



Offences against property

Criminal
Damage



Criminal Damage

- ▶ The basic offence is defined in s1(1) Criminal Damage Act 1971:
 - ▶ *A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence*
- ▶ The elements of the offence are:
 - ▶ There is property
 - ▶ That belongs to another
 - ▶ D's conduct
 - ▶ Destroys or damages the property
 - ▶ D does not have a lawful excuse
 - ▶ D intends or is reckless to destroying or damaging property





Criminal Damage - Actus reus

ACTUS REUS: D without lawful excuse, destroys or damages property belonging to another

- ▶ Property
- ▶ **S10(1) CDA 1971**- defines property. Includes:
 - ▶ Tangible items, real or personal
 - ▶ Land
 - ▶ Wild creatures that have been tamed
 - ▶ Creatures reduced to possession (**Cresswell v DPP; Currie v DPP [2006]**)
- ▶ It does not include:
 - ▶ Mushrooms and fungi growing wild
 - ▶ Flowers, fruit, foliage, shrubs or trees growing wild on any land
 - ▶ Intangible property such a copyrights and patents



Criminal Damage

Belonging to another

- ▶ **S10(2)** provides that property belongs to another if that person:

- ▶ Has custody or control of it
- ▶ Has in it any proprietary right or interest
- ▶ Has a charge on it

- ▶ D does not commit a s1 offence where he destroys or damages his own property unless it is jointly owned.

▶ **Conduct**

- ▶ Conduct causing damage does not need to be a positive act (**Miller [1983]**)



Criminal Damage

Destroy - nothing short of complete destruction suffices. Anything less is likely to be damage.

Damage - can be physical, may render property unfit for its purpose or reduce its value

- Physical damage:
 - May depend on the nature of the property (**Morphitis v Salmon [1990]**)
 - Need only be slight (**Gayford v Chouler [1898]**)
 - Can be permanent or temporary (**Roe v Kingerlee [1986]**)
 - **Hardman and Another v Chief Constable of Avon and Somerset Constabulary [1986]**
 - **A (a juvenile) [1978]**
 - **Samuels v Stubbs [1972]**
 - **Fiak [2005]**
- Rendered unfit for purpose:
 - Must be interference with the property
 - **Lloyd v DPP [1992]**
 - **Whitely [1991]**
- Value impaired:
 - Property need not be rendered useless and may still be fit for its purpose (**Roper v Knott [1898]**)



Activity

Explain whether there is 'damage' within the meaning of the Criminal Damage Act 1971 in each of the following situations.

- ▶ Aisha throws a bucket of clean water over Bess. The water thoroughly wets Bess's jacket and skirt. Would it make any difference to your answer if the water was muddy?
- ▶ Conrad writes on the brick wall of the local town hall with white chalk.
- ▶ Dan is working on a construction site. He throws a spanner down. It hits a wall which is being constructed and causes a small piece of brick to chip off. The spanner also hits a scaffolding post and causes a small dent in it.

Criminal Damage

▶ Without lawful excuse

- ▶ Two specific defences contained in **s5(2)(a) and s5(2)(b) CDA 1971**
- ▶ **s5(2)(a) - D believed that the person entitled to consent to the damage or destruction either had consented or would have consented:**
 - ▶ D must have **honestly** believed a certain person could and would have consented
 - ▶ D may have an honest but unreasonable belief eg. makes an unreasonable mistake
 - ▶ D will act lawfully where:
 - ▶ (A) mistakenly but honestly believes X was the person who could give consent to damage/destruction of the property
 - ▶ (B) mistakenly but honestly believed that the person who could consent had told him to destroy/damage the property. **Denton [1982]**
 - ▶ (C) mistakenly but honestly believed that the person who could consent would have agreed to the destruction/damage of the property **Jaggard v Dickinson [1980]**



Criminal Damage

Without lawful excuse

S5(2)(b) - D believed that property belonging to himself or another was in immediate need of protection so damaged/destroyed (other) property in order to protect it, where D believed that the means of protection used were reasonable

(a) D believed that property was in need of protection: **Chamberlain v Lindon [1998]**

- ▶ D must have an honest belief that some property is in immediate need of protection **Hill; Hall [1989], Kelleher [2003]**

(b) D damaged/destroyed (other) property in order to protect property

- ▶ The jury will consider whether a reasonable person would have thought that D acted in order to protect property **Hunt [1977], Hill; Hall [1989]**

(c) D believed that the means used were reasonable

- ▶ Suffices that D honestly believed that the means of protection adopted were reasonable: **Cresswell v DPP; Currie v DPP [2006]**



Criminal Damage



Ricky was sitting having a cup of tea when he noticed his neighbour's 15-year-old car rolling backwards out of the drive. The car was travelling towards two cars parked on the opposite side of the road. Ricky rushed out of his house, caught up with the car, smashed the window and pulled up the handbrake.

Discuss whether Ricky had a lawful excuse when he smashed the window.



