



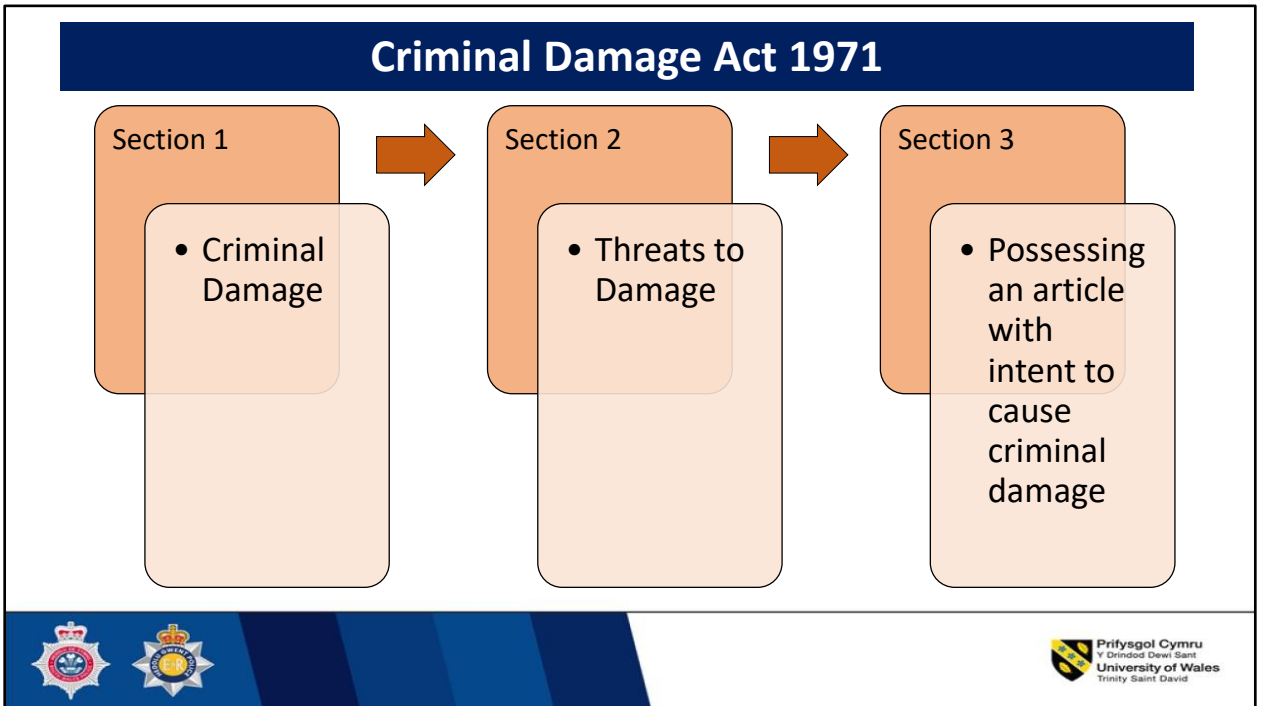
Prifysgol Cymru
Y Drindod Dewi Sant
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Criminal Damage



By the end of this session students will:

1. **Identify** the legislation in relation to criminal damage. Differentiate between the different offences under the legislation.
2. **Explain** the legislation for Arson including defences.
3. **Explain** the legislation for threats to cause damage including any defences.
4. **Explain** the legislation for possession of an Article to cause criminal damage including the defences.
5. **Apply** the relevant legislation to the varying offences discussed during the lesson.



We are going to look at three basic offences contained within Criminal Damage Act 1971:

[Criminal Damage](#) - Section 1

[Threats to damage](#)- Section 2

[Possessing an article with intent to cause criminal damage](#)- Section 3

What is Criminal Damage?

“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”

Section 1(1) Criminal Damage Act 1971



Lawful Excuse



Consent



Protection



QTS – in what circumstances would consent be a defence to criminal damage?

