

## Answers to Exam questions

### Chapter 15

#### Question 1

Danielle, an animal rights activist, persuades her friend, Chris, to join her in protest at the opening of a new animal testing laboratory. They decide that they will set the laboratory on fire that evening when all employees have left. They purchase cans of petrol and pieces of cloth, which they hide in bushes nearby. Danielle approaches the building with a view to checking that it is empty. As she reaches the front doors, she triggers an intruder alarm and the building is lit by floodlights. Danielle and Chris escape. It later transpires that the petrol cans actually contained water.

Discuss the liability of Danielle and Chris for any inchoate offences.

#### Bullets

- This question requires consideration of the inchoate offences of which Danielle and Chris might be guilty.
- This first issue to consider is whether any offences of encouraging or assisting an offence under s.44-45, Serious Crime Act 2007 have been committed. Although Danielle persuades Chris to “join her in protest”, the facts are unclear as to whether she was persuading him to commit arson or to actually protest.
- Danielle and Chris could both be charged with conspiracy to commit arson under s.1, Criminal Law Act 1977. The actus reus requires an agreement between two or more people to pursue a course of conduct which amounts to a criminal offence – this is satisfied because they agree to burn the building down.
- The mens rea is an intention to enter into the agreement and intention that the agreement be carried out and the offence be committed, along with knowledge that the circumstances which constitute the actus reus of the offence exist. Consider whether these elements are present.
- Impossibility will be no defence (s.1(1)(b), CLA 1977), thus it does not matter that the petrol cans contain water.
- Danielle and Chris could both be charged with attempted arson under s.1, Criminal Attempts Act 1981. They both intend that the offence of arson be committed, so the mens rea is satisfied.

- Consider at what stage the actus reus is satisfied – taking steps which are more than merely preparatory towards the commission of arson. Is it when they hide in the bushes nearby? If so, both will be guilty. Is it when Danielle approaches the building? If so, Danielle will be guilty. Perhaps there is no attempt. Consider case law such as *Boyle and Boyle* (1987), *Jones* (1990) and *Tosti* (1997), in which there were attempts. Consider also *Campbell* (1991) and *Geddes* (1996) in which there were no attempts.
- Impossibility is no defence to an attempt (s.1(2), CAA 1981).

## Question 2

The reforms under Part 2 of the Serious Crime Act 2007 were unnecessary and have complicated what was a relatively straightforward area of law.

To what extent do you agree with this statement?

### Bullets

- This question asks you to critically evaluate the reforms made by the SCA 2007 to the law on inchoate offences. Address the question in your introduction and acknowledge that you will explore whether the SCA 2007 provisions on inchoate offences were unnecessary and have complicated the law.
- Explain that Part 2 of the SCA 2007 came into force on 1<sup>st</sup> October 2008. Sections 44-46 created three new offences of encouraging or assisting an offence and abolished the common law offence of incitement.
- Explain the differences between the three new offences of intentionally encouraging or assisting an offence (s.44), encouraging or assisting an offence believing it will be committed (s.45) and encouraging or assisting offences believing one or more will be committed.
- Consider the reasons for the reforms which were the Parliamentary response to a Law Commission Report in 2006 entitled “Inchoate Liability for Assisting and Encouraging Crime” (Law Com. No. 300).

- Discuss the loophole that the SCA 2007 was intended to cover of assisting an offence which does not actually take place.
- Explain how the offences under the SCA 2007 overlap now with accessorial liability because the SCA 2007 does not insist upon the offence assisted or encouraged being an inchoate offence.
- Consider whether such extensive reforms were necessary in order to plug a small loophole and the extensive impact the SCA 2007 will have not only on the area of inchoate liability, but also on accessorial liability.
- Discuss any complicated features of the new offences under the SCA 2007, such as the lack of clarity surrounding the meaning of the mens rea – see s.44(2).
- You should briefly mention the old law on incitement and the fact that this old common law offence was relatively problem free.
- You should then conclude by addressing the question directly and providing your own informed opinion.