'more than merely preparatory': it is up to the jury to decide whether an act has been more than merely preparatory , whilst the judge considers whether there is enough evidence to put this question to the jury; jury decides on the following questions:

1) Was D preparing to commit the offence?
   or
2) Had D gone beyond preparation and 'embarked on the crime proper'?

An act: where an omission will not suffice; an act must be committed

'commission of the offence': D must be in the process of committing the actus reus in order to complete the offence; D must go beyond preparing to do the offence, and instead be in the commission of the offence

This type of offences is concerned with the preparation of another criminal offence; enables the police to prevent a crime and still be able to prosecute D; for D to be charged with such an offence, this must be done in conjunction with the main offence; D can be guilty of inchoate offences even if it was impossible for him to complete the actual offence; ex: conspiracy, encouraging and assisting offences

"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."

This is an **inchoate offence**

ATTEMPTS
(Definition)

Definition: where D tries to commit an offence but, for some reason, fails to complete it; set out in s.1(1) of the Criminal Attempts Act (1981)

Murder, theft, robbery, assault and battery can be charged under attempts

R v White (1910)

- D was V's son; D wanted inheritance from his mother (V)
- D put cyanide in V's tea
- V suffered a heart attack before the drank tea and died; death was inevitable
- But for D putting cyanide in V's tea, she would have died anyway => not guilty of murder because chain of events is broken

The Criminal Attempts Act 1981 covers all indictable offences, and either way offences when they are tried on indictment.

There is no liability for attempts for summary offences (least serious type of offences) unless there is a parliamentary statute setting out an exception to the rule.

R v Taaffe (1984)

- D was enlisted by a third party in Holland to import cannabis into England
- D had mistakenly believed the substance to be currency, which D had believed was prohibited to import but was in fact not
- D was not knowingly concerned in the fraudulent evasion of the prohibition on the importation of cannabis when he mistakenly believed that the substance he was importing was currency
- D's *mens rea* for the impossible offence of smuggling currency could not be imported to the smuggling of drugs
- The CA allowed D's appeal and his conviction was quashed; HofL dismissed the prosecution's appeal

R v Shivpuri (1986)

- D was arrested by customs officers and confessed that there was heroin in his luggage
- After forensic analysis, it transpired that in fact the substance was harmless vegetable extract
- D was convicted of attempting to be knowingly concerned in dealing with a controlled drug
- It did not matter that what he was doing was impossible (because it wasn't what he thought it was) the fact that he believed it to be a controlled drug meant that he had the AR and MR of the original offence and therefore, could be convicted of attempting to do the impossible!

The only case in which impossibility can now be a defence is where D attempts to commit when they think is an offence, but which is not actually an offence

D must be attempting to do the impossible; [S1(2) Criminal Attempts Act 1981]; concept caused problems for the courts interpreting the parliamentary legislation:

'A person may be guilty of attempting to commit an offence… even though the fact are such that the commission of the offence is impossible.'

ATTEMPTS

(AR)

D hadn't 'embarked on the crime proper'

D must have 'embarked upon the crime proper'

D need not have performed the last act before the crime proper, nor need he have reached the 'point of no return'.

Anderton v Ryan (1985)

- D bought a video recorder very cheaply => she thought it was stolen
- Later she admitted this to the police who were investigating a burglary at her home
- D was charged with handing stolen goods
- It was then discovered that the video recorder was in fact not stolen
- HL decided that Mrs Ryan had gone beyond mere preparation in the commission of the offence when she believed she had bought a stolen video recorder; however, it was not actually stolen => therefore they decided that she had not attempted to handle stolen goods because it wasn't the thing she thought it was
- This decision was criticised for its absurdity; R v Shivpuri (1986) overruled this case

A-Gs Ref (No1 of 1992) (1993)

- D dragged a girl up some steps to a shed
- D lowered his trousers and interfered with her private parts but was unable to perform => argued he could not therefore be convicted of attempted rape
- Conviction for attempted rape was upheld because by lowering his trousers and interfering with the girl, he had 'embarked on the crime proper'
- It did not matter that he had not performed the last act or reached the point of no return

R v Jones (1990)