There are Statutory Lawful Excuses of **Consent** and **Protection**

A person charged with an offence to which this section applies will have a lawful excuse when they believe that:

- (a) the person whom they believed to be entitled to consent to the damage or destruction to the property in question had so consented, or would have so consented to it if they had known of the damage or destruction and its circumstances, or
- (b) the property, including property (and land, however obtained) over which the person has a right or privilege, was in immediate need of **protection** and that the acts adopted or proposed were reasonable in all the circumstances.

CONSENT

It is a defence if AT THE TIME of the act – the person causing the damage or destruction honestly believed (subjective test) that either:

A person entitled to give consent had done so

Or

The person who could have consented to the damage taking place would have consented if they knew of the circumstances

N.B - It does not matter if the belief is mistaken provided it is honestly held (subjective) (Jaggard v Dickinson 1981)

An example of (a) would be if an officer was asked by a motorist to help them get into their partner's car after locking the keys inside. If during the attempt the rubber window surround was damaged, the officer would have a statutory defence to any later charge of criminal damage by the owner.

The key elements here would be:

The consent of someone whom it was believed to be entitled to consent to that damage, and

The circumstances under which it was caused.

If the driver was not available and the reason for opening the door was to get a better look at some documents for intelligence purposes, it is unlikely that the driver or the owner would have consented, either to the damage or to the circumstances in which it was caused. Therefore you could not use this particular defence.

QTS – in what circumstances would protection be a defence of criminal damage?

PROTECTION

It is a defence to either:

Destroy or damage property provided that at the time of the act they believe that both:

The property was in IMMEDIATE need of protection...

AND

... and the means used were reasonable in the circumstances

Example – You live in a block of flats. Water comes rushing down your walls from your neighbour's flat upstairs. You realise that the neighbour has left a tap running in their flats. You know that your neighbour is away on holiday for the next 2 weeks and have not left a spare key with anyone.

You would be covered by the **protection** defence if you ran upstairs and broke the door in order to gain entry to turn the tap off as you will have:

- **Damaged** the front – property
- in order to **protect property** belonging to both :

Themselves - water damage to your own flat or

Another – water damage to your neighbour's flat and:

- Both your property and your neighbours property were **in immediate need of protection** and

- the **means were reasonable in the circumstances**, as there was no spare key available to gain access without breaking the door

Notes

- These additional statutory excuses **DO NOT** apply to the aggravated offence or

the racially or religiously aggravated offences.

- The belief does not need to be justifiable provided it is honestly held.
- A right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

These 2 defences are in addition to the General defences available to most offences (self defence, duress etc)

These 2 additional specific defences are only available to offences of:

Basic Criminal Damage (simple damage)

Threats to destroy or damage property - **except where the intention is to endanger life**

Having articles with intent to destroy or damage property - **except where the intention is to endanger life**

Criminal Damage



Destroy



Damage



No specific definition of either term

If property has been destroyed or damaged will be a question of fact for each Court to decide on the evidence before it

Destroyed

Property which has been destroyed will usually be rendered unusable or be **incapable of being repaired** and must be replaced.

To '**destroy**' includes **breaking up** a machine, **burning** down a building or **tearing** up a document

Damage

Damage has a much wider meaning. It can mean that the property has been **harm**ed, made **less useful**, made **less valuable**, made **unworkable**, or just **defaced** such as by graffiti.

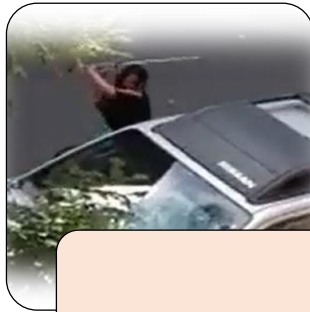
The damage caused does **NOT** have to be permanent & can include graffiti.

Hardman v CC Avon & Somerset 1986 – a street artist using **water soluble paints** to paint on a pavement was held to be criminal damage

Roe v Kingerlee 1986 - **smearing graffiti with mud** was held to be criminal damage

R v Fiak 2005 - **flooding a cell by stuffing a blanket into a toilet and repeatedly flushing** was held to be criminal damage even though the towel and cell could be dried out and reused

Criminal Damage



Property

Belonging to another



QTS – what do you think are examples of property?

Property Defined under s.10 Criminal Damage Act 1971

Property which has been damaged is that which has suffered some physical harm, impairment or deterioration.

