

- Evans [2009]: Where D supplies drugs to V who self-administers D can still be convicted of creating or contributing to a dangerous situation so that it amounted to gross negligence.

3. NON-FATAL OFFENCES AGAINST THE PERSON

3.1. Assault and battery (S.39 Criminal Justice Act 1988)

I. ASSAULT

- Offences against the person Act 1861
- The punishment for assault is set out in statute under s.39 Criminal Justice Act 1988 - maximum 6 months imprisonment
- It can be prosecuted as a common assault (Criminal Justice Act 1988, s.39) or as assault occasioning actual bodily harm (Offences Against the Person Act 1861, s.47)
- Assault does not require intention only, recklessness will suffice (Venna [1975] and R v Savage: R v Parmenter [1991])
- It is possible to commit an assault by omission (Fagan v Metropolitan Police Commissioner [1969])
- Assault can be committed by words or silence (R v Ireland; R v Burstow [1997])
- Letter can be assault (Constanza [1997])
- Cutting the victim's hair can be assault (DPP v Smith [2006])

DEFINITION:

- D causes the victim to apprehend unlawful immediate personal violence (no actual harm is necessary – Lewis [1970])

ACTUS REUS: Causing the apprehension of immediate and unlawful personal violence

MENS REA: Intention or Subjective Cunningham recklessness

II. BATTERY

DEFINITION:

- S.9 – sexual activity (sexual touching) with a child under 16 (and D is aware of this) or 13 (regardless of whether D is aware of this)
- S.10 – causing or inciting a child to engage in sexual activity (e.g. text messaging/grooming) with a child under 16 (and D is aware of this) or under 13 (regardless of whether D is aware of this)
- S.11 – engaging in sexual activity in the presence of a child under 16 (and D is aware of this) or under 13 (regardless of whether D is aware of this)
- S.12 – causing a child to watch a sexual act when the child is under 16 (and D is aware of this) or under 13 (regardless of whether D is aware of this)
- S.13 – D commits any offence under sections 9-12 and is aged 17 and under – the maximum sentence is lower

5. PROPERTY OFFENCES

5.1 THEFT

DEFINITION:

Theft Act 1968, section 1(1): "A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it..."

- The maximum penalty on indictment is seven years' imprisonment. (TA 1968, s7)

ACTUS REUS:

- Appropriation (s3)
- Of Property (s4)
- Belonging to another (s5)

MENS REA:

- Dishonestly (s2)
- Intending to permanently deprive the other (s6)

➔ **Appropriation:** "Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner." – TA 1968, s3 (1)

5.5 CRIMINAL DAMAGE

5.5(1) -> S.1 (1) Criminal damage

DEFINITION:

- S.1 (1) Criminal Damage Act 1971 provides that a person is guilty of criminal damage if they intentionally or recklessly destroy or damage property belonging to another without lawful excuse

ACTUS REUS:

- Causing damage or destruction
- Of property
- Belonging to another
- Without lawful excuse

MENS REA:

- Intention
- Recklessness (of property) - (R v G [2003] - subjective test)
- That actions would damage or destroy property AND
- Knowledge > that the property belonged to another

→ Damage:

- Damage is a matter of fact and degree
- Damage need not be permanent
- Damage must be more than merely trivial
- There is no requirement that the property is rendered useless, a diminution in value is sufficient for liability for criminal damage
- If no damage in fact occurs then no liability for criminal damage can arise
- Destroying or damage can be committed by an omission

→ Property:

- The definition of property for the purposes of criminal damage is found in s.10 (1) Criminal Damage Act 1971. Property embraces only tangible property. It includes real property (land and buildings) and personal property. Money is also included. By virtue of s.10(1) (a) animals are only included if they are tamed or ordinarily kept in captivity and under s.10(1)(b) wild mushrooms, fruit, flowers, foliage and plants are excluded.

- AND in certain limited circumstances recklessness if that is also part of the complete offence

- !!! Omissions are excluded – see s.1(1) → An attempt cannot be committed by an omission
- For murder intention relates to killing not GBH (see R v Whybrow [1951]) regardless of mens rea of the offence (O'Toole [1987])
- Intent means the same as in common law – see R v Pearman [1984]
- Mistake as to the law or physical impossibility will not amount to attempt (see Taaffe [1984] and R v Shivpuri [1987])
- Even if D succeeds in the crime an offence of attempt can be charged – s.6 (4) The Criminal Law Act 1967
- The maximum sentence is the same as the substantive offence
- There is no defence of abandonment!

