



By the end of this lesson you will be able to:

1. Identify the offence of 'driving without due care and attention' and 'without reasonable consideration' contrary to Section 3 Road Traffic Act 1988.
2. State the definition of the terms 'driving', 'mechanically propelled vehicle', 'road', and 'public place' in relation to the Road Traffic Act 1988.
3. Describe the terms 'without due care and attention', 'without reasonable consideration' including any defences.
4. Describe the offence of 'wanton and furious driving' contrary to Section 35 Offences Against the Person Act 1861.
5. Recognise the offence of 'Causing death by careless driving whilst under the influence of drink/drugs contrary to Section 3A Road Traffic Act 1988.

Driving without due care & attention or reasonable consideration

If a person **drives** a **mechanically propelled vehicle** on a **road** or other
public place

without **due care and attention** or without **reasonable consideration**

for other persons using the road or place

he is guilty of an offence

Section 3 Road Traffic Act 1988





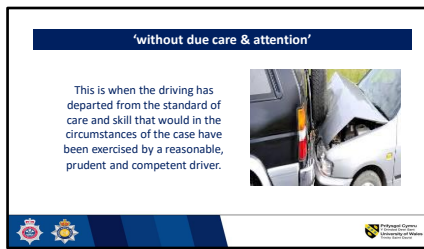
Definitions of the above terms are the same as identified in previous road traffic related sessions.

Drives – not defined under the RTA 1988 – generally accepted as ‘having control of the propulsion, steering and brakes’

Mechanically Propelled Vehicle – any vehicle that is propelled mechanically

Road – any highway or any other road to which the public has access and includes any bridges over which a road passes.

Public place – for the purposes of the Road Traffic Act 1988, the term ‘public place’ has been defined as ‘any place to which the public have open access is a public place, even if payment must be made to gain entry’



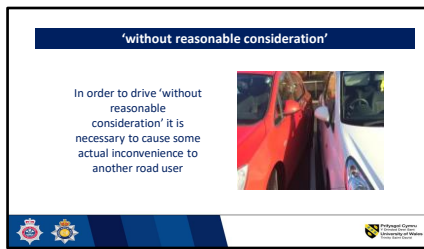
A person is regarded as driving without due care and attention if (and only if) the way he/she drives falls below what would be expected of a competent and careful driver.

The standard of care and attention is an objective one and in no way related to the degree of proficiency or experience attained by the individual driver.

The standard is the same in the case of a driver who is a learner holding a provisional licence as it is in the case of the holder of a full driving licence.

The application of this standard enables the offence to cover cases ranging from momentary lapses in concentration or minor errors of judgment to deliberately bad or dangerous driving which falls short of a Section 2 offence.

The element that distinguishes dangerous driving from careless driving is that the dangerous driver falls far below the required standard while the careless driver merely falls below the required standard.



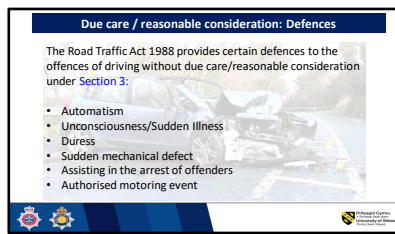
The full phrase referred to in this part of section 3 of the Road Traffic Act 1988 is 'without reasonable consideration for other persons using the road'.

It is a subjective test that has to be decided by the court on the evidence before it.

The other persons can include other drivers, passengers in the vehicle, or pedestrians and cyclists.

It can include leaving a turn indicator on too long to give a misleading signal, or a bus driver taking a corner too fast so that passengers are thrown out of their seats and injured.

On a procedural note it is good evidence to ask the driver if he knows what action the Highway Code recommends in the situation.



The Road Traffic Act 1988 provides certain defences to the offences of dangerous driving under Section 2.

The defences are:

1 Automatism – an involuntary action that affects an individuals driving **e.g. sneezing**

2 Unconsciousness / Sudden illness

For which the driver was in no way to blame; being rendered unconscious or otherwise prevented from controlling the vehicle. This could be due to a blow on the head from a stone which renders the driver unconscious, and could extend to a sudden epileptic fit or similar loss of consciousness

3. Duress – This defence can be simply stated as ‘do or else’ and can be split into two parts, **threats** (made towards the accused) and **circumstances** (dangers threatening the accused)

Duress by threats - For the defence to succeed the defendant must prove that the threats related to physical harm. The threat to property or animals would not be sufficient. The threat does not need to be aimed at just the defendant but could be towards the safety of another person whom he has responsibility, such as a spouse or child.

The threat must be of such gravity that a sober person of reasonable firmness, sharing the characteristics of the defendant, and placed in the same situation as the defendant, would have reacted in the same way and responded to the threats by committing a crime.

The threat must be operating at the time the crime is committed -

(i) A person must not voluntarily put himself in a position where he is likely to be subjected to such threats; and

(ii) if a person can avoid the effects of duress by escaping from the threats without damage to himself (or anyone, such as his family, for whom he has a responsibility), he must do so (R v Sharp (1987) 85 Cr.App.R. 207).

The above prevents those who voluntarily join criminal gangs or associate with other persons engaged in criminal activity from later attempting to raise duress as a defence.

Where threats made do not indicate immediate injury to the defendant or to someone he has responsibility for, this will not be fatal to his defence. However, It is less likely that the defendant will be able to convince a jury that he was not able to take evasive action by contacting the police or simply by not committing the crime.

A defendant may raise duress as a defence at his trial by introducing as evidence a **relevant** incident, even if it occurred after the original offence he committed, to show he was genuinely under duress. e.g. G (who N alleged had put him under duress when he committed a credit card fraud), stabbed N three months after the original

offence. The attack could be used as part of N's defence of duress where the defence of duress had never been mentioned at interview (R v Nethercott [2001] EWCA Crim. 2535).

