

Part One

THE IRISH LEGAL SYSTEM

Chapter 1

NATURE AND HISTORY OF IRISH LAW

Nature of Law

Jurisprudence is the science of law, though, unlike the natural sciences which have immutable laws, legal laws are the product of human endeavour. Laws are rules of conduct imposed by a state upon its members. These rules of conduct constitute the law of the land, the domestic law. The purpose of these laws is to maintain a certain standard of behaviour amongst its members in the interest of the common good.

Law and Morality

There is a connection between legal laws laid down by a state and certain other norms of behaviour known as laws of morality. From a legal perspective the essential difference between these two sets of rules exists in their respective enforcement. Legal rules are enforced in the courts. Rules of morality depend for their observance upon the good conscience of the individual and the force of public opinion. In any society it is usual to find the rules of morality observed by the majority of its members reflected in the legal laws of that society.

Classification of Law

Law is classified in different ways. One distinction is made between public law and private law. Public law is that portion of the domestic law governing the relations between the state and the individual; constitutional law and criminal law are examples of public law. Thus, public international law governs the relations between states. Private law is that portion of the domestic law which controls the relations between individuals within the state; contract law and property law are examples of private law.

Law is also divided into criminal law and civil law. The objectives of both, though closely connected, are clearly different. Criminal law defines a variety of actions forbidden by the state. To protect itself, society disapproves so strongly of such actions that it permits the state to punish those who depart from the standards set. Punishment is the ultimate sanction: the purpose of criminal law is to punish the offender, rather than compensate the victim. The purpose of civil law is the orderly resolution of disputes between individuals. It provides a remedy, usually a financial one, to the wronged party against the wrongdoer.

2 *Principles of Irish Law*

Compensation of the aggrieved party is the aim, rather than the punishment of the wrongdoer.

The law also draws a distinction between the rules of law, referred to as substantive law, and the machinery by which these laws are enforced in the courts, which is known as procedural law.

Law and Fact

Our law draws a distinction between the rules of law governing any particular case and the facts which must be proved before a verdict can be reached that the law has been breached. In the crime of assault it is a question of law as to the precise definition of assault and whether the conduct amounts to assault in the eyes of the law. It is a question of fact as to whether an assault has been committed and whether the defendant was the culprit.

Nature of Irish Law

For historical reasons, explained later, Ireland does not have an indigenous body of laws. Instead, we have a foreign system of laws implanted after a conquest which obliterated the highly developed native Brehon laws. Following military and political domination came common law, a product native to England which was applied in the colonised countries such as the United States of America, Canada, Australia and New Zealand.

Meaning of Common Law

Common law is the ancient unwritten law of England so called because it was made common to the whole of England and Wales after the Norman Conquest in 1066. Thereafter, over generations, this ancient law became embodied in a wide variety of judicial decisions. With the passage of time common law came to mean judge-made law as opposed to statute law, or the law enacted by parliament.

Meaning of Irish Law

‘The common law is an integral portion of our jurisprudence,’ commented Gavan Duffy J in *Cook v Carroll* (1945). Irish law draws on many different sources, such as a written constitution, the laws of the European Union, the generally accepted principles of international law, statute law and judicial decisions. A body of law thus exists which can be styled as distinctively Irish. The simplest definition of Irish law is that body of legal rules administered in Irish courts.

HISTORY OF IRISH LAW 1170–1918

Introduction of the Common Law

Although Strongbow, or Richard FitzGilbert, Earl of Pembroke, led the Normans into Ireland in 1170, the reception of the common law was a slow, gradual

process. King John, on a visit in 1210, ordained that the laws and customs of England were to be observed, though this decree merely extended the common law to English settlers living mainly in the Pale around Dublin. The remainder of the country was subject to the Brehon laws and by 1331 the Irish were generally entitled to plead the common law.