Criminal Damage: Mens Rea

D must:

- ▶ Intend to destroy or damage property, or be reckless to this;
- ▶ Know or be reckless to the fact that the damage or destruction is to property belonging to another

Intention

- ▶ Can be direct or oblique. D's good motive is irrelevant

Recklessness

- ▶ Subjective – **G and Another [2003] overruled Caldwell [1982]** - now only **SUBJECTIVE** recklessness

Know or be reckless to the fact that the damage or destruction is to property belonging to another

- ▶ Destruction/damage under a mistaken belief is insufficient **Smith [1974]**



Criminal Damage



In order to show off to his older friends, Freddie, aged 11, used a can of spray paint to write the name of Swansea FC onto a bridge over a railway track. Freddie told the Police that he honestly thought that when his friends had gone he would be able to remove the paint with water from his drink bottle. He said that he has seen his dad remove paint from the wall at their house with water. Freddie did not understand that on that occasion the paint had been water-based and not oil-based, as was the case with the spray paint. The paint on the bridge had to be removed by the rail authorities with a special solvent.

Discuss whether Freddie committed criminal damage to s1 CDA 1971



The aggravated offence: s1(2) CDA 1971

► Elements of the offence:

Without lawful excuse; D destroys or damages; property; belong to themselves or another; where D intends or is reckless to destroying or damaging the property; and where D intends by the destruction or damage to endanger the life of another or is reckless to this.

Differences between basic and aggravated offences:

- defences under s.5 only apply to the basic offence
- D can be guilty of damage or destruction to their own property
- D must intend the damage they cause to endanger the life of another

Aggravated criminal damage

- ▶ **Intention or recklessness to endangering life –**

D must intend or foresee a risk that life will be endangered by the destruction or damage and not by the act that causes the destruction or damage (Steer, 1988).

- ▶ **Life need not actually be endangered.**

Parker [1993]

- ▶ **Own property**

Section 1(2) applies even where a defendant damages their own property. This can be justified in most situations, as a person cannot be allowed to damage their own property in a manner that creates a risk to life.

Maitland-Thomas [2013]

Merrick [1996]

Aggravated criminal damage

Mens rea

There are two points which the prosecution must prove. These are:

- ▶ intention or recklessness as to destroying or damaging any property;
 - ▶ intention or recklessness as to whether life is endangered by the destruction or damage.
-
- ▶ The prosecution must prove that the defendant either intended or was aware of a risk both that the property would be destroyed or damaged and that life would be endangered
 - ▶ Cooper [2004]



Criminal Damage

- ▶ Kerry hated Rachel and decided to endanger her life by putting a harmful chemical in her glass of wine. Kerry was aware that the chemical might break the glass and endanger Rachel's life but believed that this would take at least half an hour to happen. The chemical reacted to the alcohol immediately and just as Rachel was about to take a sip the glass exploded. Shards of glass hit Rachel in the face and she had to be rushed to hospital in order to stop the profuse bleeding.
- ▶ Discuss whether Kerry committed any offences under CDA 1971. Do not discuss any other offences.



Criminal Damage

Arson s1(3)

- ▶ An offence committed under this section by destroying or damaging property by fire shall be charged as arson
- ▶ **NB Arson is not a separate offence but refers to where D commits an offence under s1(1) or s1(2) by means of fire**

ACTUS REUS

- ▶ Depends whether D charged with basic or aggravated offence. Additional requirement of damage/destroy by fire

MENS REA

- ▶ Must be shown that D intended to, or was reckless as to damage/destroy by fire (simple offence)
- ▶ Must be shown D intended to, or was reckless as to endangering life by fire

Woman set fire to door of neighbour's flat while she was still inside

It was only the swift response of firefighters which saved the occupant's life

NEWS By **Jason Evans** Court and crime reporter

18:01, 14 FEB 2023

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TASK

Is making threats to destroy or damage property an offence?

What evidence can you find to support your answer?

Threats to destroy or damage property: s.2 CDA (1971)

2. A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out –

- ▶ (a) to destroy or damage any property belonging to that other or a third person; or
- ▶ (b) to destroy or damage his own property in a way which he knows is likely to endanger the life of that other or a third person; shall be guilty of an offence.'

Cakman and others [2002]

Ankerson [2015]

Using the following structure, please answer the problem question



1. Introduce the question and how you are going to answer it (V by V, D by D, chronologically).
2. Identify the potential criminal offence in the facts
3. Apply the law:
Actus reus: What is it? Did the D do it?
Mens Rea: What is it? Did the D do it?
4. Are there any defences available?
5. Conclude liability
6. Consider any other offences

Errol is a demolition worker for the local council. He is given instructions to knock down council houses in Green Street. He is told to demolish numbers 1, 3, 5, 7, 9 and 11. When he arrives at Green Street he sees that the houses are semi-detached and in pairs: 1 and 3, 5 and 7, 9 and 11. Assuming the houses are all unoccupied, he demolishes numbers 1 and 3. He then uses heavy machinery to knock down the side wall of number 5. At this point Hannah, who owns number 7, comes out and tells Errol to stop. Hannah says that if he continues to demolish number 5 it will damage her house as well, as the houses share an internal wall. Errol continues knocking down number 5 while Hannah goes back into number 7 to telephone the council. While she is inside, number 5 falls down and causes part of the internal wall with number 7 to collapse. Fortunately, Hannah is unharmed.