Thinking point 12.1

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| Has D attempted murder in the following scenarios?  1. D hands D2 poison and tells him to put it in V’s tea the following day. D2 does so but V does not die.  2. D hands a child some poison and tells her to put it in V’s tea the following day. The child does so but V does not die. |

* In each case you have to ask whether D’s act is more than merely preparatory to the complete crime.
* In part 1. D probably procures the crime of murder as an accomplice and D may make the attempt. D’s act is too remote because D2 breaks the chain of causation.
* In part 2. D attempts murder through the innocent agency of the child.

Thinking point 15.2

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| Has D committed an attempt?  D intends to have sexual intercourse with V not thinking about whether she will consent or not. She protests and D is physically unable to penetrate her. |

* Provided D has taken more than merely preparatory steps towards the commission of the intended offence, it does not matter that he is reckless or negligent as to a circumstance (i.e.: lack of consent).

Thinking point 15.3

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| Is D guilty of an attempt in the following scenarios?  1. D rummages through V’s coat pocket hoping to steal something of value. The pocket is empty.  2. D buys what he believes to be cocaine from X. It is in fact baking powder.  3. D, aged 16, lives in London and believes he is fare-dodging by failing to pay for a bus ride. In fact, bus transport in London is free for children aged 16 and under.  4. D plunges a knife into his own pillow in his bed. D believes it to be his enemy V and intends to kill him. |

1. S1(2) CAA 1981 – physical impossibility. Guilty of attempted theft.
2. S1(2) CAA 1981 – physical impossibility. Guilty of attempted possession of Class A drugs under s5 Misuse of Drugs Act 1971.
3. S1(3) – D may believe he is committing a fraud offence but, due to a mistake of fact, no offence has actually been committed. The cases on attempting the impossible due to a mistake of fact mostly concern property or drug offences. Technically, he has committed an attempt under S1(3) CAA 1981. In reality, it is highly unlikely that a prosecution would occur. Distinguish this from the situation in which the contemplated crime does not exist under English jurisdiction. There would be no criminal liability for this at all.

4. Attempted murder under s1(3).

Thinking point 15.4

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| D1 agrees with D2 that D2 should steal V’s watch as he walks down the street but only if it is a Rolex watch. D2 is 9 years old.  Has D1 committed conspiracy to rob? |

* No, because although a conditional intent would suffice, D2 is below the age of criminal responsibility.
* s1(1) CLR 1977 requires an agreement between two or more people above that age.

Thinking point 15.5

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| On Monday, D1 and D2 agree to import amphetamines into the UK. D2 is an undercover police officer. On Friday, D1 withdraws from the agreement. In any case, he claims that his intention was not to import amphetamines but ephedrine (nose drops). D1 is charged with conspiracy to import amphetamines.  Has he committed conspiracy? |

* There needs to be a meeting of minds or agreement on a common purpose representing a course of conduct which will lead to a crime. Each conspirator needs to intend that the crime will be committed.
* D1 claims he did not intend to import the drug identified in the indictment. Therefore, he may not have the intention to commit the relevant crime. Anderson says that lack of intention to complete the crime is irrelevant provided there is intention to participate in it and he will be guilty. Yip Chiu-Cheung says that intention to commit the crime is essential.
* D1 may claim that he could not have conspired with D2 because D2 did not intend to commit the drugs. Yip Chiu-Cheung says that motive is irrelevant to intention and that D2 intended the crime.
* Therefore, both will have intended by the agreement to pursue a course of conduct leading to a crime, if there is sufficient evidence of agreement. Withdrawal makes no difference to liability.

Thinking point 15.6

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| Have D1 and D2 committed a statutory conspiracy?  1. They agree to rummage through V’s coat pocket hoping to steal something of value.  The pocket is empty.  2. They agree to buy what they believe to be cocaine from X. X secretly intends to supply baking powder.  3. Aged 16, they live in London and agree to fare-dodge by failing to pay for a bus ride. In fact, bus transport in London is free for children aged 16 and under.  4. They agree to kill V. V is already dead.  5. They agree to kill V in two weeks’ time. V dies the following day.  6. They agree to break into a house by unscrewing the window. The screwdriver breaks. |

1. Physical impossibility. Guilty.
2. Physical impossibility/mistake of fact. Guilty.
3. Legal impossibility. This is not a crime therefore no conspiracy.
4. Physically impossible. Guilty.
5. D is alive at the time of the agreement when the offence is concluded. No impossibility. Guilty.
6. Impossibility due to ineptitude. Guilty.

Thinking point 15.7

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| Two railway employees decide to make and sell their own sandwiches on a train and to keep the profits.  Have they committed conspiracy to defraud? |

They have dishonestly agreed to make a profit/gain at the expense of both their employer and the customers. Guilty.

Thinking point 15.8

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| Which ECHR rights could be violated by the offences of conspiracy to corrupt public morality or to outrage public decency? |

Articles 7 (certainty) and 10 (freedom of expression).