The development of common law courts in Ireland closely followed the English system. The Court of King's Bench was established after the visit of King Richard II in 1394–95. The judges were English born and on service here. A court system was not universally established by 1556 because in that year the Privy Council of Ireland ordered a dispute involving title to land to be decided by the Brehons, though by 1570 the Commissions of Assize were travelling the country, hearing both criminal and civil cases. By 1614 there were five circuits embracing the whole country.

Poyning's Law

Many attempts were made to introduce the statute law of the Parliament of England into Ireland, which had a parliament of its own. The validity of such laws was denied by the English judges in the reign of King Henry VI. In 1484 the opposite conclusion was reached in the case of the *Merchants of Waterford*, a decision reinforced in 1494–95 by *Poyning's Law*, a statute of the Irish Parliament, which declared that all statutes previously passed in England should have full effect in Ireland. This statute did not give the English Parliament any right to legislate for Ireland, though it did fetter the future freedom of the Irish Parliament to legislate. It provided that the Crown's representative in Ireland and the Irish Privy Council should decide on the legislation it deemed desirable to lay before the Irish Parliament. Drafts of these proposed measures were to be sent to England for the sanction of the Crown and the English Privy Council. When this consent was obtained, the draft laws were then laid before the Irish Houses of Parliament. While this procedure did not subject the Irish Parliament to the English Parliament, it did effectively render the Irish Parliament impotent unless the Crown in London approved.

For hundreds of years the Irish Parliament legislated by this process. For the purposes of legal uniformity between the two islands, the Irish Parliament passed many statutes which had been previously enacted in London. For example, the *Statute of Frauds*, passed by the English Parliament in 1677, found its way into an Irish statute, similarly entitled, in 1695.

Supremacy of the English Parliament

The English Parliament declared, in the *Dependency of Ireland Act 1719*, that it had the right to legislate for Ireland. Until that year the Irish House of Lords had served as a final court of appeal for law cases in Ireland; this function was transferred to the English House of Lords. This statute is known in history as the *Sixth of George I*.

Legislative Independence

In the wake of American Independence and the rise of the Irish Volunteers, a campaign was mounted by Henry Grattan for the restoration of legislative independence for the Irish Parliament. This was granted by the *Dependency of Ireland Act 1782* which repealed the *Sixth of George I* and *Poyning's Law*.

Henceforth an Irish law would pass through the Irish Parliament in the same way an English law passed through the English Parliament. When enacted by both the Commons and Lords, it would be sent to the Crown for royal assent. The Irish Parliament was thus subordinate only to the Crown. The appellate jurisdiction of the Irish House of Lords was restored.

Constitutional and Legal Integration

The legislative independence of the Irish Parliament was brief. Two years after the 1798 Rebellion, the *Act of Union 1800*, enacted by identical statutes in Ireland and England, brought total constitutional and legal integration. The 'United Kingdom of Great Britain and Ireland' was created with a single parliament at Westminster, to which members from Ireland were elected. For the next 120 years all statute law applicable in Ireland would be enacted at Westminster and the English House of Lords would be the court of final appeal for court cases from Ireland.

MODERN LEGAL HISTORY FROM 1919

Constitution of Dáil Éireann

Following the general election of December 1918, the elected Sinn Féin members met in Dublin on 21 January 1919 and constituted themselves as Dáil Éireann. It drew up a document known as the 'Constitution of Dáil Éireann' containing five short articles, and promulgated a 'Declaration of Independence' and a 'Democratic Programme' which reaffirmed the sentiments expressed in the Proclamation of the Irish Republic of Easter 1916. These documents, although of historical importance, had no subsequent constitutional or legal significance.

Government of Ireland Act

The British Parliament reacted to the establishment of Dáil Éireann and the continuing War of Independence by enacting the *Government of Ireland Act 1920* which partitioned the island into Southern and Northern Ireland with separate parliaments and all-Irish institutions. For reasons explained later this statute was never effective in 'Southern Ireland'.

The Anglo-Irish Treaty

The Articles of Agreement for a Treaty between Great Britain and Ireland was signed in London on 6 December 1921. Southern Ireland was to become the Irish Free State (Saorstát Éireann) and was to have dominion status within the British Empire.

