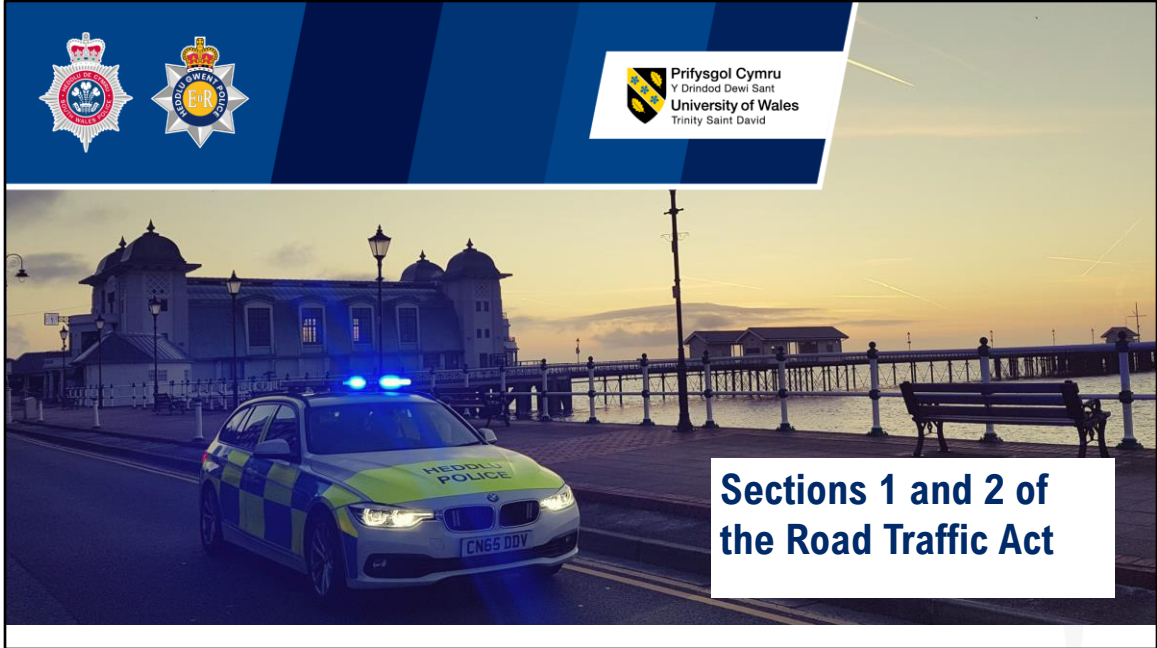
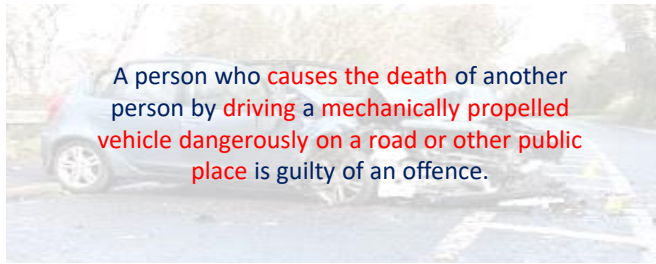




By the end of this lesson you will be able to:

1. Identify the offence of 'causing death by dangerous driving' contrary to Section 1 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. Identify what would constitute 'dangerous driving' under Section 2 Road Traffic Act 1988.
4. Identify the offences of 'causing serious injury by dangerous driving' (Sec 1A RTA 1988), 'dangerous driving' (Sec 2 RTA 1988), including any statutory defences, causing death by careless or inconsiderate driving (Sec 2B RTA 1988)

Death By Dangerous Driving



Section 1 Road Traffic Act 1988



Indictment: maximum 14 years imprisonment.

