

**Para 14.89** In relation to [1982] QB 1053, CA, see the update to paras 10.74-10.78.

**Para 14.123-14.129** In *Johnston v R* [2016] NZSC 83, the New Zealand Supreme Court was concerned with the offence of attempt contrary to the New Zealand Crimes Act 1961, s 72, under which, inter alia, proof of an act or acts amounting to more than preparation to commit the full (ie substantive) offence which D is alleged to have attempted is required. The Court held that D's intent is relevant to this element. The Court stated that the correct position is that:

'Where there is clear intent to commit the full offence, the maker of the 'more than preparation' decision has available to him or her information about what the defendant's ultimate plan was, which enables him or her to assess more accurately whether the defendant's acts amount to an attempt to commit the planned offence. Without that information, the acts may be seen as equivocal, and the decision maker could not be confident that they amount to an attempt to commit a particular offence. This does not turn mere preparation into an attempt. Rather, it is recognising that where clear intent is shown, the decision-maker has a basis to determine whether the conduct is more than mere preparation.

Even in a case of clear intent, ... a merely preparatory act ... would not be an attempt. The clear evidence of intent would not change that. But an act that is done in the context of a known plan can be classified as preparation or proximate with greater certainty than when the plan is unknown (or is excluded from consideration).' (at [57] - [58]).

Noting that the Criminal Attempt Act 1981, s 1 uses different wording from the New Zealand Crimes Act 1961, s 72, the Court considered that the English decisions (such as *Geddes* [1996] Crim LR 894, CA, para 14.126 of the text, where the fact that D intended the full offence was not taken into consideration when determining whether his acts were more than merely preparatory to its commission) did not provide much assistance in the interpretation of s 72.

Despite the difference in wording, the offences under the Criminal Attempt Act 1981, s 1 and the New Zealand Crimes Act 1961, s 72 are essentially similar in definition. The decision in *Johnston v R* may therefore be regarded as persuasive authority that under the Criminal Attempt Act 1981, s 1 the decision-maker\* may take into account D's intention when considering whether his act or acts were more than merely preparatory to the commission of the substantive offence allegedly attempted.

(\* 'The decision-maker' in England and Wales would be the jury or magistrates' court.)