Constitution of Saorstát Éireann

The *Constitution of the Irish Free State (Saorstát Éireann) Act 1922* was enacted by Dáil Éireann sitting as a constituent assembly on 25 October 1922, and came into effect on 6 December 1922. This Constitution was innovative in form and content; it was a written composite document establishing the organs of government and declaring fundamental freedoms. Most importantly, it was the yardstick against which all other law was to be tested, and if any inconsistency was found, the provisions of the Constitution were to prevail.

This Constitution declared that all authority comes from God to the People and, in turn, all powers of government come from the People. The power to make laws was vested in the Oireachtas, which consisted of the King, the Senate and Dáil Éireann. The Crown was to be represented by a Governor General.

The executive authority, that is the branch of government entrusted with carrying the laws into effect, was vested in the King, who was aided and assisted by an Executive headed by a President. The Executive Council was responsible to Dáil Éireann.

Justice was to be administered in public courts by an independent judiciary. To the courts fell the additional task of deciding whether any law was repugnant to any provision of the Constitution. From the Supreme Court of Justice an appeal lay to the British Privy Council.

The Constitution contained a declaration of rights and social principles. Rights such as the inviolability of the person and dwelling, the right to trial by jury, and freedoms of expression, association and religion were guaranteed.

For obvious reasons this Constitution could not provide a totally new system of laws to come into effect with the new Constitution itself. It therefore declared that subject to the Constitution, and to the extent to which they were not inconsistent therewith, the laws in force in the Irish Free State on 6 December 1922 continued to be of full force and effect until the same, or any of them, were repealed or amended by enactments of the Oireachtas.

Dismantling Saorstát Éireann

The Constitution of the Irish Free State never met with the approval of all political groups and, inevitably, with the passage of time it was dismantled by ordinary laws. The Oath of Allegiance, the Senate and the office of Governor General were among the deletions. The *External Relations Act 1936* removed the Crown almost completely from constitutional affairs.

Constitution of Ireland

Early in 1937 a new Constitution — *Bunreacht na hÉireann* — was published, debated and enacted by Dáil Éireann. On 1 July 1937 it was adopted in a plebiscite by the People as the fundamental legal document: 685,105 voted in favour; 526,945 voted against. It came into effect on 29 December 1937 and in the intervening years has been amended a number of times by the People by the

addition, the deletion or the alteration of articles. It has been applied by the courts in a large number of cases, many of fundamental importance to our law.

While the 1937 Constitution radically altered our constitutional philosophy and law, it could not, and did not, introduce a totally new system of laws. Instead, the practical approach of continuing the laws which were in force in the Irish Free State immediately prior to the coming into operation of the new Constitution was adopted, though only to the extent that they were not inconsistent with any of the articles of the new Constitution.

Republic of Ireland Act

Ireland did not completely sever its relations with the British Crown until 1948. Until that year the executive function in relation to external affairs was performed by the British Crown on the advice of the Government. This power was repatriated with the passing of the *Republic of Ireland Act 1948*.

Membership of the European Union

In 1973 Ireland joined the then European Economic Community, which had been established by the Treaty of Rome in 1957. An amendment of the Constitution was necessary so that laws enacted outside the State could have application within the State. Ireland has played a full and active role since joining. Legal, political, social, economic and cultural activities emanating from our membership of the European Union (see Chapter 7) have had a profound effect in shaping modern Ireland.

Amendments to the Constitution

Since the Constitution was enacted by the People, amendments to it must be enacted by the same method. Every proposal to amend the Constitution must be initiated in Dáil Éireann and be passed, or deemed to have been passed, by both Houses of the Oireachtas (see page 28). Every proposal submitted to the People in a referendum is approved if a majority of the votes cast are in favour.

There have been various proposals to amend the Constitution. Some have been rejected and many have been approved. Indeed, in recent years amending the Constitution has been done almost annually.