Obligatory disqualification

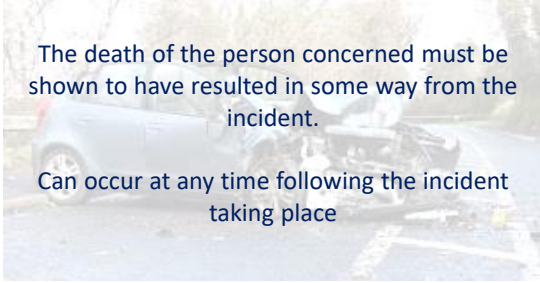
Obligatory endorsement - licence endorsed three to eleven penalty points.

Note: The vehicle may be forfeited.

'causes the death'

The death of the person concerned must be shown to have resulted in some way from the incident.

Can occur at any time following the incident taking place



The death of the person concerned must be shown to have resulted in some way from the incident to which the charge relates, however, does not have to be a major or substantial cause.

There is no longer a requirement that death must occur within a year and a day of the incident.

Video Clip detail summary:

- A recovery driver caught on camera checking his phone prior to a fatal crash has been jailed for five years.
- David Shields, 34, crashed into Yvonne Blackman's car in a line of traffic on the A75 in Dumfries last February.
- He had previously admitted a charge of causing the mother-of-four's death by dangerous driving.
- Footage captured Shields, of Drongan, East Ayrshire, focusing on his phone for a full 18 seconds in the lead-up to the fatal crash.

- Mrs Blackman, 66, of Lockerbie, never recovered and died weeks later in hospital.
- She was on her way to meet friends when the crash occurred.
- Her husband said he hoped the sentence given to Shields would deter other drivers from similar behaviour.

<https://www.bbc.co.uk/news/uk-scotland-south-scotland-45665100> (1 minute)



Driving – not defined under RTA 1988 – generally accepted as being in control of the steering, propulsion and brakes of the vehicle

Mechanically Propelled Vehicle - Motor Vehicle: M.P.V. constructed or adapted for use on a road

M.P.V.– wider in scope than motor vehicle and includes scrambler bikes whether or not intended for use on a road.

S: steam

E: Electric

P: Petrol

D: Diesel

O: Oil

G: Gas

Road - Road means any length of highway and any other place to which the public has access, and includes bridges over which a road passes

It always includes obvious public highways, footpaths and bridleways maintained by Government agencies or local authorities

Public Place - Any place to which the public have open access is a public place even, (in certain circumstances), if payment must be made to gain entry

‘dangerously’

For the purposes of Section 1: a person is to be regarded as driving dangerously if **and only if**:

1. the way s/he drives falls far below what would be expected of a competent and careful driver, **and**
2. it would be obvious to a competent and careful driver that driving in that way would be dangerous.

A person is also to be regarded as driving dangerously for the purposes of Section 1, if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous .




Examples of dangerous driving contrary to (1) -

1. Attorney General's Reference (4 of 2000)

The Court of Appeal gave judgement on the case of a bus driver who pressed the accelerator in mistake for the brake (killing two people). He had been charged with causing death by dangerous driving (but the original trial judge had ruled there was no case to answer). The Court made the following points

The essential 'limbs' of the offence did not require specific intent by the driver, they are an objective test of competency and carefulness;

This was not an unconscious act by the driver (e.g. he had not gone into a fit), he was aware that he was pressing a pedal;

Nor was it an involuntary act, he was exercising his free will when he pressed the pedal;

It was not a case where a latent defect had suddenly caused a problem.

The court concluded that pressing the wrong pedal was no defence to dangerous driving and that the matter should have been left to the jury to decide.

2. R v Brooks 2001

Two vehicles were driving behind one another along a village road towards the centre of the village (the road was a single carriageway, minor 'A road' subject to a 30 mile per hour limit). The rear vehicle overtook at such a speed that the driver in the front vehicle said in evidence that he felt he was standing still. A vehicle pulled out of a street in front of them (on the nearside) and a collision occurred with the overtaking vehicle. The driver of the emerging vehicle stated that he had time to pull out in front of the slower moving vehicle and hadn't seen the overtaking vehicle pull out from behind it until it was too late. The skid marks showed the overtaking vehicle to have been doing not less than 45 m.p.h. The driver of the overtaking vehicle was convicted of dangerous driving and his appeal was dismissed.