- D's partner told him that she wanted their relationship to end and that she was seeing another man – V
- D bought a shotgun and shortened the barrel; wearing a crash helmet with the visor down, he found V and got in his car pointing the gun at him
- V managed to grab the gun and throw it out of the window
- D tried to argue that, as the safety catch was still on, he had not done the last act before the crime proper
- CA decided that buying the gun, shortening the barrel, loading it and disguising himself with the visor were all preparatory acts but as soon as D got in Vs car and pointed the gun at him, there was sufficient evidence for attempted murder

R v Campbell (1991)

- D had an imitation shotgun, sunglasses and a threatening note in his pocket + was loitering outside a Post Office on the street
- D left and then returned 30 minutes later => the police had been tipped off that a robbery was imminent and D was arrested for attempted robbery
- His conviction for attempted robbery was quashed as he had not actually entered the post office and begun the offence + his actions were merely preparatory and he had not embarked on the crime proper

R v Geddes (1996)

- D was found in the boy's toilet block in a school with a kitchen knife, some rope and masking tape
- He had no right to be in the school and had not been in contact with any pupils
- Conviction for attempted false imprisonment was quashed => hadn't 'embarked on the crime proper' => all he had done was prepare to commit the offence but had not yet been in contact with a victim.
- D had not moved from planning/preparation to execution
- D had not shown that he was actually trying to commit the offence and had only gone so far as 'getting ready' to commit the offence

R v Gullefer (1987)

- D had bet on a greyhound in a race => since the race had started, it was clear the dog was going to lose
- D thought that if he ran onto the track, the race would be declared null and void and he could get his money back so he ran onto the track
- Ds conviction was quashed as the offence was not running on the track, but trying to get his money back from the betting shop => he had not embarked on the crime

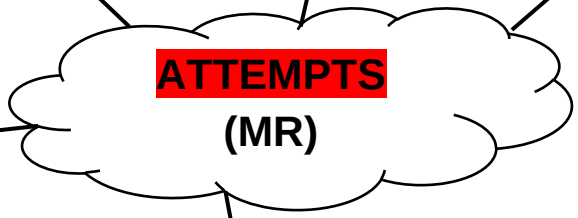
R v Easom (1971)

- D picked up handbag in a cinema, rummaged through the contents and then replaced the handbag without having taken anything
- Theft conviction of the handbag was quashed and the contents of the bag were returned
- No evidence that D had intended to permanently deprive the owner of the bag or items in it so he could not be guilty of theft

An intent to commit an offence

If the prosecution cannot prove that D had the intention, then D is not guilty of the attempt

Recklessness as to the consequences of the act is NOT enough for the MR, it must be committed intentionally (same applies for the main offence)



MR for Attempted Murder – in attempted murder, the only intention that is enough is the intent to kill; intent to cause GBH may be part of the MR for murder but it is only the intent to kill that is sufficient for MR of attempted murder; if the intent was for GBH, then the attempted offence would be GBH

R v Whybrow (1951)

- D wired up a soap dish in his wife's bath and attached it to the electricity supply => she received an electric shock when taking a bath
- D was convicted of attempted murder after the CA decided that he intended to kill his wife
- However, it must only be intent to kill (express malice) when determining the MR for attempted murder
- D cannot be guilty of attempted murder if he intended GBH (implied malice) that results in death
- Therefore, some attempted murder cases require a higher MR than murder cases where D only intended GBH!

R v Millard and Vernon (1987)

- Ds repeatedly and recklessly pushed against a wooden fence on a stand at a football ground
- Prosecution alleged that they intended to break the fence and they were convicted of attempted criminal damage
- CA quashed their convictions because they had not intended to break the fence but had behaved recklessly
- Recklessness is not sufficient for the MR of an attempted offence

When the definition of the main offence includes circumstances, and recklessness in relation to these circumstances, the recklessness for the circumstances can be considered in the attempt (even though there still has to be intent for the main offence)

A-Gs Reference (No.3 of1992)

- D was a lorry driver, who crashed into some cars parked on the hard shoulder of a motorway
- 2 people were killed
- D raised the defence of non-insane automatism based on "driving without awareness" induced by "repetitive visual stimulus experienced on long journeys on straight flat roads"
- The defence of automatism was left to the jury and the defendant was acquitted
- The A-G referred a point of law to the Court of Appeal as to whether such a condition could found a defence of automatism
- The defence of automatism should not have been left to the jury and that the state described as "driving without awareness" was not capable of founding a defence of automatism