

- a) The issue in this case is whether Hadley has committed the offences of burglary and criminal damage to property. Burglary is defined in Section 9 of the Theft Act 1971. Criminal damage is defined in Section 1 of the Criminal Damage Act 1971. The facts of the case show that Hadley went to Ronan's house to steal the bucci trainers but stole the Kalex watch instead. He snapped the wooden bench in half and poured aftershave into the bin in the dressing room and set it on fire. His entry into the house was facilitated by the use of a piece of bamboo to put through the cat flap to hook the keys from inside to open the door. These facts can be related to the two different offences of burglary and criminal damage. Since the entry into the house was done in the way that allowed him to gain a substantial and effective ingress into Ronan's house with the intention to steal the Bucci sneakers, this would come within the definition of gaining entry for burglary.¹ Indeed, burglary can even be committed even if the entry is partial and not complete but it is enough to gain access to the building or part of it to take goods.² Section 9 of the Theft Act is therefore engaged in this situation since it provides that the defendant will be guilty of burglary if they have gained entry into a house which is a part of the building for stealing something or causing damage.³ With regard to criminal damage, Section 1(1) of the Criminal Damage Act 1971 is engaged because it relates to the offence of damaging property belonging to another person either intentionally or recklessly. The mens rea of the offence is direct or oblique intention, or subjective recklessness, which was defined by the House of Lords in *R v G* as where the defendant is aware of a risk; or a result when he is aware of a risk that it will occur; and where it is unreasonable to take the risk under the circumstances.⁴ Thus, where the defendant caused damage to the vehicle after rashly dashing into the road, the court held that this was done recklessly because he was aware of the risk and closed his mind to it.⁵ The damage caused to the property need not be permanent and even temporary damage will suffice to come within the scope of criminal damage.⁶ Furthermore, the building is used as a home therefore, comes within the definition of dwelling.⁷ This may be There is also criminal damage caused by the fire, which may come within the definition by arson under Section 1(3) of the Theft Act 1971. Therefore, the facts of the case show that Hadley can be liable for burglary and criminal damage.
- b) The issue in this case is whether Freya can be charged under Section 47 of the Offences Against the Person Act 1861. Section 47 relates to assault occasioning actual bodily harm. The term 'occasioning' has been interpreted as 'causing' bodily harm, or where the harm is the natural result of what the assailant said and did, or could have been reasonably foreseen by the assailant.⁸ The term harm is synonymous with injury and because the term used is 'actual bodily harm' in Section 47, the injury envisaged

¹ *R v Collins* (1973) QB 100.

² *R v Brown* [1985] Crim LR 212.

³ *R v Walkington* [1979] 1WLR 1169.

⁴ *R v G & R* [2003] 3 WLR.

⁵ *Booth v Crown Prosecution Service* [2006] EWHC 192 (Admin).

⁶ *Cox v Riley* [1986] 83 Cr. App. R. 54.

⁷ *R v Saw and Others* [2009] EWCA Crim 1.

⁸ *R v Roberts* (1971) 56 Cr App R 95, [102].

under this provision is a significant injury.⁹ Section 47 also has a mens rea element, which includes recklessness as held in *DPP v Parmenter*.¹⁰ In *MPC v Caldwell*,¹¹ the court held that recklessness means that the defendant did not consider the possibility of a risk when acting in a particular way. Thus, what Section 47 requires is that there must be assault (explained in *R v Ireland* as a positive act by causing the victim to apprehend imminent harm¹²), and intentional or possibly reckless action in causing another person to apprehend immediate and unlawful personal violence.¹³ It is important that the threat of harm must be imminent,¹⁴ and unconditional.¹⁵ In this scenario, Freya, who has a history of epilepsy, and who was intoxicated began vomiting after the party, and then had a seizure on the kitchen floor. Freya punched Mike in the face causing him to have a black eye while she was having a seizure. The mental elements of the offence are not present in this case because Freya did not commit these actions recklessly or intentionally. The defence of automatism is available to Freya. In *Bratty v Attorney-General of Northern Ireland*,¹⁶ Lord Denning has explained this defence by saying that actions are not punishable if done involuntarily. Automatism is explained by Lord Denning as an involuntary act "done by the muscles without any control of the mind, such as a spasm, a reflex action, or a convulsion."¹⁷ This defence was allowed by the court in *Regina v. Harrison-Owen*,¹⁸ where the defendant was allowed the defence that he entered the house in a state of automatism and this led the court to hold that he lacked actus reus for the offence.¹⁹ In this case, a question may arise as to whether 'non-insane automatism' or 'insane automatism' can be posited by Freya. Non-insane automatism is defined as automatism, which is caused by some factor that is external to the mind of the defendant. Insane automatism is caused by some condition that is internal to the mind and can be caused by mental illness or 'disease of the mind'.²⁰ For example, in one case, the defence of insanity automatism was allowed to a defendant where he had been sleepwalking when he committed the offence.²¹ Intoxication will not be a defence for Freya because she got intoxicated voluntarily and in *Majewski*, the court has held that

⁹ Ibid.

¹⁰ *DPP v Parmenter* [1991] 94 Cr App R 193.

¹¹ *R v Ireland* [1982] AC 341.

¹² *R v Ireland* [1982] AC 341.

¹³ *Fagan v Metropolitan Police Commissioner* [1969] 1 QB 439 (QBD), [445].

¹⁴ *Smith v Superintendent of Woking Police Station* (1983) 76 Cr App R 234 (DC).

¹⁵ *Tuberville v Savage* (1669) 1 Mod Rep 3, 86 ER 684.

¹⁶ *Bratty v Attorney-General of Northern Ireland* [1963] AC 386 (HL).

¹⁷ Hungerford Welch Staff, *Sourcebook Criminal Law* (Cavendish Publishing 2001) 231.

¹⁸ *Regina v. Harrison-Owen*, 2 All E.R. 726 (Crim. App. 1951).

¹⁹ Ibid.

²⁰ *M'Naghten's Case* [1843] All ER Rep 229.

²¹ *R v Burgess* [1991] 2 QB 92.

the voluntary intoxication of the defendant does not make it appropriate to not hold them liable for the injury.²²

Table of cases

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R v Brown [1985] Crim LR 212.
R v Burgess [1991] 2 QB 92.
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R v Saw and Others [2009] EWCA Crim 1.
R v Walkington [1979] 1WLR 1169.
Regina v. Harrison-Owen, 2 All E.R. 726 (Crim. App. 1951).
Smith v Superintendent of Woking Police Station (1983) 76 Cr App R 234 (DC).
Tuberville v Savage (1669) 1 Mod Rep 3, 86 ER 684.

Books

Staff HG, *Sourcebook Criminal Law* (Cavendish Publishing 2001).

²² *DPP v Majewski* [1977] A.C. 443.