



Prifysgol Cymru
Y Drindod Dewi Sant
University of Wales
Trinity Saint David

Disqualified Driving



By the end of the lesson learners will be able to:

1. **Identify** the offence of driving whilst disqualified including any possible defences.
2. **Describe** the routes by which a person can be disqualified from driving.
3. **Identify** the meaning of the terms 'obligatory disqualification' and 'discretionary disqualification'.
4. **Describe** how to establish whether a person has been disqualified from driving.
5. **Explain** police powers in relation to the offence of 'driving whilst disqualified'

Disqualified Driving

- A person is guilty of an offence if, while disqualified from holding or obtaining a licence, he -
- obtains a licence, or
- drives a motor vehicle on a road

Section 103 Road Traffic Act 1988





Section 103(1)(a)

SUMMARY:

A fine not exceeding level three on the [standard scale](#).

Section 103(1)(b)

SUMMARY:

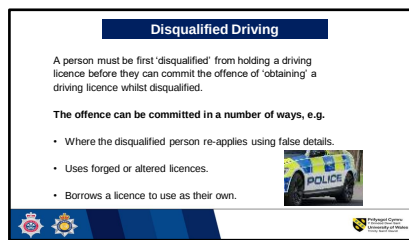
Imprisonment for a term not exceeding six months and / or a fine not exceeding level five on the standard scale.

Discretionary disqualification

Obligatory endorsement - licence endorsed six penalty points.

A licence obtained by a person who is disqualified is of no effect (or, where the disqualification relates only to vehicles of a particular class, is of no effect in relation to vehicles of that class).

The terms 'motor vehicle', 'drives' and 'road' are as defined in previous sessions



Defences

Unaware of disqualification

Driving under Duress

- R v Derwentside refers to the requirement that there must be proper evidence that a driver was disqualified – print PNLD doc C407

- R v Martin, 1988

Necessity Defense. This is a case about driving while disqualified, but is used to set out the general conditions for a defense of “necessity” to succeed.

The reference to this case in the law journals (which you are supposed to quote in court) is 88 Cr.App.R. 343, which you would read out as, “volume 88, Criminal Appeals Reports, page 343.”

Facts & background of case

Colin Martin was caught driving his son to work while disqualified from driving. He had wanted to argue a “necessity” defence at his trial, on the grounds that his wife was suicidal and was threatening to kill herself that morning unless he drove the son (who had overslept and was late for work). The judge at his trial had told him in advance that he could not use the necessity defense, therefore he pleaded guilty and was convicted. On appeal, the Court of Appeal ruled that the judge had got it wrong, and that Martin should have been able to present a necessity defense. Therefore the appeal was allowed the conviction quashed. This is the judgment of the Court of Appeal.

Summary of the judgment

The particular facts of this case are not really relevant. What matters is the conclusions of the judgment, which are given by Mr Justice Simon Brown in the following words:

The principles may be summarised thus. First, English law does, in extreme circumstances, recognize a defence of necessity. Most commonly this defence arises as duress, that is pressure upon the accused’s will from the wrongful threats or violence of another. Equally, however, it can arise from other objective dangers threatening the accused or others. Arising thus it is conveniently called “duress of circumstances.”

Secondly, the defence is available only if, from an objective standpoint, the accused can be said to be acting reasonably and proportionately in order to avoid a threat of death or serious injury.

Thirdly, assuming the defence to be open to the accused on his account of the facts, the issue should be left to the jury, who should be directed to determine these two questions: first, was the accused, or may he have been, impelled to act as he did

because as a result of what he reasonably believed to be the situation he had good cause to fear that otherwise death or serious physical injury would result? Second, if so, may a sober person of reasonable firmness, sharing the characteristics of the accused, have responded to that situation by acting as the accused acted? If the answer to both those questions was yes, then the jury would acquit: the defence of necessity would have been established. (Simon Brown J., at p.345–346)

Police Powers

A constable may arrest without warrant any person driving / having driven a motor vehicle on a road whom he/she has reasonable cause to suspect of being disqualified.

Section 24(2) Police and Criminal Evidence Act 1984



S24(2) PACE - if a constable has reasonable grounds for suspecting that an offence has been committed, he/she may arrest without warrant anyone whom he/she has reasonable grounds to suspect of being guilty of it.

REASON (A to F) – to allow the prompt and effective investigation of the offence or of the conduct of the person in question.

At one time an arrest could only be made at the time of the offence but with the new powers S24(2) PACE allows us now to arrest after the offence.

Power of entry – Sec 17(1) PACE identifies a power of entry for a constable to arrest a person for an offence under Sec 163 Road Traffic Act 1988 (Fail to stop when required to do so by a constable in uniform).

This power may be applicable to this offence depending on the circumstances.

For example, if a driver has failed to stop for an officer when required to do so, abandons the vehicle and enters a nearby house, the officer would have a power of entry as outlined above.