'dangerously'

'dangerously' refers to the danger of either injury to any person or serious damage to property

'dangerous' can also relate to the state of the vehicle, or of anything attached to or carried by it



The danger must relate to either injury to any person OR serious damage to property

Standard of Driving

The standard of driving required (competent and careful driver) applies to all drivers irrespective of their experience

Courts will decide each case on its merits

Instances of poor driving which may support a prosecution for dangerous driving would include:-



Competent and careful driver - in deciding what would be expected of, or obvious to, a competent and careful driver in a particular case, account shall be taken not only of the circumstances of which he could be expected to be aware, but also to any circumstances shown to have actually been within the knowledge of the accused.

Standard of driving - the standard of driving required (i.e. a competent and careful driver) applies to all drivers irrespective of their experience. It is perfectly possible for driving to be held to be competent and careful in one situation when the same actions fall below that standard in another. The weather, visibility and traffic conditions are examples of factors which will affect the degree of care required and for this reason Courts decide each case on its own merits.

Standard of Driving

Racing or competitive sport



Competent and careful driver - in deciding what would be expected of, or obvious to, a competent and careful driver in a particular case, account shall be taken not only of the circumstances of which he could be expected to be aware, but also to any circumstances shown to have actually been within the knowledge of the accused.

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Standard of Driving

Disregard of traffic lights/other road signs
which appears to be deliberate



Information: Characteristics

Vehicle: [redacted]

Registration: [redacted]

Make: [redacted]

Model: [redacted]

Year: [redacted]

Colour: [redacted]

Engine: [redacted]

Transmission: [redacted]

Drive: [redacted]

Weight: [redacted]

Power: [redacted]

Speed: [redacted]

Other: [redacted]





Competent and careful driver - in deciding what would be expected of, or obvious to, a competent and careful driver in a particular case, account shall be taken not only of the circumstances of which he could be expected to be aware, but also to any circumstances shown to have actually been within the knowledge of the accused.

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Standard of Driving

Speed which is highly inappropriate for the prevailing weather/traffic conditions



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Standard of driving - the standard of driving required (i.e. a competent and careful driver) applies to all drivers irrespective of their experience. It is perfectly possible for driving to be held to be competent and careful in one situation when the same actions fall below that standard in another. The weather, visibility and traffic conditions are examples of factors which will affect the degree of care required and for this reason Courts decide each case on its own merits.

Standard of Driving

Prolonged, persistent or deliberate bad driving



Competent and careful driver - in deciding what would be expected of, or obvious to, a competent and careful driver in a particular case, account shall be taken not only of the circumstances of which he could be expected to be aware, but also to any circumstances shown to have actually been within the knowledge of the accused.

Standard of driving - the standard of driving required (i.e. a competent and careful driver) applies to all drivers irrespective of their experience. It is perfectly possible for driving to be held to be competent and careful in one situation when the same actions fall below that standard in another. The weather, visibility and traffic conditions are examples of factors which will affect the degree of care required and for this reason Courts decide each case on its own merits.

Standard of Driving

Aggressive or intimidatory driving



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Competent and careful driver - in deciding what would be expected of, or obvious to, a competent and careful driver in a particular case, account shall be taken not only of the circumstances of which he could be expected to be aware, but also to any circumstances shown to have actually been within the knowledge of the accused.

Standard of driving - the standard of driving required (i.e. a competent and careful driver) applies to all drivers irrespective of their experience. It is perfectly possible for driving to be held to be competent and careful in one situation when the same actions fall below that standard in another. The weather, visibility and traffic conditions are examples of factors which will affect the degree of care required and for this reason Courts decide each case on its own merits.

