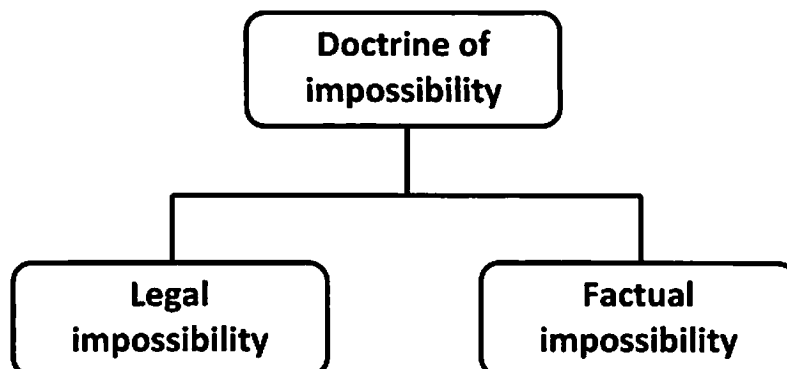


6. Attempting the Impossible

The doctrine of impossibility

1. The doctrine of 'impossibility' as a defence has been controversial and confusing.
2. There are two forms:



Legal impossibility

1. This provides a defence.
2. If D carried out all that s/he intended but, contrary to his/her belief, did not actually commit a criminal offence, then an attempt cannot have been committed.
3. An example is when D smuggles a substance into the UK in the mistaken belief that its importation and possession are criminal offences when in fact they are not. D has not committed a crime.
4. So, if D's objective was not a criminal offence, this fact cannot be altered by D's mistaken belief that it was.

Factual impossibility

1. The doctrine of 'factual' impossibility is more problematic.
2. D misunderstands the factual situation. It is not a question of misunderstanding the law.
3. So, this is where D's intended objective would have been criminal on the facts that D believed them to be, but s/he failed to complete the crime because it was actually impossible to do so.
4. An example would be if D enters V's bedroom with the intention of killing V. D then fires several shots into a pile of laundry, mistakenly believing the pile to be the intended victim.

Development of the law to 1987

1. In **Haughton v Smith 1975**, the House of Lords held that 'factual' impossibility could not be an attempt.
2. This decision was criticised. If D satisfied both the mens rea and actus reus of an attempt, is there any reason why D should get off?
3. Is D, who shoots at a pile of laundry in the mistaken belief that it is his/her intended victim, any less blameworthy than the D who intends to kill V, fires at V but misses due to poor marksmanship?
4. The criticism of **Haughton v Smith 1975** culminated in the **Criminal Attempts Act 1981** that appeared to abolish the defence of factual impossibility.
5. S1(2) Criminal Attempts Act 1981 states that: '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.'
6. In **Anderton v Ryan 1985**, however, the House of Lords decided that Mrs Ryan should not be convicted of attempted theft.
7. By so doing, it was suggesting that factual impossibility could be a defence for an attempt.

Developments in 1987

1. The House of Lords revisited this issue in **Shivpuri 1987**.
2. In **Shivpuri 1987**, the question presented on appeal was whether factual impossibility could be a defence to a crime of attempt.
3. In dismissing Shivpuri's appeal, the House of Lords had no difficulty in finding that D intended to smuggle heroin and that his conduct had gone beyond the preparatory stage of the intended crime.
4. The House of Lords re-examined **Anderton v Ryan 1985** and tried to find distinctions between the two offences but failed.
5. They chose to overrule **Anderton v Ryan 1985** stating that it had been a 'wrong' decision and should not have to be followed by the courts.
6. The Law Lords corrected the law quickly by using the Practice Statement.
7. Therefore, in the light of **Shivpuri 1987**, it is clear that factual impossibility is not a defence to the crime of attempt.
8. If D makes a mistake about the facts as in **Shivpuri 1987**, which makes the commission of the full offence impossible, D can be guilty of attempts.
9. So even if a crime is physically impossible to commit, it may still be possible to commit the attempted crime.
10. Under current law, Mrs Ryan technically would be guilty but the Law Lords suggested that the prosecution would be unlikely to prosecute in such minor cases.