

## CRIMINAL LIABILITY OF IMPOSSIBLE ATTEMPTS: IMPOSSIBLE IS NOT NOTHING

### I. IMPOSSIBLE IS NOT NOTHING

1. The well-known slogan “*Impossible is Nothing*” inspires the strength of one’s conviction in the pursuit of sporting excellence.
2. However, when it comes to crime, impossible is not nothing and one may have a different type of conviction at the end of the day.
3. This is because one can be convicted of an offence when one attempts to commit an offence that could not possibly be completed in the circumstances.
4. Such attempts are called *impossible attempts*.
5. In *Han Fang Guan v Public Prosecutor [2020] SGCA 11*, the Court of Appeal set out a landmark two-stage framework which assesses whether an impossible attempt amounts to a criminal act.
6. The Court of Appeal also overturned Han’s conviction and death sentence on a capital charge of attempting to possess diamorphine for the purposes of trafficking.
7. According to the framework, one commits an offence if one had an intention to commit a crime and carried out acts to further that intention, even though the crime could not possibly be completed in the circumstances.

8. Thus, impossible is not nothing in unlawful endeavors.

### II. BACKGROUND

9. In *Han Fang Guan v Public Prosecutor [2020] SGCA 11*, the Court of Appeal acquitted Han of the capital drug charge because the Court of Appeal was persuaded that there was a reasonable doubt as to whether Han intended to possess diamorphine.
10. What happened was that Han contacted his drug supplier in Malaysia to order a selection of drugs (ketamine and methamphetamine).
11. Subsequently, a consignment of drugs was brought into Singapore through Woodlands Checkpoint by another person.
12. At Woodlands Checkpoint, this person was arrested and the consignment of drugs was intercepted by the Central Narcotics Bureau (“CNB”). The consignment of drugs comprised of seven bundles of drugs.
13. After the interception, the CNB conducted a sting operation that led to Han’s arrest.
14. During the sting operation, it was arranged for Han to meet a CNB operative to receive one bundle of drugs. This bundle was from the intercepted consignment.

15. The CNB arrested Han at the meeting location before Han received any drugs.
16. The bundle of drugs that Han was to receive during the sting operation was found to contain diamorphine.
17. As it turned out, the selection of drugs that Han ordered was not in the intercepted consignment.
18. On appeal, Han argued that he did not order diamorphine and that there was a possibility of a mix-up in the drug orders.
19. The Court of Appeal accepted that there was a reasonable doubt as to whether Han ordered diamorphine.
20. As such, the Court of Appeal acquitted Han of the charge of attempting to possess diamorphine for the purposes of trafficking.
21. The Court of Appeal held that it remained necessary to consider whether the charge should be amended to one that Han attempted to possess a different selection of drugs (which Han ordered) for the purposes of trafficking.
22. However, there was no possibility of Han completing the offence of possessing the selection of drugs which Han ordered given that there was no such selection of drugs in the intercepted consignment.
23. As such, it was necessary to consider the

circumstances under which criminal liability could attach to impossible attempts.

### III. THE FRAMEWORK FOR ASSESSING IMPOSSIBLE ATTEMPTS

24. After considering the Misuse of Drugs Act, the law in various jurisdictions and parties' submissions, the Court of Appeal set out a two-stage framework for dealing with cases involving impossible attempts.
25. At the first stage, the Court examines whether the accused person had a specific intention to commit a criminal act.
26. Here, the questions are:
  - a. What was the *act* that the accused person specifically *intended* to do?
  - b. Was the *intended act* criminal?
27. If the intended act was criminal, the inquiry proceeds to the second stage.
28. At the second stage, the Court examines whether there were sufficient acts committed by the accused person in furtherance of the specific intention to commit the criminal act found at the first stage.
29. Here, the inquiry is directed at whether there were sufficient acts to reasonably corroborate the presence of the specific intention found at the first stage and demonstrate substantial movement towards its fulfilment.

30. The accused person may only be convicted if the answer to this is yes.
31. Having set out the two-stage framework and acquitted Han of the capital charge, the Court of Appeal adjourned the matter pending submissions from the Prosecution on whether the charge against Han should be amended to one of attempting to possess the different selection of drugs (which Han ordered) for the purposes of trafficking.
32. If the Prosecution so contends, the Court of Appeal will hear Han on the proposed amended charge and his course of action.
- IV. OBSERVATIONS**
33. The Court of Appeal's decision is welcome as it addresses issues arising from difficult situations involving impossible attempts.
34. It resolves the inconsistencies and difficulties that arise from reliance on categories such as "physical impossibility" and "inept-offender impossibility" to distinguish between criminal and non-criminal attempts.
35. The framework assesses cases involving impossible attempts by focusing on the criminality of the *specific intended* act coupled with sufficient acts in furtherance of the *specific intention*.
36. The requirement that there are sufficient acts by the accused person to corroborate the existence of a guilty intention serves as an evidentiary threshold and as a safeguard that ensures that an accused person is not penalized solely for having a guilty intention.
37. Han was jointly defended by Favian Kang of Peter Low & Choo LLC and 2 other lawyers.

If you like information on this or other areas of law, please feel free to contact:



**Favian Kang**

*Director*

Tel: +65 6410 1017

Email: [faviankang@peterlowllc.com](mailto:faviankang@peterlowllc.com)