The Supreme Court decided in *McKenna v Ireland* (1996) that once a Bill to amend the Constitution had been submitted to the People, the People were entitled to reach their decision in a free and democratic manner and the use by the Government of public money to fund a campaign designed to influence the voters was an interference with the democratic process. To further this principle of equality, the *Referendum Act 1998*, as amended, established the Referendum Commission, the primary role of which is to explain the subject matter of the referendum as simply and effectively as possible, while ensuring that the arguments of those against the terms of the referendum and those in favour are put forward in a manner that is fair to all interests concerned.

Belfast Agreement

While a major portion of the agreement signed in Belfast on Good Friday, 10 April 1998, was concerned with Northern Ireland, two matters have important constitutional implications for this part of the island. The first relates to Articles 2 and 3 (see page 8) which abandon the legal claim to the territorial area of the island of Ireland, and the second relates to changes to Article 29 which allows the State to be bound by the Belfast Agreement and to recognise institutions that may exercise jurisdiction over the whole of the island. Despite the People agreeing to these changes in a constitutional referendum, the Belfast Agreement remains solely an international agreement and is not part of the domestic law of the State.

Institutions for the development of British–Irish relations, such as the British–Irish Intergovernmental Conference and the British–Irish Council, are given legislative effect in the *British–Irish Agreement Act 1999*. In addition, Implementation Bodies designated to implement, on an all-island and cross-border basis, policies agreed by the North-South Ministerial Council were provided for.

Part Three

CRIMINAL LAW

Chapter 12

CRIMINAL LIABILITY

Purpose of the Criminal Law

The purpose of the criminal law is to forbid conduct that unjustifiably inflicts or threatens substantial harm to the individual or to the public interest. The preservation of public peace and order is achieved by giving fair warning of the nature of the offensive conduct and by imposing punishment which reflects an emphatic rejection by the community of both the crime and the offender. The courts not alone seek to do justice by imposing the punishment deserved, but also strive to punish equally offenders who possess an equal degree of guilt. The purpose of sanctions is to punish past wrongdoing and to deter repetitions. Reform of the offender through rehabilitation is a secondary consideration, though much modern penal legislation is directed towards that end.

Definition of a Crime

A crime is defined as a wrongful act which directly and seriously threatens the security or well-being of society, and which is unsafe to be redressed by the mere compensation of the injured party. It is a wrongful act against the community with punishment imposed by the courts and enforced by the executive.

THE CLASSIFICATION OF CRIME

Constitutional Division of Crimes

The Constitution distinguishes between minor and other offences for the purposes of trial. A minor offence is not defined by the Constitution, so it falls to the courts to supply a definition. The Supreme Court, in *Melling v Ó Mathghamhna* (1962), laid down the following criteria for determining this question: (i) how the law stood when the statute was passed; (ii) the severity of the penalty; (iii) the moral quality of the act; and (iv) its relation to common law offences. ‘Punishment,’ according to Lavery J, ‘is the most important consideration.’ By and large the subsequent cases have been decided on the issue of punishment. There are three broad types of cases: (i) those where imprisonment is a possible punishment; (ii) those where the sole penalty is the imposition of a fine; and (iii) those where the loss of a licence follows conviction.

The Supreme Court, in *Conroy v Attorney General* (1965), decided that an offence which carried six months’ imprisonment and/or a fine of €126 was a

minor offence. But in *The State (Sheerin) v Kennedy* (1966) the Supreme Court held that an offence which merited a two-year sentence in a borstal institution was a non-minor offence. The Supreme Court held, in *In re Haughey* (1971), that an offence which carried an unlimited prison sentence was considered to be non-minor. These cases suggest that where imprisonment is less than six months, the offence is minor and where it is two years or more, it is non-minor. Further cases may decide where precisely the line can be drawn.