****Note that there is no power of entry to arrest for the offence of driving whilst disqualified as this is not an indictable offence (summary only)****

Routes to Disqualification

Penalty points

Obligatory

DTTP – Disqualified until test passed

Discretionary

Disqualified where driving is involved in serious crime



Obligatory – Obligatory disqualification is where a person is convicted of an offence for which the relevant legislation states that the court **MUST** disqualify the offender from driving for a specified period of time. Disqualification is obligatory for example in cases such as drink driving or causing death by dangerous driving. However in certain circumstances special reasons can still be argued to avoid disqualification. Special reasons are not defined by statute. Some arguments that have succeeded, for example in drink driving cases, driving in an emergency, shortness of distance driven. Very rare..

Examples of offences which carry an obligatory disqualification include those shown above

Discretionary – Discretionary disqualification is where the relevant legislation states that the convicting court **MAY** disqualify a person from driving if they consider the circumstances of the offence or the previous driving record of the offender makes disqualification appropriate

Examples of offences which may attract a discretionary disqualification, include those shown above

Where an offence requires an obligatory or discretionary disqualification (not because 12 points have been accumulated) no account is taken of any points on the licence. In other words, they remain valid even though the offender is disqualified. The slate is not wiped clean.

The length of time an endorsement on a licence remains valid varies according to the nature of the offence.

Routes to Disqualification



Penalty Points



If a person has **12** or more penalty points on their licence within a three year period, from the date of the first offence, then they are liable to disqualification under the 'totting up' procedure.



Penalty Points

Offence	Penalty Points
Speeding offences generally (if dealt with by fixed penalty)	3 – 6 (3)
Driving or attempting to drive while unfit through drink or drugs	3 - 11
Driving or attempting to drive with excess alcohol	3 - 11
Failing to provide a specimen for analysis	3 - 11
Failing to stop or report an accident	5 - 10
Contravention of pedestrian and school crossing provisions	3
Dangerous driving and causing death by dangerous or careless driving	3 - 11
Careless and inconsiderate driving	3 - 9
Carrying passenger on motor cycle contrary to Section 23 Road Traffic Act 1988	7



Where there is a range of points and the offence is dealt with by way of a fixed penalty notice the lowest number of points that are attributable apply.

Penalty Points

Disqualification under the 'totting up' procedure will wipe the licence clean.

All the penalty points will be removed from the licence.

However if the driver has been convicted of an offence carrying obligatory disqualification
e.g. drink driving then the points will remain
i.e. the slate is NOT wiped clean.



2 important dates to remember



Date of offence.....

For calculating the valid/current penalty points

AND

Date of conviction.....

For removal of all points after disqualification
under the totting up procedure.



Points are spent within 3 years. They can be removed from a licence after 4.



Obligatory Disqualification



There are offences which carry a minimum disqualification.

This type of disqualification means that any points prior to the disqualification will **remain on the licence.**



Obligatory Disqualification

Examples of offences which carry an **obligatory** disqualification include:

- M**anslaughter
- A**ggravated vehicle taking
- D**angerous driving
- C**ausing death by dangerous driving
- O**ver the limit of alcohol or refuse to provide a specimen for analysis
- W**hilst unfit through drink or drugs



The following offences are subject to **obligatory** disqualification:

- causing death by dangerous driving;
- dangerous driving;
- causing death by dangerous driving whilst under the influence of drink or drugs;
- causing death by careless or inconsiderate driving;
- causing death by driving whilst unlicensed, disqualified or uninsured;
- driving or attempting to drive whilst unfit;
- driving or attempting to drive with excess alcohol;
- failing to provide a specimen for analysis (driving or attempting to drive);
- racing or speeding trials;
- manslaughter;
- aggravated vehicle taking.

The court must disqualify unless it finds special reasons for not disqualifying.

Disqualification must be for a minimum of **12 months**, unless:

- the defendant is convicted of manslaughter, causing death by dangerous driving, or causing death whilst under the influence of drink or drugs in which case, for a minimum of **2 years**;
- the defendant has been twice disqualified for 56 days or more in the three years prior to the commission of the present offence - in which case for a minimum of **2 years**;
- the defendant has been convicted of an excess alcohol offence and has previously been convicted of an excess alcohol offence within the last 10 years - in which case for a minimum of **3 years**.

Disqualification until a driving test is passed can be imposed by a court for the following offences:

- Manslaughter by the driver of a motor vehicle
- Causing death by dangerous driving
- Dangerous driving,

Disqualification under the 'totting up' procedure, if found guilty of an offence for which, disqualification is obligatory.

Where disqualification is obligatory, or under the 'totting up' procedure, then an extended test is required. Otherwise a standard test is required.



If the defendant is convicted of dangerous driving or of manslaughter, causing death by dangerous driving, or causing death whilst under the influence of drink or drugs, in relation to an offence committed after 31 January 2002, the court must order the defendant to take an extended driving test. In any other case involving obligatory disqualification, the court may order the defendant to take a further driving test.

A person disqualified until a test is passed, must apply for a provisional licence and comply with the conditions attached (e.g. display 'L' plates, be supervised, etc.) until the appropriate test has been passed.