Similar to property under the Theft Act 1968 and includes:

Property means any property of a tangible nature, whether real or personal property, 'real' means real estate, i.e. land and things forming part of that land

Including

- Money
- Wild creatures which have been tamed or are ordinarily kept in captivity; and
- Any other wild creatures or their carcasses if, but only if, they have been **reduced into possession** which has not been lost or abandoned or are in the course of being reduced into possession,

but does not include:

- mushrooms/fungus growing wild on any land: or
- flowers, fruit or foliage of a plant/shrub/tree growing wild on any land.

Compare this definition of property with that in relation to theft. It includes land but doesn't include intangibles or things in action. Therefore land could be damaged, for example, by dumping toxic waste on it.

Differences –

Real property (land & things attached to it) **CAN be damaged** even though it **cannot be stolen**

Whereas **intangible property** (such as copyright) **can be stolen** but **CANNOT be damaged**

Trampling flower beds, digging up cricket pitches, chopping down trees in a private garden and pulling up genetically modified crops could all potentially amount to criminal damage

Pets or farm animals are property for the purposes of the Act. Cases of horses being mutilated would, in addition to the offence of 'cruelty' itself, amount to criminal damage

Belonging to another

Property belongs to the person who has:

- a. the custody or control of it
- b. in it any proprietary right or interest, or
- c. a charge on it

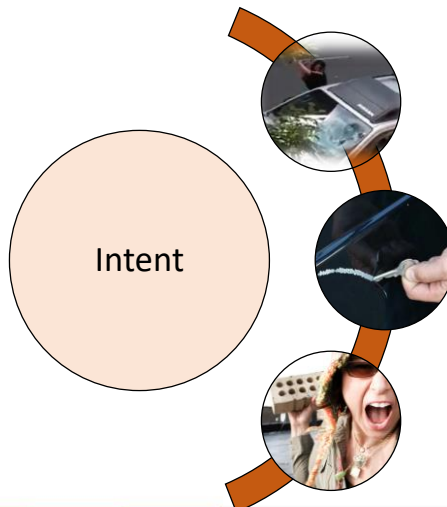
The terms 'proprietary right or interest' and 'legal charge' may extend ownership of the property to include others who may have a legal interest in or a responsibility for that property.

It is possible to damage your own property if at the same time it belongs to someone else within the above meaning e.g. a person sets fire to his own house which is subject to a mortgage, can still be charged with the offence as the mortgagor will have a proprietary right or interest in the property.

Other defences

Damage caused to protect life, prevent injury or stop unlawful imprisonment of a person is also a valid defence.

Criminal Damage



Intent - is a word that is usually used in relation to having a purpose when following a course of action.

In criminal law 'intent' is often an element of the offence. It is known in law as 'mens rea', which is Latin for '**guilty mind**'. Intention is not defined but has to be proved. An offence of criminal damage can be proved by showing that the offender intended to cause the damage. As intent is an internal emotion it would have to be ascertained if this was the case on interview from admissions, or inferences from the circumstances of the offence.

An offence of basic intent – which can be drawn from the evidence in absence of any admission

The Mens Rea for an offence can be transferred from an original intended victim to another person who inadvertently suffers harm as a result of the action.

- Example - a person throws a stone intending to damage the property of A, but misses and damages the property of B. This is still intentional damage, as they intended to damage the property of another, although it is not the person against whom the damage was originally intended

However – the intent can only be transferred to the same offence.

- Example - If the unintended victim was a person who was hit by the stone and suffered an injury – the intent would not be transferred as it differs from that of assault

Criminal Damage

Reckless



Step 1

The defendant is subjectively aware of the risk, they foresee the risk, of the consequence either destruction or damage being caused. I.e. they have internally registered the risk.



