conspirator if he and a co-conspirator intend or know about the relevant facts or circumstances at the time of the offence. “Suspicion” of facts or circumstances is not enough as seen in Saik (2006) and Tree (2008). The mens rea required for conspiracy is not the same mens rea that is required for the offence itself. This was shown in Siracusa (1989) in which it was held that the mens rea for the offence in question is not be required for a charge of conspiracy — what must be proved is an agreement to commit that offence, not the intention to commit that offence. Anderson (1986) confirms that it does not matter that the defendant did not wish to see the conspiracy through to the end (i.e. the commission of an offence): he intended to play some part and this is enough. A conspiracy has taken place even if the agreement contains certain conditions which may or may not transpire on the day as held in Reed (1982) and Jackson (1985). There can be a single conspiracy against several defendants to commit several criminal offences as seen in Roberts (1998). If a conspiracy involves two or more countries (i.e. drug smuggling), the defendants can be tried for conspiracy in both countries as held in Lavercombe (1988). However, a
defendant cannot conspire to aid, abet, counsel or procure another - Kenning and others (2008).

The only common law version of conspiracy that is left after the 1977 Act is common law conspiracy to defraud. The elements of the offence were described by Viscount Dilhorne in Scott v MPC (1975):

“It is clearly the law that an agreement by two or more persons by dishonesty to deprive a person of something which is his or to which he is, or would be, entitled, and an agreement by two or more by dishonesty to injure some proprietary rights of his, suffices to constitute the offence of conspiracy to defraud.”

Although the conspirators must to intend to defraud, the desire to make a profit may suffice, as this will have the inevitable consequence of resulting in loss to the victim — Cooke (1986).