Offences may be punished by fine rather than imprisonment. What are the limits in this respect? The High Court held, in *Cullen v Attorney General* (1979), that the imposition of an unlimited fine in lieu of damages for negligent driving created a non-minor offence. The punishment for illegal fishing is the forfeiture of gear and catch which, in *Kostan v Ireland* (1978), was valued in the region of €127,000. The High Court held the offence to be non-minor. The Supreme Court, in *The State (Rollinson) v Kelly* (1984), held that the imposition of a €635 fine rendered the offence a minor one. From these cases it can be seen that the line can be drawn somewhere between €635 and €127,000.

A third sanction which may be imposed is the loss of a licence. In *Conroy v Attorney General* (1965), mentioned earlier, together with imprisonment and/or a fine there was a mandatory disqualification from driving for a stated period. The Supreme Court held the disqualification was not in the nature of a punishment, but was the withdrawal of a statutory right and this could not be considered when deciding whether the offence was minor or non-minor. The High Court decided, in *The State (Pheasantry Ltd) v Donnelly* (1982), that the loss of a wine licence on conviction for a third time under the licensing laws was considered too remote in character to be taken into account when deciding whether the offence was minor or non-minor (see page 77).

The consequence of deciding this crucial question as to whether an offence is minor or non-minor was considered on page 51 when examining the various methods of trials.

Statutory Division

The common law divided crimes into felonies and misdemeanours. The *Criminal Law Act 1997* abolished this distinction and in its place provided for arrestable offences (described in the *Bail Act 1997* as serious offences), which are defined as offences for which a person of full capacity may be punished by imprisonment for a term of five years or by a more severe penalty. Therefore, arrestable offences are the most obvious serious offences such as murder, rape and kidnapping.

Procedural Division

This division divides crimes according to their method of trial. Minor offences, known as summary offences, are tried in the District Court without a jury. Non-minor offences, known as indictable offences or arrestable or serious offences,

are tried by a jury in the Circuit Court or Central Criminal Court or in the non-jury Special Criminal Court. The trial of offences is discussed fully on page 52. From this procedural division it can be seen why the classification of crimes into minor and non-minor offences is so important: it dictates the method of trial.

INGREDIENTS OF A CRIME

Actus Reus and Mens Rea

In general to secure a conviction for an indictable offence (subject to what is said about statutory offences later) it must be proved beyond reasonable doubt that the accused committed a guilty act, the *actus reus*, with guilty intent, the *mens rea*.

The *actus reus* consists of some act or some omission forbidden by law. The conduct of the accused must come within the forbidden action. The *actus* must be directly attributable to the accused and not to another person, unless the accused incited that other person or they shared a common purpose. The *actus* must be done voluntarily.

The *mens rea* means a blameworthy state of mind. What the law regards as blameworthy varies from offence to offence. It may be intentional conduct, as in murder or rape, where the consequences are foreseen and desired; or it may be reckless or grossly negligent, as in manslaughter, where the consequences are foreseen but not necessarily desired; or it may be negligent, as in dangerous driving, where the consequences are not foreseen in circumstances where the law requires foresight.

The Supreme Court held, in *The People (DPP) v Power* (2008), that where a criminal offence was created by statute, and the statute was silent as to *mens rea*, there was a presumption that *mens rea* was required in relation to the offence as a whole and in relation to each constituent part of the offence. This presumption could be displaced only by clear words or by necessary implication.

Motive

Motive is not an ingredient in the legal definition of a crime. Motive may assist in the solution of a crime, but it is not an essential proof in a trial. An act is none the less criminal where it is motiveless and a good motive does not excuse a crime.

Strict Liability

Until the middle of the nineteenth century, it was the common law judges who exclusively created new offences as the necessity arose. When statute intervened, the difficulty arose as to whether *mens rea* was an ingredient of statutory crimes. The courts inclined to regard solely the words of the statutes without importing the element of *mens rea*, because what was being created in language of great exactitude was a host of minor offences carrying relatively light penalties. A strict interpretation of the wording of these statutes excluded *mens rea*.