Step 2

They nevertheless go ahead and unreasonably take the risk anyway



Inadequate to show that a person throwing a stone at a window **ought** to have foreseen the consequence of the window being damaged as a result
It must be proven that

Reckless

A person acts **recklessly** for the purposes of Section 1 of the Criminal Damage Act 1971 with respect to

1. a circumstance where that person is **aware of a risk** that exists or will exist; e.g. A tramp taking shelter in a barn full of dry hay, risks lighting a fire to boil water for his cup of tea and sets the barn alight.
2. when doing the act, the defendant either has not given any thought to the possibility of there being such a risk or has recognised that there was some risk involved and has nevertheless gone on to do it. e.g. An adult wants to let off a large rocket in the street outside his house. He ignores instructions stating that the firework should be launched from a hole in the ground and launches it from a pop bottle standing upright on the pavement. It goes through the bedroom window of a house opposite and causes a fire.

The risk at the time of the defendant's conduct need only be apparent to a **reasonable person**. It is not necessary to show that the risk would have been obvious to the defendant had he/she stopped to think about what he/she was doing.

The police **must prove**:

There is an obvious risk to property

AND

The defendant gave no thought to there being a risk

OR

The defendant recognised there was a risk but went on to do it anyway.

Can you Damage your own Property?

The basic offence of Criminal Damage relates only to damaging property belonging to another

Therefore, it will not be possible to commit the basic offence of Criminal Damage by damaging/destroying your own property

The **exception** to this rule involves situations where the property damaged/destroyed belongs to **BOTH** themselves & another by virtue of either:

Joint ownership – i.e. proprietary interest

Another party has custody or control of the property

Another party is in control of the property



QTS – can you damage your own property?

The extended meaning of 'belonging to another' is similar to that used in the Theft Act 1968

The result is that if a person damages their own property they may still commit the offence of simple criminal damage if that property also belongs to someone else

Damage Endangering Another's Life S1(2) CDA 1971

A person who without lawful excuse, destroys or damages any property, whether belonging to himself or another



(a) Intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged **AND**



(b) Intending by the destruction or damage to **endanger the life of another** or being reckless as to whether the life of another would be thereby endangered



Part two of the definition:

Aggravated Criminal damage is where property has been destroyed or damaged with the aggravating factor being that life is endangered by the destruction or damage to the property.

Officers should be aware that **endanger life** in relation to criminal damage, does not require attempt to kill, otherwise murder or manslaughter would be the more appropriate charge and there is no requirement for any actual injury. It is sufficient that life was endangered; for example, if a jealous husband cuts the brake pipe of his rivals car, no harm may actually come to the intended victim, but the potential for harm exists.

Triable only on indictment – Life imprisonment

Power of arrest without warrant – Constables/other persons

To decide whether a person has committed this offence, ask yourself three questions.. (See next slide)

Ask yourself these questions

1. Has someone?
Destroyed or damaged property?
Without lawful excuse, whether their own or someone else's?

2. Did they either?
Intend the damage/
destruction?
OR
Were they reckless as to the possible damage/
destruction?

3. Did they?
Intend to endanger someone else's life?
OR
Were they reckless as to whether it might endanger life?



Only if the answers to **all** these questions are **YES** has the **full offence Section 1(2)** has been committed.

Although the words “Lawful Excuse” appears in this offence, the excuses provided in Section 5(2) **do not** apply to this offence.

Lawful excuse will be restricted to those excuses such as self defense and defense of another

Self induced intoxication through drink or drugs is a defense to a charge of a crime requiring specific intent but not to a charge of a crime requiring recklessness.

Therefore, if a defendant is alleged to have committed an offence of criminal damage by acting recklessly, it is no defense to claim voluntary intoxication.

Note that the offence can be complete even if nobody's life is actually put at risk. For example, if someone burns a house down, intending to kill the occupants, the offence is complete even if the occupants are not in the house.

****Activity -Trainer to ask students to look at questions 1 to 5 and debrief.***

Group Activity

- **You will be divided into 3 groups.**
- Each group will be given **40 minutes** to **research** an **offence**.
- Your group are then **responsible** for **teaching this offence to the class**.
- You may use **any means** you wish to **research** the **offence** and **teach the class**.
- Your **presentation** should last **10 minutes**.

- **Group 1** – Arson Section 1(3) Criminal Damage Act 1971
- **Group 2** – Threats to commit damage Section 2 Criminal Damage Act 1971
- **Group 3** – Possession of an article with intent to cause damage Section 3 Criminal Damage Act 1971



Arson



Section 1(3) Criminal Damage Act 1971



If the damage or destruction is caused by fire, then the offence of **Arson** (under section 1(3)) should be charged.