Standard of Driving

Unsafe overtaking



Standard of Driving

Driving a vehicle with a load which presents a danger to other road users



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Tŷni, Gwent

Standard of Driving

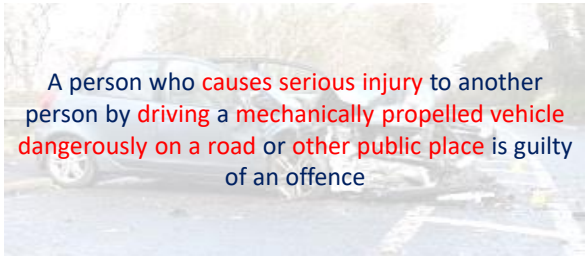
Failing to pay proper attention, amounting to something more than a momentary lapse



Competent and careful driver - in deciding what would be expected of, or obvious to, a competent and careful driver in a particular case, account shall be taken not only of the circumstances of which he could be expected to be aware, but also to any circumstances shown to have actually been within the knowledge of the accused.

Standard of driving - the standard of driving required (i.e. a competent and careful driver) applies to all drivers irrespective of their experience. It is perfectly possible for driving to be held to be competent and careful in one situation when the same actions fall below that standard in another. The weather, visibility and traffic conditions are examples of factors which will affect the degree of care required and for this reason Courts decide each case on its own merits.

Causing Serious Injury by Dangerous Driving



A person who causes serious injury to another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence

Section 1A Road Traffic Act 1988



Either Way

Summary – 12 months imprisonment and/or fine

Indictment: 5 years imprisonment and/or fine

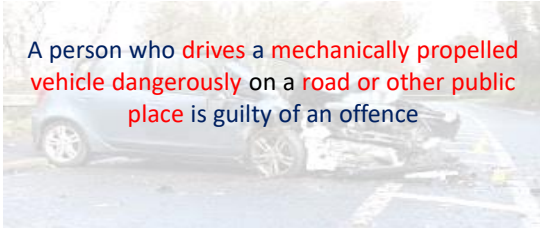
Serious injury – in this section the term ‘serious injury’ means physical harm which amounts to grievous bodily harm for the purposes of the Offences Against the Person Act 1861.

Notes

This offence was created by section 143 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and came in force on 3 December 2012. This section only has effect only in relation to driving occurring after that date.

A person found not guilty of this offence may in the alternative be convicted of dangerous driving (contrary to [section 2](#) of this Act) or careless, or inconsiderate, driving (contrary to [section 3](#) of this Act).

Dangerous Driving



A person who drives a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence

Section 2 Road Traffic Act 1988




Either Way

Summary – 6 months imprisonment and/or fine

Indictment: 2 years imprisonment and/or fine

Obligatory Disqualification

Obligatory Endorsement with 3 – 11 penalty points

Serious injury – in this section the term ‘serious injury’ means physical harm which amounts to grievous bodily harm for the purposes of the Offences Against the Person Act 1861.

Notes

The offence has two distinct parts and two separate questions for the jury or magistrates to answer.

First, there is the actus reus (guilty act) of the offence. They must consider whether a defendant's driving fell far below the fixed and objective standard of a competent and careful driver, irrespective of their experience. The standard expected is the same for a learner driver holding a provisional licence as it is for a driver who has passed his driving test or even an experienced professional driver. Although the standard of driving required is fixed and objective in the sense that it must always be that of the competent and careful driver, it may vary according to road and driving conditions. It is perfectly possible for driving to be held to be competent and careful in one situation and to have fallen below that standard in another. The weather, visibility and traffic conditions are examples of factors which affect the degree of care required. For this reason, juries and magistrates decide each case on its own facts. The standard of driving required, and failure to reach it is easier to recognise in practice, than to define generally. Any aspect of a defendant's driving (control of the vehicle) may fall far below the standard expected, whether it be by excessive speed, failure to comply with a road sign, etc.

The second question for the jury or magistrates is whether it would be obvious to a competent and careful driver that driving in the way the defendant drove would be dangerous

Death by Careless or Inconsiderate Driving

A person who 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, is guilty of an offence

Section 2B Road Traffic Act 1988



Either way

Summary: maximum 12 months imprisonment and/or fine. Obligatory disqualification and obligatory endorsement with 3-11 penalty points

Indictment: maximum 5 years imprisonment and/or a fine. Obligatory disqualification and obligatory endorsement with 3-11 penalty points

This offence may be an alternative verdict to an offence under Sec 1 (Death by dangerous driving)



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.