But courts are only inclined to impose strict liability where the penalty is trivial. In more serious crimes created by statute, the courts do not impose strict liability because they argue that the legislature would not encroach on individual rights without expressly and clearly saying so. As one judge explained: ‘The Oireachtas may make acts crimes although the accused was not aware that he was committing an offence. But, to effect this, clear language must be used. In the absence of such an indication, the general rule is that the guilty mind or criminal intent must be established in relation to each ingredient of the offence.’

CRIMINAL CAPACITY

Minority

The *Criminal Justice Act 2006* provides that a child under the age of twelve years shall not be charged with an offence. But a child of ten or eleven years may be charged with murder, manslaughter, rape or aggravated sexual assault.

Where a child under fourteen years of age is charged with an offence, the court may dismiss the case on its merits if, having had due regard to the child’s age and level of maturity, it determines that the child did not have a full understanding of what was involved in the commission of the offence.

DEFENCES TO CRIMES

Insanity

According to the *Criminal Law (Insanity) Act 2006*, where an accused person is tried for an offence and the court finds that he or she committed the act alleged and, having heard evidence relating to the mental condition of the accused given by a consultant psychiatrist, finds that: (a) the accused person was suffering at the time from a mental disorder; and (b) the mental disorder was such that the accused person ought not to be held responsible for the act alleged by reason of the fact that he or she: (1) did not know the nature and quality of the act; (2) did not know that what he or she was doing was wrong; or (3) was unable to refrain from committing the act, the court shall return a special verdict that the accused person was not guilty by reason of insanity.

Mental disorder is defined as mental illness, mental disability, dementia, and other disease of the mind, but does not include intoxication.

Where an accused person has been found not guilty by reason of insanity and the court considers that he or she is suffering from a mental disorder and is in need of in-patient care or treatment, the court shall commit that person to a centre for evaluation and/or treatment. It follows that where an accused person is found not guilty by reason of insanity and is, at the time of the verdict, not suffering from a mental disorder, he or she must be released.

Diminished Responsibility

The *Criminal Law (Insanity) Act 2006* provides that where a person is tried for murder and the court finds that the person: (a) did the act alleged; (b) was at the time suffering from a mental disorder; and (c) the mental disorder was not such as to justify finding him or her not guilty by reason of insanity but was such as to diminish substantially his or her responsibility for the act, the court shall find the person not guilty of that offence but guilty of manslaughter on the grounds of diminished responsibility.

Drunkeness

The common law regarded drunkness as aggravating guilt. It did not afford an excuse for the commission of a crime because, unlike insanity, it was induced voluntarily. Drunkness continues to offer no defence unless it produces temporary insanity or it negates the specific intention required for the crime charged.

Far from being a defence, drunkness may be an ingredient which assists in proving the commission of an offence. In *The People (AG) v Regan* (1975) the Court of Criminal Appeal held that the fact that the accused had consumed a significant quantity of alcohol before the commission of events on which the charge was based was relevant and admissible on a charge of dangerous driving. The Court of Criminal Appeal, in *The People (DPP) v Reilly* (2005), held that voluntarily induced intoxication was no defence to a charge of manslaughter even where such intoxication resulted in a state of automatism. In that case, the accused, having consumed a large quantity of alcohol, stabbed a young child to death and evidence was given by expert witnesses that the accused was in a deep sleep at the time of his actions and was then functioning as an automaton.

Duress

It is a defence to prove that the offence was committed while under the coercion of another. This defence is rarely successful because the courts regard it with suspicion.

In *Attorney General v Whelan* (1934) the scope of the defence of duress *per minas* was stated. On a charge of receiving stolen money, the accused claimed he did so under threats of personal violence. The Court of Criminal Appeal, per Murnaghan J, explained: 'It seems to us that threats of immediate death or serious personal violence so great as to overbear the ordinary power of human resistance should be accepted as a justification for acts which would otherwise be criminal ... where the excuse of duress is applicable it must ... be clearly shown that the overpowering of the will was operative at the time the crime was actually committed and, if there was reasonable opportunity for the will to reassert itself, no justification can be found in antecedent threats.' The court noted that duress, no matter how great, was no defence to murder and the Court of Criminal Appeal so held in *The People (DPP) v Murray* (1977), where a wife pleaded that she had killed in the presence of, and under the will of, her husband.