For a person to be found guilty of this offence at least some of the damage must have been caused by fire (excluding smoke damage)

For this offence to be proved there must be an intent or an element of recklessness in relation to the use of fire.

Either way offence

Summary: 6 months imprisonment and/or fine

Indictment: Life imprisonment

Threats to Destroy or Damage Property S2 CDA 1971

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



To destroy or damage any property belonging to that other or a third person or



To destroy or damage their own property in a way which they know is likely to endanger the life of that other or a third person



Lawful excuse

If a threat to life is involved there is **no defense** of 'lawful excuse'

Threats

The threat may be oral or written, (telephone, email, text, fax or letter) It may be made to the person whose property is to be damaged, or it may be made to another. The threat can be made towards a third person e.g. "I'll torch your brothers workshop, if you don't get this sorted!"

The recipient does not have to believe the threat will be carried out, nor do they have to be put in fear

Intends - it is the offenders intention that is vital not the effect on the victim

The offender must be shown to have an intention to make the other person fear that the threat would be carried out. It does not matter if the other person is not put in fear.

Own property

The offender's own property may be the subject of the offence, but only if the threatened damage or destruction would be likely to endanger another's life. An example would be, "If you take my car, I will cut the brake pipes" which when used by another would endanger their life.

Triable either way – max 10 years imprisonment on indictment

Power of arrest without warrant – Constables/other persons

**To decide whether this is an offence the following questions should be asked;
(See next slide)**

Ask yourself these questions ...

1. Has the person threatened someone else that they will damage that person's or another person's property?

2. Did they intend that the threatened person would fear that the threat would be carried out?



Only if the answers to **both** these questions is **YES** then the **full offence** Section 2 been committed.

Possessing anything with intent to destroy or damage property or endanger life S3 CDA 1971

An offence is committed by a person who has an article in their custody or under their control, intending without lawful excuse, to use it or cause or permit another to use it



to destroy/or damage any property belonging to some other person OR



To destroy/or damage their own or the user's property in a way which they know is likely to endanger the life of some other person



Section 3 of the Criminal Damage Act 1971 creates the offence of 'going equipped' intending to destroy or damage property.

Article

Virtually anything could be used to cause damage. There is no need to show it is made or adapted to cause damage. However it must be in their **custody or control** at the time of the damage for the offence to be complete

Custody means safekeeping. A concept similar to possession in theft.

Control means the power to manipulate property without having legal title or possession, such as the dispatcher of a parcel delivery company, who has control of the distribution of the parcels without ownership, custody or possession.

What the offender intends to do need not be immediate, it can be at some time in the future

Use it, cause or permit another to use it

The suspect must be able to have custody or control over the article in order to 'cause' or 'permit' its use. Eg a protester asks the leader of the group of protesters where the supply of spray paint is kept. The leader tells the protestor where to find them and helps to find them.

Own property

The offender can damage/destroy their own property or their own property that

someone else is using

Triable either way – max 10 years imprisonment on indictment

Power of arrest without warrant – Constables/other persons

**To decide whether this is an offence the following questions should be asked;
(See next slide)**

Ask yourself these questions

1. Was the item in their control or custody?



2. Did they intend to use it, or allow another to use it to cause damage to property?



3. Did the property belong to another?



If the property belonged to themselves or the user, did they intend to use it, cause or permit another to use it in a way which they knew was likely to endanger the life of another?



4. Did they have no lawful excuse?



Only if the answers to these questions is **YES** has the full offence been committed.

****Activity – Trainer to ask students to complete remaining questions on worksheet. ****



Scenario 1

PURCELL is out for the day to visit her elderly mother. Her friend JERMYN arrives at PURCELL'S house and cannot get a reply. JERMYN knows that PURCELL is diabetic and that on more than one occasion she has become unconscious. JERMYN is unable to gain entry, and so stops a passer by to help. JERMYN explains the problem to POTTER who smashes a window in order to get inside.