Discretionary Disqualification



For some offences the court has the power to order a '**discretionary**' disqualification.



This means that it is up to the court who receives a driving ban and also determines the length of the ban.



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If an offender is convicted of:

stealing or attempting to steal a vehicle;

taking a motor vehicle without consent, or being carried;

going equipped to steal a motor vehicle;

the court can order discretionary disqualification (but not endorsement) for such period as it thinks fit.

[Schedule 2 Road Traffic Offenders Act 1988](#)

Most offences subject to obligatory endorsement are also subject to discretionary disqualification for such period as the court thinks fit.

Disqualification For Any Offence

Certain courts with special permission from the Secretary of State may disqualify a person from driving for any offence e.g. anti social behaviour, kerb crawling.

It does not matter whether a motor vehicle was used or not in the commission of that offence.



Disqualification for any offence

Certain Courts (Crown, Magistrates, and Youth) have been given special permission (notification) from the Secretary of State and may disqualify a person from driving if convicted for any offence, irrespective of whether or not a motor vehicle was used in the commission of that offence.

The court may, instead of, or in addition to dealing with the offender in any other way, order them to be disqualified for such a period as it thinks fit from holding or obtaining a driving licence.

When an order for disqualification of any length is made under these provisions, the court will require the offender to produce his or her driving licence and return it to Driver Vehicle Licensing Authority (DVLA).

There will be no endorsement of the licence, but it will be marked with an offence code. At the end of the disqualification period the offender will need to apply to the DVLA for the return of his or her licence.

Rehabilitative courses

At court's discretion & gives drivers up to a quarter off their disqualification.

Forfeiture of vehicles

Drivers convicted of drink driving, driving whilst disqualified, dangerous driving etc. may have their vehicles forfeited.



Rehabilitative courses

Those drivers who attend a rehabilitative course will be eligible for a reduction of not more than a quarter of their disqualification period. These courses, when available, are at the court's discretion.

For example, Jane is convicted of drink-driving and is disqualified for 12 months. She attends a course and can then have her period of disqualification reduced to nine months. This applies only if disqualified for 12 months or more.

Establishing Disqualification

Admissions by the defendant.

Providing witnesses who were present at the time of the disqualification
e.g. Police/clerk of the court.



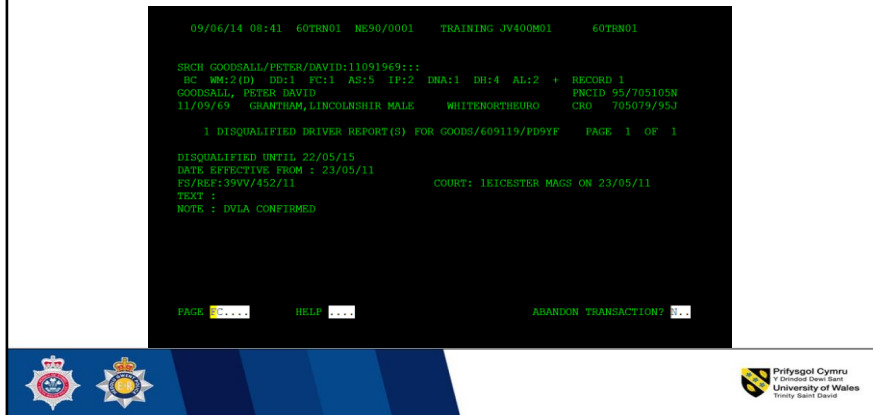
Documentary evidence, i.e. court records, DVLA records, fingerprint evidence taken at the time of the initial or previous disqualification showing date and offence.

PNC records showing date and court must be checked.



Note that it will be necessary to interview the driver to establish their knowledge of their disqualification.

Establishing Disqualification (PNC example)



For some offences the court has the power to order a 'Discretionary' disqualification.

This means that it is up to the court who receives a driving ban and also determines the length of the ban.

A person disqualified until a test is passed, must apply for a provisional licence and comply with the conditions attached (e.g. display 'L' plates, be supervised, etc.) until the appropriate test has been passed.

Since 1st July 1992 a driver can no longer be convicted of this offence simply because he is disqualified from driving by his age.

An "under-age" driver should be charged with and convicted of the offence of 'driving otherwise than in accordance with a licence' contrary to section 87(1) Road Traffic Act 1988.

Disqualification can then be imposed by the court.



The Sec 87(1) offence would also be applicable to persons driving with a notifiable medical condition of which the DVLA had not been made aware..

Disqualification

A person can be disqualified by:

age, or
a court.

Disqualification by age occurs when a person who is under the age limit for a particular class of vehicle, drives a motor vehicle of that class on a road.

Disqualification can be imposed by a court in respect of:
driving related offences occurs under Part II of the Road Traffic Act, 1988 or
any offence, instead of, or as well as, any other punishment (section 146 of the Powers of Criminal Court (Sentencing) Act 2000)

Disqualified Driving



Any Questions?

