

Chapter Five

Degrees in the Commission of a Crime

- ***Introduction***
- **The material element of the crime may result in a completed or incomplete offence.**
- **Incomplete offences are taken to be incomplete degrees of the material element of a crime**
- **The burning issue, therefore, is *what degree should be reached in the carrying out of the criminal design in order to regard a person as having fulfilled the material element of the crime?***
- **These and other issues will be discussed here under. These include preparatory acts, attempt, renunciation, active repentance,**

Preparation

- **The Criminal Code does not apply unless a person crosses the line of demarcation between the mental and the material phases.**
- **A criminal crosses this line firstly by preparing the commission of a crime within the meaning of Art. 26.**
- **Various phases normally precede acts. The phases of desire, decision and initial planning (in the thoughts of the criminal) are mental that do not involve exterior acts. *From the moment these phases develop into “external conduct” that aims at the commission of a crime, the phase of preparatory act is said to have begun.***

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- **However, not every preparatory act is punishable.**
- **For example, a person who has planned to rob a store may buy a pistol, survey the most “appropriate” time of action and arrange various facilities.**
- **Such preparations apparently involve external conduct.**
- **Yet, it is difficult and unfair to punish such acts because we cannot be certain about a person’s criminal intent unless the prospective criminal himself tells us.**
- ***Preparatory acts are “remote” from the ultimate harm, unequivocal design and the determination to carry it out.***

The Ethiopian Context(Art26 CC)

- Preparatory Acts are defined under Art. 26 of the Penal Code of Ethiopia as *those acts which are merely designed to prepare or make possible an offence, by procuring the means or creating the conditions for its commission.*
- This definition encompasses all those situations where he/she from the moment that a person conceives the idea of committing a crime up to its consummation. This process includes formulation of intent to commit a crime.
- This intent may also be supported by external acts like collecting the means

Exceptions

Article 26 of Criminal Code reads:

- ***“Acts which are committed to prepare or make possible a crime, particularly by procuring the means or creating the conditions for its commission are not usually punishable, however, such acts are punishable where
(a) In themselves they constitute a crime defined by law; or
(b) They are expressly constituted a special crime by law by owing to their gravity or the general danger they entail”.***

Attempt

- **Attempt is the second degree in the material element of the crime.**
- **It is a substantial but unsuccessful effort to commit a particular offence. It is a willful effort but without success.**
- **The effort must be unsuccessful because a person cannot be prosecuted for both an attempt and completed crimes as the attempt can be considered to have been merged with the completed offence, thereby abrogating itself.**
- **Example, Asfaw shot at Belay with the view of killing him but failed to achieve the target.**
- *In a nutshell, attempt includes three most important requirements to exist that include: intent, overt act, and failure to achieve the result.*

Incomplete Attempt

- **If the accused chooses not to do or is prevented from doing the last act of the crime, the attempt is said to be incomplete.**
- **For example, an accused aims at a person, touches the trigger and then changes his mind is said to have voluntarily withdrawn. Article 28/1 gives due credit to an offender who renounces the pursuit of his criminal activity by allowing reduced punishment (Art. 179), free mitigation (Art. 180) “if circumstances so justify” or no punishment “if the renunciation was prompted by honesty and high motives”**
- **In cases where the withdrawal occurs due**

Complete Attempt

- **An attempt is said to be complete when the wrongdoer has performed everything on his/her part, which is considered to be necessary without, however, result having occurred.**
- **The reasons for the failure to achieve the result may be of two types: one, it may happen that the offender did every thing that was necessary to bring about the result but the achievement has not occurred due to situations beyond his/her control.**
- **This category of attempt includes impossible offence. Attempt could also be to achieve the result due to the active involvement of the perpetrator him/herself. This is known as active repentance.**
- **E.g. If a criminal having poisoned a victim with a dosage sufficient to cause death, regrets and voluntarily takes him to hospital there by enabling complete recovery the criminal has apparently**

Impossible Attempt” Art. 29

Absolute Vs Relative impossibility

- **where the circumstances in which the criminal acted are unable to cause the criminal’s intended harm due to the means used or because of the object against which the act is committed. Failure to achieve result because of an unloaded gun is an absolute impossibility due to the means used.**
- **Poisoning a person with an insufficiently fatal poison is a case of relative impossibility due to insufficient means. If a doctor attempts abortion over a woman who is not pregnant, there is absolute impossibility due to the missing object.**

Tests used in demarcating between Preparation and an attempt

- The demarcation point between preparation and the beginning of executing the crime is indeed difficult to draw. The following tests are however used in criminal law
 - **Reasonable Inference or Unequivocally Test:**
 - an act done with intent to commit a crime is not a criminal attempt unless it is of such a nature as to be in itself sufficient evidence of the criminal intent with which it is done”.
 - **The Commencement of Execution Test**
 - According to this test, there is an attempt as of the moment the accused begins to commit the crime.
 - **Proximity test**
 - An act of attempt must be sufficiently proximate to the crime intended, it should not be remotely

Complete Crime

- *When the intended consequences are achieved by the conduct of the accused, the crime is said to have been completed and thus making the accused liable to punishment for full fledged crime.*

Renunciation

- Renunciation is provided under Article 28 of the Penal Code as “if an offender of his own free will renounce the pursuit of his criminal activity the court shall reduce the punishment within the limits provided by law (Art. 179) or may reduce it without restriction (Art. 180)
- if circumstances so justify. No punishment shall be imposed if the renunciation was prompted by reasons of honesty or high motives.” It refers to situations where a person abandons the pursuit of his or her criminal activity by his or her own free will without completing the act required producing the result.
- *Renunciation exists when the criminal activity is abandoned absolutely*

Active repentance

- The failure to achieve the result after the completion of the act may also occur when, *after having performed all the acts to bring about the desired result, the perpetrator himself either prevents or contributes for the prevention of the result.*
- This is what is called active repentance which is dealt with under Article 28(2) of the Penal Code that reads: If an offender, having completed his or her criminal activity, of his or her own free will prevents, or contributes to prevent the consequent result, the court may without restriction reduce the punishment (Art. 180).