Q: What offence, if any, has been committed and by whom?

- A. POTTER and JERMYN both commit criminal damage.
- B. JERMYN commits damage but POTTER does not.
- C. POTTER commits criminal damage but JERMYN does not.
- D. POTTER and JERMYN have a lawful excuse.



Which of the following is true?

POTTER and JERMYN both commit criminal damage.

JERMYN commits damage but POTTER does **not**.

POTTER commits criminal damage but JERMYN does **not**.

POTTER and JERMYN have a lawful excuse.

ANSWER: D

Both have a lawful excuse. In this instance when they break in and find the house empty the belief in their mind is that PURCELL would have consented had she known the circumstances.

Scenario 2

SNOW is confronted in his local pub by ROGERS. ROGERS tells SNOW that unless he pays his bill for the work carried out on his roof he will smash up SNOW'S car with a hammer. SNOW thinks the threats are funny and has no belief that ROGERS will damage his car.

Q: What offence, if any, has been committed?

- A. SNOW owes ROGERS money and therefore providing the amount of damage does not exceed the cost of the repairs no offence is committed.
- B. If ROGERS intends SNOW to fear the damage to his car will be carried out he has committed an offence of threats to destroy or damage property.
- C. Because SNOW is not in fear of the act being carried out then no offence is committed.

Which of the following is true?

a. SNOW owes ROGERS money and therefore providing the amount of damage does not exceed the cost of the repairs no offence is committed.

b. If ROGERS intends SNOW to fear the damage to his car will be carried out he has committed an offence of threats to destroy or damage property.

c. Because SNOW is not in fear of the act being carried out then no offence is committed.

ANSWER: B it is irrelevant that SNOW is not in fear of the damage being carried out. It is the intent of the offender that matters and in this case if ROGERS intends SNOW to believe he will damage the car the offence will be committed.



Scenario 3

MORGAN and his wife have had an argument, and his wife has decided to leave him. MORGAN goes to the pub and after an hour he returns to the house believing his wife has gone. There he sets fire to a petrol soaked rag placed in the letterbox and watches his house burn to the ground. MORGAN'S wife having been trapped inside by flames manages to escape through a rear window to safety.

Q: What offence has been committed and by whom?

- A. MORGAN had no idea his wife was inside and would never have harmed her, he has destroyed his own property therefore no offence of criminal damage or arson has been committed.
- B. MORGAN set fire to his home and was reckless as to endangering the life of another therefore he commits an offence.
- C. Nobody was harmed and MORGAN destroyed his own property so an offence of arson cannot have been committed.

Which of the following is true?

MORGAN had no idea his wife was inside and would never have harmed her, he has destroyed his own property therefore no offence of criminal damage or arson has been committed.

MORGAN set fire to his home and was reckless as to endangering the life of another therefore he commits an offence.

Nobody was harmed and MORGAN destroyed his own property so an offence of arson cannot have been committed.

ANSWER: B with an offence under section 1 (2) being committed where he has carried out a reckless act of criminal damage (Arson) that endangered the life of his wife.

Scenario 4

BENNETT is fed up with school, he longs for the school holiday which does not start for another 4 weeks. He decides that if he burns the school down he can begin his holiday immediately. He sets off from home at 3am with a can of petrol and a box of matches, however before he gets to the school he is stopped by police.

Q: What offence has been committed?

- A. BENNETT commits no offences in respect of the Criminal Damage Act because he has not carried out the offence.
- B. BENNETT commits an offence of having something with him intending to use them to destroy or damage property.
- C. BENNETT has not reached the school property and it is not until then that any offence is committed.

Which of the following is true?

BENNETT commits no offences in respect of the Criminal Damage Act because he has not carried out the offence.

BENNETT commits an offence of having something with him intending to use them to destroy or damage property.

BENNETT has not reached the school property and it is not until then that any offence is committed.

ANSWER: B where BENNETT has articles in his possession with which he intends to commit criminal damage.

Trainer to consider finishing the worksheet as a plenary for the lesson

*****Optional Kahoot quiz-

<https://create.kahoot.it/search?filter=1&tags=criminal%20damage%20pa1&query=criminal%20damage%20pa1>