Self-defence

The common law rules relating to self-defence have been replaced by statutory rules contained in the *Non-Fatal Offences Against the Person Act 1997*, which provides that the use of reasonable force is permissible to protect any person from injury, assault or detention caused by a criminal act or to prevent crime or a breach of the peace. The use of reasonable force to protect property is also permissible (see page 167).

Diplomatic and Other Immunities

In accordance with the principles of international law, foreign diplomats and their families are immune from prosecution for criminal offences which are committed within the State. These principles are incorporated into the *Diplomatic Relations and Immunities Act 1967*. Members of the Oireachtas cannot be arrested while going to, in, or coming from the Houses of the Oireachtas, though they may be arrested elsewhere. This immunity is excluded in cases of treason, felony and breach of the peace though, of course, they may be arrested elsewhere. There is complete immunity from criminal prosecution and civil action for utterances made within the Oireachtas by its members (see page 219).

Those taking part in judicial proceedings are immune from prosecution for things said in the course of those proceedings provided what is said is relevant to the proceedings in progress (see pages 43 and 219).

CRIMINAL PARTICIPATION

Degrees of Participation

Often there is only a single participant in a crime. Where there are more than one, all may possess an equal degree of guilt or, depending on the actual circumstances, some may attract a greater or lesser amount of guilt than others. There are three possible degrees of participation in a criminal offence.

Principal Offender

The principal in the first degree is the person who commits the *actus reus* with the necessary *mens rea*, or who instigates an innocent agent to perform the *actus reus*. The agent, having no blameworthy intention, incurs no criminal liability.

Aider and Abettor

The common law provided that the principal in the second degree was one who rendered aid, assistance or encouragement at the time the crime was actually committed. The principal offender and the abettor must be acting in a common purpose. In *The People (AG) v Ryan* (1966) the accused was one of a gang who attacked an unarmed group, resulting in the death of one. The inflicter of the injuries was convicted of murder and the accused of manslaughter. The Court of Criminal Appeal held that the accused's presence in the group of attackers, where

he knowingly lent the assailant support in the latter's enterprise, was sufficient for conviction.

Accessories

The *Criminal Law Act 1997* provides that any person who aids, abets, counsels or procures the commission of an indictable offence shall be tried and punished as a principal offender. The common law considered such a person to be an accessory before the fact. To be convicted, that person must know the particular deed contemplated before its performance, and his or her assent or approval must have encouraged the principal offender. In *The People (DPP) v Madden (1977)* one of the accused who stole a car used in a murder in which he did not participate, though he knew that something was going to be done to the victim, was properly convicted of murder as an accessory before the fact.

A person who, with knowledge that a crime has been committed, shelters or conceals the offender in such a way as to enable that person to evade justice, is an accessory after the fact. Some active assistance, however slight, with the intention to assist the offender is necessary. Passive activity, such as abstaining from arresting the offender, is not enough.

PRELIMINARY CRIMES

Inchoate Crimes

Preliminary, or inchoate, crimes are underdeveloped crimes in which the *mens rea* of the intended crime is present, whereas any act done is only a step towards the execution of the full crime. In every crime some brief or prolonged active conduct by the offender must precede the ultimate end. This preparatory activity consists of a single step, or a series of steps, taken in furtherance of the desired end. Any of these steps may amount to one, or more, of the inchoate crimes, which are independent and complete crimes.

Attempt to Commit a Crime

'An attempt,' according to Haugh J in *The People (AG) v Thornton (1952)*, 'consists of an act done by the accused with a specific intent to commit a particular crime; that it must go beyond mere preparation, and must be a direct movement towards the commission after the preparations have been made; that some such act is required, and if it only remotely leads to the commission of the offence and is not immediately connected therewith, it cannot be considered as an attempt to commit an offence.' In that case a conviction for unlawfully attempting to procure a poison, knowing it was intended to be used in a miscarriage, was quashed because the evidence only showed that the accused asked a doctor about that particular drug. The mere desire to commit a crime was not sufficient to constitute an attempt.

