

# Incitement

Encouraging another to commit an offence (Common Law)

## Actus Reus

- There must be a real encouragement of another to commit a crime – more than just a suggestion. Could be by means of **advice, persuasion, threats or pressure**, communicated in **writing, speech or through signs**.
- The incitement need not to be an individual put may be addressed to a group of people or people in general (R v Most 1881)
- Incitement does not need to be explicit – an implied encouragement to commit an offence may be enough. (Invicta Plastics Ltd v Clare 1976)
- The act incited must be one which would be a crime if it was committed by the specific person incited. (Whitehouse 1977)

## Inciting the impossible

- The act which the incitement is aimed at must be capable of being an offence.
- If the offence will be possible in the future then, even though it is impossible at the moment of the incitement, the inciter is guilty. ( R v McDonough 1962)

## Mens rea

- The inciter must intend that the crime will be committed, without needing to know that it is a crime (ignorance of the law is never a defence)
- Where the full offence is actually committed the inciter can only be liable if the person incited actually had the required mens rea for the full offence. (Curr 1968)
- Where the full offence is not committed, it is not entirely clear whether the court must conclude that the person incited would have had the mens rea if the offence had gone ahead, though this does appear to be a logical extension of Curr.

## Criticism

- This crime can be committed merely by speaking; giving rise to obvious dangers that evidence can be fabricated by the police.
- Sentencing – the court can impose a sentence of imprisonment which is greater than the maximum penalty for the crime incited. (Ringleaders of gangs encouraging members to commit crimes but without taking part themselves.)
- The confusion over the impossibility to incitement
- The offence may be unnecessary – if the person incited agrees to commit the crime, there will be a conspiracy.

## Cases

### R v Most 1881

It was held that an article in a revolutionary newspaper encouraging revolutionaries all over the world to assassinate their heads of state, could be incitement to murder.

#### Invicta Plastics Ltd v Clare 1976

The defendants manufactured advice called a Radatec which could detect wireless transmissions, including those used by police radar traps designed to catch speeding motorists. They advertised the product in a motoring magazine, the advertisement showing a road with a speed limit sign, seen through a car windscreen. The court held that this was an implied incitement to use the device without a licence, constituting an offence under the Wireless Telegraphy Act (1949). The fact that the company's advertisement did point out that to do so would be an offence did not prevent liability being incurred.

#### Whitehouse (1977)

A father tried to persuade his daughter to have sexual intercourse with him, though in the event no sex took place. The father could not be prosecuted for inciting the girl to commit incest, since she would not have been committing the crime if she had done so (though he would have been).

#### McDonough (1962)

In this case it appeared that a person could be liable for inciting an offence even though it would not have been possible to go on and commit the actual offence. McDonough had been convicted of inciting another to handle stolen lamb carcasses. He had believed the meat in question was in cold store, but in fact it did not even exist (and therefore could not have either stolen or handled). The court of Appeal upheld his conviction.

#### Curr (1968)

The accused was charged with inciting women to commit offences covered by the Family Allowances Act 1945. He had provided loans, taking family allowance books as security, and persuaded women to cash the books for him. He was acquitted of incitement because the prosecution could not prove that the women had the knowledge that was the necessary mens rea of the statutory offence. If Curr had been charged as a principal he might have been liable, since he had mens rea and therefore the women could have been treated as innocent parties.