

Conspiracy

Law

General references

Stair Encyclopaedia, Vol 7, paragraphs 171-174; Gordon, *Criminal Law*, 3rd ed, Vol I, paragraphs 6-57 to 6-80.

Legal principles

1. "Conspiracy when regarded as a crime is the agreement of two or more persons to effect any criminal purpose whether as their ultimate aim or only as a means to it, and the crime is complete if there is such agreement even though nothing is done in pursuance of it. The crime consists of the agreement, though in most cases overt acts done in pursuance of the combination are available as proof of the fact that they have agreed" ([Sayers v HM Advocate 1981 SCCR 312](#), 316 per Lord Ross).

Conspiracy to break into a house is not a crime ([Cochrane v HM Advocate 2002 SLT 1424](#) at paragraph [15]).

2. Evidence of overt acts done can be used to prove an antecedent agreement, but in considering the case against each accused regard can be had only to the individual acts in which that accused is alleged to have been involved (*Sayers*).

3. It is necessary to define the scope of the conspiracy in relation to each alleged conspirator. Evidence may indicate that the various conspirators joined and left the conspiracy at different times (*Sayers*).

4. It is competent to frame the indictment so as to convict the accused, or at least two of them, both of conspiracy and of criminal acts proved to have been done in pursuance of that conspiracy (*Sayers*).

5. "[A]ll words uttered or documents issued by one conspirator in furtherance of the common design, and those which accompany acts of that description, and so form part of the *res gestae*, may be used against all the other prisoners, provided there be *prima facie* proof that they engaged in the plot" (Dickson, *Law of Evidence*, (1887), paragraph 363).

POSSIBLE FORM OF DIRECTION ON CONSPIRACY

Charge [x] is a charge of conspiracy.

It takes more than one person to form a conspiracy. The essence of conspiracy is the agreement of two or more people to commit a crime. That crime can be their ultimate aim, or simply the means to their ultimate aim. The crime of conspiracy consists in making the actual agreement. Matters must have got beyond the stage of merely discussing a suggestion. But if agreement is reached, the crime of conspiracy is complete, even if nothing more happens. People often act on an agreement, but if they do not, that does not mean that no conspiracy has been formed.

Where there are more than two conspirators, it is not necessary that all of them should have reached agreement at the same time, or at the same place. Some may be recruited and join at a later stage.

A word about the form of the charge. It is in two parts. The first part defines the conspiracy. That is covered in the opening paragraph, down to the words *"and in pursuance of said conspiracy did"*. The second part then goes on to specify certain things which, it is said, were done in pursuance of that conspiracy. These are the matters referred to in the sub-heads (a) to (x).

You will have to decide if the Crown has proved that there was a conspiracy among all of the accused, or between any two [or more] of them. That is something you may have to infer from what is proved to have been said and/or done, for conspiracy implies stealth and secrecy, and often there will be no eye-witness evidence about the agreement being reached.

It may be helpful to approach the evidence in stages.

- (1) Decide if what is set out in the sub-heads of the charge, and is said to have been done in pursuance of the conspiracy, has been proved.
- (2) Look at any general evidence about the actings of the accused, even if it is not directed specifically to any of these sub-heads.
- (3) Then decide if you can infer the existence of an agreement or conspiracy from all of the evidence.
- (4) If you are satisfied that there was a conspiracy, then look at the case against each accused separately and decide whether it has been proved that that

accused was involved in the conspiracy. If a particular accused was not involved in the actings in any one sub-head, ignore those in deciding whether or not that accused was involved in the conspiracy.

If you find the conspiracy proved, a particular type of criminal liability arises. Normally you are held criminally responsible for your own actions only, but if you are involved in a conspiracy, you are responsible not just for what you have done yourself, but also for what your fellow conspirators have done. So, you would convict each accused involved in the conspiracy of whatever has been proved to have happened in pursuance of the conspiracy.

If you find no conspiracy involving any of the accused proved, that is not necessarily an end of the case against them. Each accused could be found criminally liable for what he himself did. Some of the sub-heads in the second part of the indictment, if proved, constitute crimes. They are [specify]. You would have to consider, in relation to each accused, whether it has been proved that that accused committed any of these particular crimes. So, even if no conspiracy is proved, you could still find an accused guilty of the crime in a sub-head, if that accused committed it.

Let me summarise. If conspiracy is not proved, you could only convict a particular accused of those sub-heads which amount to crimes and of which that accused is guilty. If conspiracy is proved, you could convict an accused of all of the sub-heads which have been proved, as long as it has been proved that that accused was involved in the conspiracy.

An example or two may help.

[There may be other examples on the evidence and judges should adapt as required]

- Suppose you find it proved that an accused was involved in the conspiracy, and that all the sub-heads have been proved to have been carried out in furtherance of that conspiracy, your verdict in his case would be guilty as libelled.
- If you find it proved that an accused was involved in the conspiracy, but that not all of the sub-heads were carried out in pursuance of that conspiracy, you would find him guilty under deletion of those sub-heads.

If you find that the conspiracy has not been proved, but that an accused was guilty of some of the sub-heads which amount to crimes, you would simply find him guilty of those sub-heads.

- Lastly, if neither the conspiracy nor any of the sub-heads has been proved, then an acquittal would be the verdict in relation to each of the accused.

Summary

[Adapt as required]

For the Crown to prove this charge against a particular accused, you must be satisfied that:

- (1) there was an agreement to commit a crime;
- (2) that accused was, or became, party to that agreement; and
- (3) the actings specified in the sub-heads of the charge were carried out in pursuance of that agreement.