→ R v Shivpuri [1987] -> **Held:** The House of Lords overturned its previous decision in Anderton v Ryan:

Any attempt to commit an offence carries liability if D

- Intended to carry out the substantive offence and
 - Did an act that was more than merely preparatory.
 - Even though completion was impossible.
- Legal impossibility:** Legal impossibility arises when the defendant did, or intended to do, acts that would not constitute a crime under any circumstances. In other words it is legally impossible for those acts to have been a crime. / D's attempt is legally impossible where she tries to commit a principal offence which, contrary to her belief, is not actually an offence known to the law. (if D comes from another country where the offence is illegal, and D believing the same is true in England, tries / commit the offence, we could describe her actions as an impossible attempt)
- Factual impossibility:** Factual impossibility arises only when it would be factually impossible for the defendant to complete the crime. / D's attempt is factually impossible where she tries to commit a principal offence which does exist in English law, but the circumstances surrounding her attempt mean that that offence could not come about. (where D is trying to kill V who is already dead, trying to steal from an empty safe, trying to shoot V with an unloaded gun...)

7.2 CONSPIRACY (s.1 Criminal Law Act 1977)

DEFINITION:

- Conspiracy involves agreeing with others to (two or more) commit an offence as a joint plan
- Must intend the agreed action but do not have to play an active role

- Mistakes of law will not generally be a defence – but see **Smith** [1974] on the question of civil law.
- An honest mistake may exempt D from criminal liability even if the mistake was not reasonable – see **DPP v Morgan** [1976] but see changes made under Sexual Offences Act 2003

10. GENERAL DEFENCES

10.1 SELF-DEFENCE

- Victim must pose an unjust threat (actual or imminent) see **Beckford v Queen** [1987] The use of force must be necessary to ward off/resist threat
- The degree of force must be reasonable
- The force was not retaliatory or revengeful
- The defendant must be acting to defend himself, another person, or property
- Governed by s.3 of the Criminal Law Act 1967 (“CLA”) and the Criminal Justice and Immigration Act 2008 (“CJIA”)
- Defending self or another (common law and 2008 Act)
- Using force in the prevention of crime (s.2 CLA 1967)
- **Palmer v R** [1971] sets out the requirements:
 - D honestly believes that it was necessary to use force because was facing an unjust threat from the victim (or believed he was) – **subjective test**
 - D used a level of force against the (perceived) threat that was proportionate to the circumstances as he believed them to be – **objective test**
- See **Palmer v R** [1971] – the law takes account of the urgency of the moment
- An honest but unreasonable mistake about the threat -- See a return to an agreed definition of the objective test in **Owino (1995)** which reinstated the test from **R v Gladstone Williams** [1983]
- See **Whyte** [1987]– what is reasonable will depend on the nature of the attack
- See **Bird** [1985] – there is no duty to retreat. But for provoked attacks by D see **R v Keane** [2010], **Beckford v Queen** [1987]
-

10.2 DURESS

- A defence to all crimes except murder, and treason – see **Howe [1987]** per Lord Hailsham or attempted murder – see **R v Gotts [1992]**
- Defendant must show according to the case of **R v Graham [1982]** 1 WLR 294 per Lord Lane:
 - D committed crime because of threats which lead to a reasonable fear of death or grievous bodily harm (*subjective and objective test*)
 - A sober person of reasonable firmness sharing D's characteristics would have responded to the belief as D did (*objective test*)

-> Duress may be by 1) threats or 2) by circumstance

-> The sober person may be given D's characteristics – see **R v Bowen** (1996)

- **Abbott** (1977) - the accused's will must have been overborne by the threats so that the commission of the offence was not a voluntary act.
- **Gill** (1963) - it is not for the accused to prove duress, but for the prosecution to disprove it.
- The case of **R v Hasan [2005]** has now clarified the law on duress.
- ➔ The threat need not exist in fact so long as D reasonably fears that it does – see **R v Cairns [1999]** and **R v Martin (David Paul) [2000]**
- ➔ The defence will fail where D associates with others whom he knows or ought to have known might subject him to compulsion through threats – see **R v Hasan [2005]**
- ➔ See **R v Graham [1982]** – matter of public policy to limit defence using an objective test. See **R v Hasan [2005]** which now asserts a strict objective approach.
- ➔ Objective test requires sober person to share in D's characteristics – see **R v Bowen [1996]** The defence will fail if D associates with those he knew or ought to have known might subject him to compulsion or threats of violence – see **R v Fitzpatrick [1977]** and **R v Hasan [2005]**

10.3 NECESSITY

- ➔ The defence of necessity in criminal law is where the defendant is arguing that it was necessary for them to commit a crime. For example, where a prisoner escapes from a burning prison he may raise the defence of necessity as it was necessary for him to escape. The defence of necessity often operates where the defendant has two alternatives either commit a crime or suffer or cause another extreme hardship. According to Sir James Stephen, there are three requirements for the application of the defence of necessity:

(i) the act is needed to avoid inevitable and irreparable evil;