The accused, in *Attorney General v Richmond (1935)*, broke into a loft, laid

a trail of wood-shavings, and placed a bottle of paraffin and a wick in position. The Court of Criminal Appeal upheld a conviction for attempted arson. Mere words are insufficient to constitute an attempt. A conviction of attempting to procure an act of gross indecency was quashed in *The People (AG) v England* (1947) by the Court of Criminal Appeal because, per Gavan Duffy P: ‘There are numberless ways in which a man may describe the attractive facility for crime to another in lucid terms without incurring a charge of attempting to turn the hearer into a criminal; everyone has come across instances both in literature and on the screen. And something more beyond description is reasonably required by the law for an attempt to procure the commission of a crime.’

The Court of Criminal Appeal decided, in *The People (AG) v Dermody* (1956), that there cannot be convictions for the substantive offence and for an attempt to commit the same offence.

Conspiracy to Commit a Crime

A conspiracy is an agreement by two or more persons to commit an unlawful act, or an agreement to commit a lawful act by unlawful means. It is, as one judge said, ‘the consensus of two minds’. It was held, in *The People (AG) v Keane* (1975), that conspiracy to commit an offence should not be charged where the substantive offence can be laid.

It is not a conspiracy to combine, or agree, to do any act in furtherance of a trade dispute. This immunity from criminal liability is granted by the *Industrial Relations Act 1990* (page 486).

Incitement to Commit a Crime

It is an offence to incite another to commit an offence. This is so whether that other person accepts or rejects the incitement. The essential ingredient is the soliciting of another towards a criminal action. In *The People (AG) v Capaldi* (1949) the accused brought a girl to a doctor, and when she was found to be pregnant he asked the doctor to ‘do something for her’ and said ‘there is ample money to meet your fees’. The Court of Criminal Appeal upheld a conviction for incitement to commit an abortion because, said Maguire CJ: ‘The jury must necessarily have taken the view that the accused was doing something essentially different from giving vent to a mere desire, and was in fact seriously and specifically seeking to employ the doctor to perform an illegal operation on a ... female for reward.’

JURISDICTION OF THE COURTS

Jurisdiction as to Place

The jurisdiction of our courts over criminal activity extends, not alone over the land, islands and waters of the State, but to Irish-registered ships both on the high seas and within the territorial waters of another state. In *The People (AG)*

v Thomas (1954) a trial for a manslaughter which occurred on a passenger ship between Liverpool and Dublin, while it was fifteen miles off the Welsh coast, was rightly conducted in Dublin. But any offence committed abroad on an Irish-registered aircraft is considered to have been committed where the offender is: *Air Navigation and Transport Act 1936*, as amended. The *Criminal Law (Jurisdiction) Act 1976* confers jurisdiction on the courts of this State to try persons for certain offences which are committed in Northern Ireland and Britain. The *Sexual Offences (Jurisdiction) Act 1996* provides that certain sexual offences against children committed outside the State by a citizen or a person ordinarily resident in the State may be tried in this State provided the act is an offence in the place where the act was committed and is an offence under Irish law.

Jurisdiction as to Time

As a general principle there is no time limitation on the prosecution of crimes. A person may face prosecution at any time for an offence, though for practical reasons, a prosecution is brought as soon as possible after the commission of the crime. Otherwise witnesses may die, become aged or ill, be untraceable, or merely forget the events in question. In *The State (O'Connell) v Fawsitt* (1986) the accused was returned for trial in 1982 and the case was adjourned periodically until 1985. The Supreme Court ruled that an accused was entitled to be tried with reasonable expedition and that in this case there had been excessive and inexcusable delay (see page 50).

There are exceptions to this general rule. Prosecution for certain sexual offences must be commenced within a year. And almost all prosecutions for summary offences must be commenced within six months.