

[INCHOATE OFFENCE/ATTEMPT](#)

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What is An Inchoate Offence?

An inchoate offence is an attempt to commit an offence which doesn't come into fruition. In inchoate offences, the defendant is expected to have relatively come close to the achievement of his criminal objective.

The rationale behind punishing inchoate offences is due to the fact that it aids in the protection of life and property. It is a generally held view that these offences should be punishable because anyone who attempts to commit a crime has the *mens rea* to bring that crime into fruition.

See: S.4 CC and S.95 PC.

It should be noted that the act of the accused should be connected to the offence he is alleged to be committing. It must be something more than mere preparation for the commission of the offence. See: ***Jegede vs The State (2001) vol 14 NWLR pt 733***.

According to **Gross**:

Where there is only an attempt, the liability of the conduct itself may usefully be regarded as a second other harm in itself. It is the sort of conduct that normally presents a threat of harm and that by itself, is a violation of an interest that concerns the law.

This interest is security from harm. Thus, merely representing a threat of harm violates that security interest.

The above is also in line with the provision of **S.1(4)** of the **English Criminal Attempt Act of 1981**. See also; **S.508 CC** and **S.229 Penal Code**.

By the provision of **S.4** of the **Criminal Code**, the *mens rea* of an inchoate offence is the presence of a direct intention to commit the offence which the accused was alleged to have attempted.

In the case of ***Bassey Akpan Idn vs The State (1994) vol 8 NWLR pt 365***, the court of appeal, in affirming the conviction for attempted murder meted out to the accused, reiterated that in a charge of attempted murder, the *mens rea* is the intention to kill.

Also, in the case of ***R vs Whybrow (1951) vol 35 CRA***, the accused delivered an electric shock to his wife while she was having her bath. The court also held that the intention to kill is the principal element to be proved in a charge of attempted murder.

In another case of ***R vs Khan (1990) vol 2 All E.R.*** the accused was charged for attempted rape. The court held:

In a case of rape, an attempted rape will be the intent to have sexual intercourse in circumstances where she does not consent and the defendant knows or cares less about her absence of consent. He commits the offence because of the circumstances in which he manifests that intent.

See also: ***R vs Mohan (1975) vol 2 All ER, Nwankwo vs FRN (2003) vol 4 NWLR pt 809***.

The *actus reus* of an inchoate offence is also provided for under S.4 of the Criminal Code. They are:

1. To begin to put the intention into execution by means adapted to its fulfilment.
2. To manifest the intention by some overt act even though the actual offence is yet to be committed.
3. The accused person has the intention to bring about the commission of the actual crime. See: ***Aminu vs The State (2005) vol 2 NWLR pt 908***.

It should be noted that in order for an inchoate offence can be sustained and established, the overt act of the accused has to be contemporaneous with the actual crime alleged.

Also, the accused would also be criminally liable regardless of the fact that it is impossible for the crime to come into fruition. In the case of ***Haughton vs Smith (1975) AC*** the accused was charged with attempting to handle stolen property contrary to the provision of **S.22 of the Theft Act 1968**. The accused had received the goods with the intention of receiving stolen goods. In reality, they were not stolen goods. The court stated:

The crime is impossible in this circumstance but it could be proximate to it.

Also, in the case of ***R vs White (1910) vol 2 KB***, the accused tried to kill his mother with poison. However, the poison could not kill the mother due to insufficient quantity. The court stated:

A man may set out to commit a crime with inadequate tools. He may find that he cannot break in because the door is too strong for him. If he used poison which is not strong enough, he is certainly guilty of attempt because with better equipment or greater skill, he could have committed the full crime.

Punishment For Inchoate Offences

The provisions for punishment of inchoate offences vary in the Criminal Code and the Penal Code. The punishments for the two codes shall be highlighted below:

In The Criminal Code

If a person attempts to commit a crime punishable with imprisonment ranging from 14 years to the death penalty, such person would be imprisoned for 7 years. For other felonies, if no other punishment is prescribed, such person would be serve imprisonment for half of the highest punishment obtainable; S.509 Criminal Code.

For misdemeanors, S.510 provides:

Any person who attempts to commit a misdemeanour is liable if no other punishment is provided, to a punishment equal to one-half of the greatest punishment to which an offender convicted of the offence which he attempted to commit is liable.

For Simple offences, S.511 provides:

Any person who attempts to commit a simple offence is liable, if no other punishment is provided, to one-half of the greatest punishment to which an offender convicted of the offence which he attempted to commit is liable.

For persons who attempted to commit an offence but desisted from doing it, S.512 provides:

When a person is convicted of attempting to commit an offence, if it is proved that he desisted of his own motion from the further prosecution of his intention, without its fulfilment being prevented by circumstances independent of will, he is liable to one-half only of the punishment to which he would otherwise be liable. If that punishment is imprisonment for life, the greatest punishment to which he is liable is imprisonment for seven years.

The Penal Code

For offences generally, the Penal Code provides in S.95:

Whoever attempts to commit an offence punishable with imprisonment or to cause such an offence to be committed and in the attempt does an act towards the commission of the offence shall, where no express provision is made by this Penal Code or by any other Act or Law for the time being in force for the punishment of the attempt, be punished with imprisonment for a term which may extend to one half of the longest term provided for that offence or with such fine as is provided for the offence or with both.

For attempting culpable homicide punishable with death, S.229 provides:

(1) Whoever does an act not resulting in death with such intention or knowledge and in such circumstances that if he by that act caused death, he would be guilty of culpable homicide punishable with death shall be punished with imprisonment for life or for any less term or with fine or with both.

(2) When a person being under sentence of imprisonment for life commits an offence under this section, he shall, if hurt is caused, be punished with death.

For attempting culpable homicide not punishable with death, the Penal Code provides in S.230:

Whoever does an act with such intention or knowledge and in such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not punishable with death, shall be punished-

(a) with imprisonment for a term which may extend to three years or with fine or with both; or

(b) if hurt is caused to any person by such act with imprisonment which may extend to seven years or with fine or with both.

SOURCES

1. Lecture delivered by Dr Mrs. M.A. Abdulraheem Mustapha, Faculty of Law, University of Ilorin.
2. Okonkwo and Naish: Criminal Law in Nigeria
3. The Nigerian criminal Code
4. The Nigerian Penal Code
5. The Theft Act 1986