'relevant'

means in these circumstances, any two facts so related to each other that according to the common course of events one either taken by itself or in connection with other facts proves or renders probable the past, present or future existence or non-existence, of the other.

'wanton and furious driving'

Whosoever having the charge of any carriage_or vehicle shall
by wanton or furious driving or racing
or other wilful misconduct or wilful neglect
do or cause any bodily harm to any person whatsoever
shall be guilty of an offence

Section 35 Offences Against the Person Act 1861



Indictment – Maximum 2 years imprisonment

Note that this offences uses the term 'vehicle'. This can be taken in its widest context and will include such things as cycles and horse drawn carriages.

In most instances normal assault or driving charges should be considered rather than this offence, however, it does have an advantage in that it can be committed anywhere by any vehicle or carriage.

This offence does not carry endorsement or disqualification, therefore it should normally only be used on occasions when it is not possible to prosecute for an offence under the road traffic legislation, for example:
incidents on private premises or incidents not on highways at all (such as dirt tracks or country trails).

'Vehicle' should be given its everyday ordinary meaning and includes motor vehicles.

'Bodily harm' in this section has its ordinary meaning and includes any hurt or injury calculated to interfere with the health or comfort of the victim.

'Wanton' may be described as:

"without any lawful motive and being thoughtless as to the possible consequences".

Causing death by careless driving whilst under the influence of
drink / drugs

If a person **causes the death** of another person by driving a
mechanically propelled vehicle on a **road** or other **public place**
 without **due care and attention** or without **reasonable consideration**
 for other persons using the road or place

AND




Indictment: maximum 14 years imprisonment and/or fine
 Obligatory disqualification
 Obligatory endorsement - licence endorsed three to eleven penalty points

The term 'causes the death' is the same as that specified in the Sec 1 offence of causing death by dangerous driving.

Notes

(i) It is **important** to make clear to officers that subsection 3A(3) above means that as 'mechanically propelled vehicle' and 'motor vehicle' have different meanings, the offences provided in subsections 3A(1)(b), (ba), (c) and (d) require that it must be proved that the vehicle involved was a motor vehicle not merely a mechanically propelled vehicle.

If, for example, a dumper truck (a mechanically propelled vehicle as opposed to a motor vehicle) is involved, you cannot require a specimen of breath, as it is not generally intended to be used on a road.

(ii) This offence has a number of different ingredients. A defendant must have 'driven' a mechanically propelled vehicle on a road or other public place. The defendant's driving must have been either 'without due care and attention' or 'without reasonable consideration for other persons using the road or place' or both.

(iii) The careless or inconsiderate driving must cause the death of another person. There must be a causation link between the two but there is nothing which requires the manner of the driving to be a substantial cause, or a major cause of the accident: *R v Hennigan* [1971] RTR 305 One effect of this is that two separate drivers can each be the cause of a victim's death.

Causing death by careless driving whilst under the influence of drink / drugs

He is, at the time when they are driving, unfit to drive through drink or drugs,
or

He has consumed so much alcohol that the proportion of it in their breath, blood
or urine exceeds the prescribed limit (MPV must be a Motor Vehicle)

or

He has in his body a specified controlled drug and the proportion of it in his
blood/urine exceeds the prescribed limit for that drug

or

He is, within 18 hours after that time, required to provide a specimen in pursuance
of S.7 of the this Act (RTA 1988), but without reasonable excuse fails to provide it

or



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(iv) There are a number of [defences](#) to this offence.

(v) "Another person" means any person other than the defendant. The words have been held to include a passenger in the defendant's vehicle and a foetus in utero at the time of the driving who is subsequently born alive but who dies of his or her injuries.

(vi) In addition to causing the death of another person by careless or inconsiderate driving, to be guilty of this offence the driver must have been under the influence of drink or drugs.

(vii) The words 'unfit to drive through drink or drugs' bear the same meaning as for offences under [section 4\(1\)](#). Similarly, the words 'consumed so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit' are of precisely the same effect as they are for the purposes of [section 5\(1\)\(a\)](#).

(viii) An alternative is failing to provide a specimen for analysis. It is noteworthy that the defendant must be required to provide a specimen in pursuance of section 7 (power to require specimens from driver) and the requirement must be made within 18 hours after the time he drove carelessly or inconsiderately. The defendant must fail to provide the specimen without reasonable excuse.

(ix) It is not necessary for the intoxication to be the direct cause of the careless/inconsiderate driving. A jury is allowed to look at the level of intoxication as a factor of the careless driving; R v Millington [1996] RTR 80. The court is entitled to consider evidence that a driver is adversely affected by drink or that the amount of drink taken was such as would adversely affect a driver; whether the particular driving in question was influenced by the excess of alcohol in the body, is a question of degree and of fact for the jury to decide.

(x) See also [use of specimens](#) for this offence and the [documentary evidence](#) required.

(xi) A person commits an offence if they fail to give permission for blood taken from them to be subjected to a laboratory test. Conviction of the offence under section 7A(6) can be an alternative verdict where a prosecution for the offence under section 3A has been unsuccessful.

Causing death by careless driving whilst under the influence of drink / drugs

He is, within 18 hours after that time, required to provide a specimen in pursuance of S.7 of the this Act (RTA 1988), but without reasonable excuse fails to provide it

or

He is required by a constable to give his permission for a laboratory test of a specimen of blood taken from him under Section 7A of this Act (RTA 1988), but without reasonable excuse fails to do so

He is guilty of an offence

Section 3A Road Traffic Act 1988



